

**HB**

**136**

**HFIN**

**FILE**

(11)

HOUSE COMMITTEE REPORT

Date Referred to Committee: April 29, 1996

FURTHER REFERRALS:

Date of Committee Action: 4/29/96

The FINANCE Committee considered:

HB 136

HOUSE BILL NO. 136

MANDATE SALE OF ALASKA RAILROAD

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

recommends it be replaced with the following committee substitute CS HB 136 (FIN) [ ] the same title [ ] a new title

[ ] additional referral to \_\_\_\_\_ Committee [ ] attached amendment(s)

ADOPTS: \_\_\_\_\_ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (Dept/Date)

[ ] fiscal note(s) \_\_\_\_\_

[X] fiscal note(s) HSTA 40- CED, 4/29/96

[ ] zero fiscal note(s) \_\_\_\_\_

[ ] zero fiscal note(s) \_\_\_\_\_

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>Richard Foster</i>			X	
<i>Allen Mulder</i>	X			
<i>Terry Martin</i>	X			
<i>Stan Pannell</i>			X	
<i>Eric Kohring</i>			X	
<i>Mike Howard</i>		X		
<i>Jay Brown</i>			X	
<i>Gene Therrault</i>			X	

CHAIR'S SIGNATURE

*Richard Foster*

Title: Relating to Railroad Sale.  
Sponsor: \_\_\_\_\_  
Requestor: Martin

Dept. Affected: Commerce  
BRU: Rail Road AARC  
Components: \_\_\_\_\_  
Serial #: \_\_\_\_\_

EXPENDITURES/REVENUES: (THOUSANDS OF DOLLARS)

OPERATING	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
Personal Services						
Travel						
Contractual	250,000	0	0	0	0	0
Supplies						
Equipment						
Land & Structures						
Grants, Claims						
Miscellaneous						
TOTAL OPERATING	250,000	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (THOUSANDS OF DOLLARS)

General Fund						
Federal Fund						
Other AARC Corporate receipts	250,000	0	0	0	0	0
TOTAL	250,000	0	0	0	0	0

POSITIONS:

Full-Time						
Part-Time						
Temporary						

ANALYSIS: (ATTACH A SEPARATE PAGE IF NECESSARY)

see attached analysis

Prepared by: House State Affairs  
Rep. James  
James

Date: 4/29/96  
Phone: 465-3743  
Phone: \_\_\_\_\_

AMENDMENT

3

Adopted  
no obj

**TO: CS FOR HOUSE BILL NO. 136(STA)**  
**FROM: PARNELL**

P. 4, ln. 30 after "governor"

Insert: ", the speaker of the house, the president of the senate,"

P. 4, ln. 31 after "1997."

Insert: "Copies of the report shall be made available to the public by the Alaska Railroad Commission."

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

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

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

MEMORANDUM

November 9, 1992

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

**TO:** Representative Terry Martin  
ATTN: Tom Anderson

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

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

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

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

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

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

Representative Terry Martin

November 9, 1992

Page 2

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

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

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

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

If I can provide further assistance, please advise.

GU:gc  
92-508.glc

Amended pg 2  
4

**CS FOR HOUSE BILL NO. 136(STA)**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**NINETEENTH LEGISLATURE - SECOND SESSION**

**BY THE HOUSE STATE AFFAIRS COMMITTEE**

**Offered:  
Referred:**

**Sponsor(s): REPRESENTATIVE MARTIN**

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to the establishment and operation of the Alaska Railroad  
2 Commission to determine whether sale of the Alaska Railroad is in the best  
3 interest of the state; and providing for an effective date."

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

5 \* Section 1. ALASKA RAILROAD COMMISSION. (a) The Alaska Railroad  
6 Commission is established as an agency of the legislative branch. The commission consists  
7 of five members. One member shall be appointed by the governor, one member shall be  
8 appointed by the president of the senate, one member shall be appointed by the speaker of the  
9 house of representatives, one member shall be appointed jointly by the governor, president of  
10 the senate, and speaker of the house of representatives from among the employees of the  
11 Alaska Railroad Corporation who are members of a bargaining unit representing employees  
12 of the railroad, and one member shall be appointed jointly by the governor, president of the  
13 senate, and speaker of the house of representatives who is a representative of the major  
14 customers of the Alaska Railroad Corporation. The persons making appointments to the

1 commission shall give consideration to the appointment of <sup>at least one</sup> ~~persons~~ <sup>has</sup> who ~~have~~ experience  
2 involving corporate mergers and acquisitions. A vacant seat on the commission shall be filled  
3 in the manner that the seat was originally filled.

4 (b) A member of the Alaska Railroad Commission who is a public member is entitled  
5 to compensation at a rate of \$250 for each day the member is engaged in the actual  
6 performance of duties as a commission member. The commission may provide for  
7 compensation for partial days during which a member who is a public member is engaged in  
8 actual performance of duties as a commission member. In addition, a member who is a public  
9 member is entitled to per diem and travel expenses authorized for boards and commissions  
10 under AS 39.20.180. A member of the commission who is not a public member is entitled  
11 to the member's usual compensation and travel and per diem expenses as a legislator, state  
12 employee, or employee of the Alaska Railroad. In this subsection, a public member of the  
13 commission is a member who is not a legislator, state employee, or employee of the Alaska  
14 Railroad.

15 (c) Subject to appropriations for the purpose, the Alaska Railroad Commission may  
16 contract for professional services as the commission considers necessary. Contracts for  
17 professional services under this subsection are exempt from AS 36.30.

18 (d) The Alaska Railroad Commission shall contract for preparation of an evaluation  
19 of the Alaska Railroad as a going concern by a qualified railroad appraiser. The commission  
20 shall give a preference to a private entity based in the state for the contract to perform the  
21 evaluation. The evaluation shall be submitted to the governor and the Legislative Budget and  
22 Audit Committee before November 1, 1996. The Alaska Railroad Corporation shall pay for  
23 the evaluation from corporate receipts of the Alaska Railroad Corporation. The contract for  
24 the evaluation under this subsection is exempt from AS 36.30.

25 (e) On September 1, 1996, and November 1, 1996, the Alaska Railroad Commission  
26 shall submit a report to the Legislative Budget and Audit Committee detailing the progress  
27 of the commission in implementing this section and the problems encountered by the  
28 commission. The Legislative Budget and Audit Committee may request that the commission  
29 appear before the committee to brief the committee on the progress of the commission in  
30 performing the commission's functions under this section.

31 (f) By January 13, 1997, the Alaska Railroad Commission shall determine whether or

1 not it is in the best interest of the state to sell the Alaska Railroad and all other assets of the  
2 Alaska Railroad Corporation classified as necessary for the operation of the railroad. In  
3 reaching its determination under this subsection, the commission shall

4 (1) identify all assets, real and personal and tangible and intangible, of the  
5 Alaska Railroad Corporation and classify those assets as necessary for the operation of the  
6 railroad or as other assets of the corporation;

7 (2) consider the effect of a sale of the Alaska Railroad on the state, on  
8 customers, lessees, and employees of the railroad, and on municipalities served or affected by  
9 the railroad;

10 (3) consider the effect of privatization of the Alaska Railroad and the  
11 conditions of a sale upon the long-term profitability of the railroad;

12 (4) consider the ability of the state to obtain enforceable assurances of  
13 continued operation of the railroad at necessary levels of service;

14 (5) consider foreseeable economic effects of a sale of the railroad; and

15 (6) consider the value to the state of direct oversight of operations of the  
16 Alaska Railroad Corporation as currently provided under law.

17 (g) Notwithstanding the determination of the commission under (f) of this section,  
18 before January 13, 1997, the Alaska Railroad Commission shall also

19 (1) recommend specific conditions to be attached to a sale of the Alaska  
20 Railroad, including requirements that the purchaser of the railroad agree to

21 (A) continue operation of the railroad, as an active and functioning  
22 transportation system, for a minimum of 20 years following the date of sale of the  
23 railroad;

24 (B) accept assignment of all contracts, including agreements with  
25 connecting carriers, shippers, or other persons concerning services, operation, property,  
26 and facilities of the Alaska Railroad Corporation, entered into by the Alaska Railroad  
27 Corporation and in effect on the date of the sale of the Alaska Railroad, provided that  
28 the contracts are assignable under terms of the contract or that the other parties to the  
29 contract consent to the assignment; this subparagraph does not apply to executive  
30 employment contracts;

31 (C) accept assignment of collective bargaining agreements with labor

1 organizations that represent employees of the Alaska Railroad that are in effect on the  
2 date of transfer of ownership of the Alaska Railroad until expiration of the agreements;

3 (D) as a condition of the sale and before the transfer of ownership of  
4 the Alaska Railroad, negotiate collective bargaining agreements, including provisions  
5 for future retirement benefits if appropriate, to take effect upon the expiration of the  
6 collective bargaining agreements that are in effect on the date of transfer of ownership  
7 of the Alaska Railroad;

8 (E) accept assignment of the retirement obligations owed to employees  
9 of the Alaska Railroad at the time of transfer of ownership of the Alaska Railroad;

10 (F) purchase the Alaska Railroad for an amount that is equal to or  
11 exceeds the fair market value of the Alaska Railroad and the assets of the Alaska  
12 Railroad Corporation that are necessary for the operation of the railroad; and

13 (G) provide proof of financial ability to abide by the terms of sale and  
14 to operate the railroad as an active and functioning transportation system;

15 (2) recommend specific procedures and a schedule of events to be followed  
16 in selling the Alaska Railroad;

17 (3) evaluate the prospects for and effects of operation of the Alaska Railroad  
18 under private ownership;

19 (4) <sup>inventory</sup> recommend <sup>& contracts</sup> procedures for the disposal of real property, of the Alaska  
20 Railroad Corporation that <sup>is not</sup> necessary for operation of the Alaska Railroad to the state or  
21 to private persons; <sup>make recommendations for their disposal</sup>

22 (5) identify measures necessary to assure continued use of the railroad right-of-  
23 way corridor for transportation, communication, and transmission purposes and support  
24 functions associated with these purposes; and

25 (6) identify conditions or terms of a sale of the Alaska Railroad that may be  
26 necessary for consistency with the Alaska Railroad Transfer Act of 1982 (P.L. 97-468, Title  
27 IV) and AS 42.40 (Alaska Railroad Corporation Act).

28 (h) The Alaska Railroad Commission shall submit a comprehensive report of its  
29 determination, recommendations, identifications, and evaluations made under (f) and (g) of this  
30 section and of the evaluation of the Alaska Railroad under (d) of this section to the governor  
31 and the Legislative Budget and Audit Committee before January 13, 1997.

TO  
Sub  
(F)  
Page 2

1 (i) Except as provided under this subsection, the meetings of the Alaska Railroad  
2 Commission shall be open to the public and shall provide an opportunity for public comment.  
3 A subject may not be considered at an executive session unless the subject is mentioned in  
4 the motion calling for the executive session or is auxiliary to a subject mentioned in the  
5 motion. An action may not be taken at an executive session. Only the following subjects  
6 may be discussed in an executive session:

7 (1) matters, the immediate knowledge of which would clearly have an adverse  
8 effect upon the finances of the Alaska Railroad Corporation;

9 (2) unless the person has requested to have the subjects discussed in public,  
10 subjects that tend to prejudice the reputation and character of a person;

11 (3) matters that, by law or municipal charter or ordinance, are permitted to be  
12 kept confidential from public disclosure;

13 (4) matters pertaining to personnel;

14 *ADOPTED* (5) matters pertaining to <sup>current or potential litigation involving</sup> the legal position of the Alaska Railroad Corporation;

15 *Delet* (6) ~~land acquisition or disposal, and~~ <sup>currently under negotiations</sup>

16 (7) proprietary or other information of a type treated as confidential under the  
17 standards and practices of the United States Interstate Commerce Commission, including  
18 practices that protect information associated with specific shippers, divisions, and contract rate  
19 agreements.

20 (j) Notwithstanding AS 42.40.220 and other provisions of AS 42.40, the Alaska  
21 Railroad Commission shall have access to financial records, contracts, legal documents, and  
22 other records and documents of the Alaska Railroad Corporation that the commission  
23 determines are necessary to perform the commission's functions under this section. The  
24 members and staff of the commission shall maintain the confidentiality of confidential records  
25 and documents provided by the corporation to the commission.

26 (k) The Alaska Railroad Commission may not expend more than a total of \$250,000  
27 to perform the commission's functions under this section.

28 \* Sec. 2. This Act is repealed June 30, 1997.

29 \* Sec. 3. This Act takes effect immediately under AS 01.10.070(c).

REPRESENTATIVE  
**TERRY MARTIN**  
CHAIRMAN  
BUDGET & AUDIT COMMITTEE  
MEMBER  
HOUSE FINANCE COMMITTEE

# Alaska State Legislature



MAY 15 - JAN 15 258-8169  
716 W. 4TH, SUITE 650  
ANCHORAGE, AK 99504  
JAN 15 - MAY 15 465-3783  
STATE CAPITOL  
JUNEAU, AK 99801-1182  
HOME 333-6990  
355 DONNA DRIVE, #11  
ANCHORAGE, AK 99504

## SPONSOR STATEMENT CSHB 136 (STA)

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

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

In view that the federal restrictions on transfers have ceased to apply, this is an opportune time to appraise the value of the ARRC in land and assets. It is also important that the State work with potential private enterprises interested in the expansion of the Alaska Railroad.

With that line of thought, CSHB 136 (STA) provides for a commission to be established that will identify assets of the ARRC and determine whether a sale would be viable for the state of Alaska. The commission will be responsible for a comprehensive report analyzing economic factors, land evaluations, and a host of other important aspects of a potential sale. The commission will be established as an agency of the legislative branch and be required to provide an update of their analysis to the Legislative Budget & Audit Committee.



# ALASKA RAILROAD CORPORATION



Corporate Address: P.O. Box 107500, Anchorage, Alaska 99510  
327 W. Ship Creek Avenue, Anchorage, Alaska 99501

Executive Office  
(907) 265-2414  
Fax (907) 258-1456

April 8, 1996

The Honorable Drue Pearce  
President  
Alaska State Senate  
State Capitol  
Juneau, Alaska 99501-2133

Dear Senator Pearce:

I am in receipt of your April 3, 1996, letter regarding my testimony before the Joint Senate-House Transportation Committees on March 26, 1996.

As I mentioned to you in the Beltz Room immediately following my testimony before the committee, I had realized that I was mistaken in my remarks to the effect that a decision was made in an executive session of the Railroad Board meeting and wanted to set the record straight. I again apologize for the confusion caused by my mistake, but I must assure you that no vote was taken in executive session. All the Board members, including myself, are very sensitive to our obligations in this regard.

I understand from your letter that you are concerned that even the Board's discussion occurred in that executive session. As I also indicated to you after my testimony, I apprised the Board during that October 19, 1995, meeting of a letter I had received from Dennis Washington concerning his interest in entering into a confidential dialogue as to how he would proceed with an offer to purchase the Alaska Railroad. Our discussion occurred in executive session. We believe the discussion of Mr. Washington's letter of inquiry in executive session is supported by sound legal and policy considerations.

I believe the broad policy considerations which support our consideration of the Washington letter in executive session are both obvious and compelling. The Railroad's receipt of an unsolicited letter of inquiry from an investor as experienced and as savvy as Mr. Washington presented a unique challenge, particularly given the lack of any specific financial terms in the proposal. While it is one matter for the Board or the Alaska Legislature to initiate a public discussion of whether to privatize the Alaska

The Honorable Drue Pearce

April 8, 1996

Page 2

Railroad, it is, in our view, a far different matter to loosely initiate that debate solely in response to a preliminary letter of inquiry from a private investor. Whatever one's view as to whether to sell the Railroad, we can certainly agree that any sale or privatization should only be undertaken on the most favorable terms for Alaska. As you know, the timing and structuring of the privatization process may well have a material impact on the sale terms themselves. In short, we thought it important to control the dynamics of the process, at least until Mr. Washington presented a more concrete economic proposal for public consideration of whether, and how, to sell the Alaska Railroad.

Our consideration of the Washington letter in executive session was also clearly authorized under several of the statutory guidelines which govern when an executive session is appropriate. Under our statute, the Board can discuss matters in executive session whose public dissemination "would clearly have an adverse impact on the finances of the corporation." At the most basic level, a discussion of our response strategy certainly had the potential to affect the financial terms of any possible sale negotiations. We were also mindful of the effect a discussion of selling the railroad would have on our financial relationships with our employees, bankers, and customers. The statute also provides for discussion of matters "pertaining to the corporation's legal position." An inquiry such as Mr. Washington's triggered several legal issues in our mind, and a number of these were also discussed in executive session. Without going into details, they relate to what obligations might arise in response to an unsolicited or hostile acquisition proposal, resulting fiduciary duties of Board members, and the applicability of competitive procurement principles to a sale of the railroad. Lastly, we had some concerns that a proposal to acquire one railroad by another would fall within Interstate Commerce Commission jurisdiction and confidentiality rules, another basis for consideration in executive session. A copy of the statute is enclosed for your ready reference.

In light of these considerations, in addition to Mr. Washington's clearly stated desire to maintain confidentiality at the outset of discussions, the matter was therefore established as an executive session item on the October 19, 1995, Board agenda. A copy of the agenda is enclosed, please see also pages two and thirteen of the enclosed October 19, 1995, meeting minutes. It is the Board's practice to specify items for executive session when it adopts the agenda at the beginning of each meeting and then refer to them again when it recesses.

During the executive session, I apprised the Board of the letter which I received from Dennis Washington and showed them a draft copy of a proposed response. Also,

The Honorable Drue Pearce  
April 8, 1996  
Page 3

during the course of that meeting we had a discussion regarding the issue and I heard no objections from any member of the Board to my stated opinion that the subject of selling the Railroad at this time was premature. When we came out of executive session, I then appointed a subcommittee consisting of three Board members to further review the matter (see page 17 of attached minutes).

I have enclosed a copy of the minutes of the October 19, 1995, Board meeting for your review. Audio tapes of Board meetings are only retained until two subsequent meetings have occurred and, therefore, a tape of the October meeting is not available. As for the executive session, as you know no minutes or notes are maintained during executive sessions.

I wholeheartedly concur with your closing statement that the Railroad's decision-making process should be conducted openly, reserving to executive session only those items recognized by AS 42.40.170. That is one reason we welcomed the opportunity to participate in last week's hearing, and we would be pleased to assist the Legislature as it considers this very delicate and significant issue for all Alaskans. Again, I apologize for any misunderstandings caused by my remarks at the hearing and urge you to contact me if I can provide any additional information.

Sincerely,



Governor Bill Sheffield  
Chairman, Board of Directors

cc: Governor Knowles  
Representative Gail Phillips, Speaker of the House  
Representative Terry Martin, Legislative Budget & Audit

ENCLOSURES: October 19, 1995, Board Agenda  
October 19, 1995, Board Minutes  
Dennis Washington's Letter  
AS.42.40.170

ALASKA RAILROAD CORPORATION  
BOARD OF DIRECTORS MEETING

October 19, 1995  
Anchorage, Alaska

AMENDED AGENDA

I CALL TO ORDER

II ESTABLISHMENT OF QUORUM

III ADOPTION OF AGENDA

IV OLD BUSINESS

Action Items

- A. Approval of Regular Meeting Minutes of September 19-20, 1995

Briefing Items

- B. Status of Contracts, Litigation and Legal Claims (Executive Session)  
C. Update on Ship Creek Development  
D. Update on Labor Negotiations (Executive Session)  
E. Update on Crowley Contract (Executive Session)

V NEW BUSINESS

Action Items

- F. Resolution No. 95-14, Relating to the Financing of the New 100 Ton Open Top Hopper Cars  
G. Approval of Leases  
1. Contract No. 7030, Orca Enterprises  
2. Contract No. 7065, David and Jeanne Gransbury  
3. Contract No. 6091, M.K. Properties  
4. Contract No. 7050, Somers & Associates (Reconsideration)  
5. Contract No. 6848, Pruhs Investment Company, Inc. (Reconsideration)  
H. 1996 Budget Process (Work Session), (Portion to be held in Executive Session)

Briefing Items

- I. Financial Highlights  
J. Transportation Services Highlights  
K. Update on Kenai Flood  
1. Contractual Matter with another Railroad (Executive Session)

VI OPPORTUNITY FOR PUBLIC COMMENT

VII ANNOUNCEMENTS

VIII DIRECTOR/CEO/STAFF COMMENTS

IX ADJOURNMENT

**ALASKA RAILROAD CORPORATION**  
**MINUTES OF BOARD OF DIRECTORS MEETING**

Anchorage, Alaska  
October 19, 1995

I

**CALL TO ORDER**

The Chairman, Governor Bill Sheffield, called the meeting to order at 9:05 a.m., on October 19, 1995, in the Board Room of the Alaska Railroad Headquarters, 327 West Ship Creek Avenue, Anchorage, Alaska.

II

**ESTABLISHMENT OF QUORUM**

The Chairman requested Board Secretary Jim Blasingame to call the roll. Board members present were Governor Sheffield, Messrs. Binkley, Hatfield, Burton, and Commissioner Perkins. Commissioner Hensley would be arriving late, and Director Lindsey was absent.

A quorum was established.

Staff members present:

J. Blasingame, Board Secretary  
P. Johnson, VP/General Counsel  
J. Burns, VP/Real Estate & Fac.  
D. Frerich, Chief Security

Pat Dunn, VP Finance/Admin.  
G. Erickson, VP Transportation Svcs.  
S. Banks, Comm. Specialist

III

**ADOPTION OF AGENDA**

ARRC Board Meeting  
October 19, 1995  
Page 1

Governor Sheffield asked for any additions or corrections to the Agenda. Board Secretary James Blasingame stated that there was an addition to the Agenda regarding a contractual matter with another rail line and it could be added in New Business as K-1. He further stated that this issue should be considered in Executive Session.

Next, Board Secretary Blasingame stated that Item B (Status of Contracts, Litigation, and Legal Claims), Item D (Update on Labor Negotiations), Item E ( Update on Crowley Contract), a portion of Item H (1996 Budget Process), and now Item K-1 (Contractual Matter with another Railroad), would be the Agenda items considered in Executive Session.

There were no further additions or corrections. Director Binkley moved and Commissioner Perkins seconded that the Agenda be adopted as amended. There were no objections, and the Agenda was adopted as amended.

#### IV OLD BUSINESS ACTION ITEMS

##### Item A - Approval of Minutes of September 19-20, 1995.

Governor Sheffield asked whether there were any additions or corrections to the minutes of the Regular Board Meeting of September 19-20, 1995. He stated that on page 12, third paragraph, first sentence should read:

From: .....he has always like trains.

. To .....he has always liked trains.

Director Binkley moved that the minutes be adopted as amended, and Director/President & CEO Hatfield seconded the motion. There were no further discussions and no objections. The minutes of the Regular Meeting of September 19-20, 1995, were adopted.

Governor Sheffield stated that Director Lindsey has been on the Alaska Railroad Board for seven years and this is the first meeting he has ever missed.

## BRIEFING ITEMS

### Item C. - Update of Ship Creek Development

Mr. John Burns, Vice President, Real Estate and Facilities introduced Mr. Mark LoPatin of LoPatin and Company to provide the Board with a briefing on Ship Creek Development.

Mr. LoPatin stated that he would like to speak about the Northern Crossroads Discovery Center. He stated that there are several phases to this development, and the first phase of it is the residential component, the office component, and the hotel component. He said that he has always put the residential component on the back burner pending more activity downtown. Mr. LoPatin stated that the office component, by market, is moved back with the exception of the Railroad Depot. Mr. LoPatin continued by stating that they are still working with the hotel company, but he feels that getting a facility under construction next year is unlikely.

Mr. LoPatin said that the Northern Crossroads Discovery Center is the center piece for Ship Creek Landing. He stated that this is the tourist component of the development. Mr. LoPatin said that he is very comfortable in real estate development; however, he is very uncomfortable operating a facility like the Northern Crossroads Discovery Center. He stated that this is an operating business; it is day to day. Mr. LoPatin said that he has a vision of it, he knows what to expect, and he knows what should be there; however, operating businesses are not like tenants they are guests. He stated that because of this he wanted to get the top operating companies to work with him on this joint venture in the development of this center.

Mr. LoPatin said that there are three big companies in the tourist related business. He stated that there is Disney, Warner, and Universal Studios, and when he called and asked them who they would recommend for an operator for the Northern Crossroads Discovery Center they said Mr. Peter Crane. Mr. LoPatin said that Mr. Crane is the expert in this type of field and he is their partner. He stated that Mr. Crane worked with Disney in the design of Epcot, and he is one of the first principals working with IMAX. Mr. LoPatin said that when he and Mr. Crane talked about the vision of the Northern Crossroads Discovery Center one of the companies that Mr. Crane said was on the top of his list was ITECH.

He stated that what they are looking for in the Northern Crossroads Discovery Center is a facility that would be a must see attraction; something that every tourist that comes to Anchorage, Alaska must see. Mr. LoPatin then stated that this would not be just a large

screen film, but it would create an ambiance that would allow them to get a feel of Alaska, and what they are going to see, or when they are leaving Alaska a memory of what they saw. He said that 70% of the tourists that come to Alaska are here during a four month period of time. Mr. LoPatin said these tourists do not see the Northern Lights, the Iditarod, Prudhoe Bay, and they do not experience a lot of the things that they have heard about or have talked about. He stated that they also want to create a facility that will allow the Alaska residents to bring their guests. Mr. LoPatin said that when the tourists and guests are gone there will be a place for the residents to go to be entertained. He stated that the Northern Crossroads Discovery Center will be more than a large screen theater; it will be a mall with more than twenty-two shops.

Mr. LoPatin said that Ogden Entertainment operates all over the world, and they have created a division and acquired a company, Firehole Entertainment out of New York, that is in the business of developing large screen theaters. He said that Firehole is not an operator of large screen theaters, they have an arrangement with and are in the process of finalizing this arrangement with Mr. Kelvyn Cullimore's company, ITECH. Mr. LoPatin stated that they are very comfortable with Ogden Entertainment. He said that on Tuesday, October 17, 1995, there was a letter of intent signed by Ogden Entertainment to acquire Firehole, and Firehole has an agreement with Kelvyn Cullimore's Company, ITECH, a publicly traded company, and this company is a partner in the development of the Northern Crossroads Discovery Center.

Next, Mr. LoPatin introduced Mr. Peter Crane.

Mr. Crane stated that just about everyone has two businesses; his own and the entertainment business. He said that his first meeting with Mr. LoPatin was when he told him that he did not know a thing about this type of business and needed his help. Mr. Crane said that right then he felt Mr. LoPatin would make it because he was not trying to be an expert in a field he did not know anything about. He stated that he has had his own consulting firm for twenty-four years and he got into this business through being at World Fairs, running Pavilions, and meeting Walt Disney. Mr. Crane said that when Disney World opened he saw an opportunity to help develop other kinds of theme attractions that would not be the magnitude of Disney World, but would serve both seasonal markets and smaller markets.

He stated that working with so many companies they are continually searching for new ideas of how to present something besides the traditional iron rides and live shows. Mr. Crane continued by stating that when he was working with Disney he met the people who developed the first IMAX projector. He said that it uses a very large screen as high as 60 feet high by 70 to 80 feet wide, and it is designed to put everyone in the

audience in a position that everything they see occupies that person's total peripheral vision, be it horizontal or vertical, it plunges the person into the picture and approaches a 3D effect.

Mr. Crane stated that in his work they started to search for ways to find attractions that could support an IMAX theater. He said that the IMAX people approached him and stated that they had only had luck doing conversions of planetariums to dome theaters, and they asked what they could do to broaden their horizons and get into the private sector? Mr. Crane stated that what was missing was good software. He said that there was only institutional films which were suited for planetariums and science centers, but what they had to do for IMAX was try to develop a market that could justify the expenditure for a theater, and still have enough software that would satisfy the needs of the market.

Mr. Crane stated that some of the major steps taken to get the IMAX theater progressing were NASA, Smithsonian, and Marriott Corporation. He said to be successful in this type of market they needed a signature film. Mr. Crane stated that this type of film is for the tourist and visitor who neither has the time, money, or both, to do all the adventuring the signature film is showing. He said that the classic example of an IMAX movie is the one they made of the Grand Canyon. Mr. Crane stated that anyone that tries to go to the Grand Canyon in July or August is struggling through 100,000 people and they might get a fifteen minute look over the south rim and find out everything is booked up. He said that placing the theater outside the park and doing the film that presented all the history, geology, and the romance in the Grand Canyon has given all these people the wonderful opportunity to feel like they experienced the Grand Canyon. Mr. Crane stated that this principle works and there are theaters in Yellowstone, St. Louis Arch, and a film on the 100th anniversary of flight which Wilbur and Orville actually did on the outer banks of the Carolinas.

He said that he came to Alaska several years ago to try to do a dome theater and tie it into a planetarium in a location near the museum. Mr. Crane stated that at that time there was such a shortage of good films that the local market in Anchorage could not justify an IMAX theater. He said that so much has happened since then, there have been plenty of films produced and there is a new film in production on the State of Alaska which the Houston Museum is financing and is being produced by Graphics Films.

Mr. Crane stated that the importance he saw in the Alaska market was it is a healthy residential market. He said that combining a good residential market and a good tourist market gave them substantiating evidence of what lead to the positive recommendation

they gave Mr. LoPatin.

Next, Mr. Crane introduced Mr. Kelvyn Cullimore.

Mr. Cullimore stated that he has brought a video tape with him that they have shown to the tour guides explaining their facility. He said that it explains more clearly of what they are doing than taking a lot of time speaking about it. Mr. Cullimore showed the video. After the video, Mr. Cullimore stated that his company is a member of the American Bus Association and the National Tour Association. He said that they are heavily involved in the tourist industry. Mr. Cullimore stated that Branson, Missouri is the number one tour bus destination in America, and they have four people who deal with only the bus tours. He said that he has been in this business for two years in Branson, Missouri, and nine years in the development of this concept. Mr. Cullimore stated that the hardware is the easiest part, and the software is the second easiest. He said that there is already a film in production on Alaska and it will fit very nicely.

Mr. Cullimore continued by stating that what matters is how the people are treated once they get to one of these facilities, and if they leave feeling good about the facility and feeling good about Alaska. He said that they bring an exciting experience and an opportunity for people to capture the vision of Alaska that they might not be able to get on their own, and most of all, they will get an opportunity to feel the warmth and the cordiality that exist in this part of the country.

Mr. Cullimore stated that another thing that is important is that they create a critical mass. He said that the giant screen theater becomes the focal point, but the restaurants, the other theaters, and the retail shops all create a critical mass that is very important. Mr. Cullimore stated that without all of this put together it would not happen because it is the combination of all of it put together that makes it work.

Director/President & CEO Hatfield asked what the time frame was for building this and where would the money come from. Mr. Cullimore said that he hopes they can get started on construction in 1996 and open in 1997 in time for the heavy season. He stated that they are looking at approximately \$14 million for the facility, film, and everything else. Mr. Cullimore stated that the reason they have not been to the railroad before is because they could not have said with any degree of confidence that the financial resources were there for the facility. He said that for six months they have been negotiating with Firehole Entertainment to be their partner. Mr. Cullimore stated that Firehole announced through public announcement that they have signed an agreement with Ogden to become their entertainment arm. He said that he is told that the commitment from Ogden is that they will supply the funding that Firehole has on the

drawing board. Mr. Cullimore stated that they have a meeting with Firehole next week to finalize their agreement. He said that they will be the operating arm and Firehole will supply the financing.

Director Binkley asked how large the facility was in Branson, Missouri? Mr. Cullimore stated that it was 60,000 square feet. He asked what the cost of the construction was for that facility. Mr. Cullimore said that it cost \$5.5 million. Next, Director Binkley asked what the admission cost was? Mr. Cullimore stated that it cost \$8.50 for adults, there is a senior price, and a group price. Director Binkley continued asking Mr. Cullimore how long the show lasted? Mr. Cullimore stated that their show lasts about an hour. He said what they do is when the public comes in they are given a demonstration of the sound system, shown the signature film, and then they present the theme film. Director Binkley asked how large the theater was. Mr. Cullimore stated that the theater seats 550 and this is a very large theater. He said that the screen is 62 feet high and 84 feet wide; however, he said with the Anchorage theater they would probably have a 400 seat theater and approximately 55 to 57 foot high screen.

Director/President & CEO Hatfield asked how many people they expect to go through the Northern Crossroads Discovery Center. Mr. Cullimore stated that if they do not get at least 400,000 people through the facility in one year making money would be tough. Mr. Crane said that in their study they have projected at least 400,000 people in the first year.

Director Binkley asked Mr. LoPatin about the time line he talked about at the last Board Meeting. Mr. LoPatin stated that they do not have a construction budget, and because it is the middle of October they are not going to have a construction budget before their projected time line. He said that they had their first meeting with a local architect yesterday, but there will be some sliding on the timeliness; at least the first two. Mr. LoPatin stated that they do have a preliminary budget which is in the range of \$10 to \$14 million. He said that the whole project would be phased. Mr. LoPatin stated that the first phase of the project will be the large screen theater and approximately 20,000 square feet of retail. He continued by stating that surrounding this will be a very large public area where people can meander around and will also be a staging area for the tour companies. Mr. LoPatin stated that the tour companies are thinking about using this area in the facility to drop people who are getting ready to get on a plane or getting ready to get on a boat. He said right now these people are being dropped at the Egan Center, but if they move to the Northern Crossroads Discovery Center there will be an immediate assembly of a couple hundred thousand people who are dropped at the door.

Mr. LoPatin said that they wanted to be under construction next year so they can open the following season. He stated that they do not want to open next August, so it moves them into the spring. Mr. LoPatin said that if they find out that it is an eighteen-month build then the best thing to do is to get started in August. He said that if they can build it in less than eighteen months they will. He said he would like to get it started in the spring of 1996 and have it open in the spring of 1997. Director Binkley asked if his time line was changing from eighteen months to twelve months? Mr. LoPatin said that it looked that way.

Mr. LoPatin stated that the Legislature is meeting again in January and all their ducks need to be in line. He said that the legislature and the railroad need to know that the construction is going to start in the spring or fall of 1996. Mr. LoPatin stated that it is very critical that construction begin next year and that they do everything else by the end of this year. Director Binkley asked if he anticipated having the contractor in place, financing in place, final building plans completed, and everything else in place by January. Mr. LoPatin said that the contractor would be in place, the schedule in place, the financing in place, and the final construction costs in place.

Governor Sheffield thanked Mr. Crane, Mr. Cullimore, and Mr. LoPatin.

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Governor Sheffield declared a ten minute recess at 10:40 a.m.

Governor Sheffield called the meeting back to order at 10:50 a.m.  
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## **NEW BUSINESS ACTION ITEMS**

### **Item G - Approval of Leases**

#### **Item G - 4 - Contract No. 7050. Somers & Associates (Reconsideration)**

Mr. Burns stated that the Board is reconsidering this lease because of some public comment that came in before the public notice period was completed. Governor Sheffield stated that if there were no comments from the Board of Directors on the

public comment letters that were included in the packet, then the lease will stand approved.

Mr. Burns stated that Mr. Pruhs and Mr. Somers were present in the audience, as well as Mr. Somers contractor. He stated that there are concerns that the property was not properly valued, and how the utilities installation functions. Mr. Burns said that on the appraisal aspect, they require that the ARRC use an independent appraiser to establish the value of the railroad's property. He stated that Mr. Chilton Hines, who is a MAI Certified Appraiser in Fairbanks, has periodically been on contract with the railroad and performed the appraisal under his current contract. Mr. Burns said that when Mr. Hines completed the appraisal it was forwarded to ARRC's Real Estate department to review for any mistakes. He stated that since the September 1995 meeting the Real Estate Department Staff has interviewed Mr. Hines on the details of the appraisal to make sure that he does not want to make any modifications. Mr. Burns then said that Mr. Hines is very comfortable with the appraisal he did on this property. He stated that this is one of the areas that the railroad is charging 10%.

Mr. Burns continued by stating that there has been some questions asked whether the utilities' installation will somehow be subsidized to the businesses. He said the railroad did not request an appraisal for raw land, they requested an appraisal to reflect the intended development, so that is how the appraisal was done. Mr. Burns then stated that in the conventional sense as an investor, the investment of this money is well justified since the railroad will receive it all back in three years and continue to earn 10% after that. He said that the railroad has tried very hard to work with the City of Fairbanks so that the City can take advantage of this installation to further their master plan for water and sewer specifically to serve the Bullwinkle property and to create a loop out of the Aurora subdivision and Nome Drive areas. He said that the work the railroad is doing now does not have any City of Fairbanks involvement in serving the lease lots. Mr. Burns stated that the City of Fairbanks extension will go generally west-northwest, and it may be usable for the lease lots that the railroad has not leased yet, but clearly it is a benefit, and the City of Fairbanks' engineer will tell the Board that it is for areas that they have previously served. He said that they discussed this subject at length last year, and he is not sure how the railroad can overcome the misconception or perception problem on this matter.

Director/President & CEO Hatfield asked how he chose Mr. Chilton Hines. Mr. Burns stated that the railroad goes out each year for appraisal contracts for Anchorage and Fairbanks, so Mr. Hines was chosen through a RFP process which included a criteria of experience and certification. He said that Mr. Hines has previously won these contracts before and there are times he has not won them.

Governor Sheffield stated that most of the complaints center around two things, one is the evaluation of the property and the fact that the railroad did not charge up front for the cost to the users for the utilities. Mr. Burns stated that he has provided Mr. Beistline with a copy of the appraisal and the instructions that were given to the appraiser which said, appraise these lease lots as fully improved. He said that it is certainly an alternative that Mr. Beistline could promote that the railroad could have asked the appraiser to appraise the land unimproved, and then when the improvements were installed the railroad could have the land reappraised.

Governor Sheffield stated that if you are going to build a subdivision you would not build a subdivision and have everyone put their own improvements in. He said that nothing would happen for a long time. Governor Sheffield stated that the builder usually puts the utilities in and then he charges for his lots appropriately. Mr. Burns said that as the developer of this property it is typical of the railroad to install these utilities to municipal specifications.

Director/President & CEO Hatfield stated that the only other alternative that he can think of is that the participants put their own utilities in and the railroad gives them rent credits which essentially ends up in the same place. Mr. Burns also stated that it ends up in the same place, but it needs to be approached for the full demand of the potential project. He said that if the railroad does the rent credit approach it is reasonable to consider their money at a reasonable interest rate. Mr. Burns said that the railroad is really forestalling the day that the corporation starts making its money. He stated that there is a rent credit clause built into leases, but in this case with up to eight or nine lease lots someone needed to be in charge and coordinating the project before individual projects could commit to it.

Governor Sheffield asked Mr. Burns how long this project has been in the works. Mr. Burns said that Princess Hotels approached the railroad in 1990, and they looked at the site to build their hotel before they constructed down river. He stated that there were public meetings in Fairbanks for this project. Mr. Burns continued by stating that in 1992 when Princess Hotels decided to build down river at another location the railroad brought back the property to the Chena River Commission, which was a group Mayor Sampson initiated.

Director/President & CEO Hatfield stated that the very first Board meeting he ever attended, that the Princess Hotel made a proposal to the Board that they were not going to use this property, because they did not want to spend the money to put the utilities on to the property. He said that the estimate to put the utilities on the property at that time was significantly higher.

Director Binkley asked if Ms. Johnson had reviewed the letter from Mr. Beistline. Mr. Burns stated no. Director Binkley said that it looked like Mr. Beistline's counsel wrote the letter, and he said that in the letter it referred to the railroad's lease policy, item 2.04, Performance for Construction Bonds, and they are asking whether the railroad is violating their own policy by not requiring performance or construction bonds, and he would like to know if Ms. Johnson could speak about this. Mr. Burns stated that the construction of the letter is, everything is possibly, maybe, and could be. He continued by stating that without Mr. Beistline and himself getting to where they understand what specific items need to be discussed it is hard to evaluate. He said that if this were specifically about Mr. Somers he would expect his bank would not let him go out and even start without a VHA or AHFC loan. Mr. Burns stated the bank is going to want to know who has the take out and they would be glad to lend them the interim. Director/President & CEO Hatfield asked Mr. Burns if the bank requires the construction bonds, would the railroad require one also. Mr. Burns said that he doubted that the railroad would cause the unnecessary expense if it was redundant. He also stated that if the railroad believes the intent of the lease policy has been served by other peoples actions then they probably would not ask.

Director Binkley stated that he does not understand what Mr. Beistline is speaking about when he says that the railroad is getting the City of Fairbanks to go after state grant monies. Mr. Burns stated that he does not know if the railroad will ever rise above the misconceptions of this. He said that the City of Fairbanks on its accounts has had up to \$900,000 in DEC funding for water and sewer projects, and it is a matching funding. Mr. Burns stated that the City of Fairbanks has not had the money to match it. He said that the railroad was going to do all the utilities on their own, but as a courtesy the railroad went to the City Manager, who was Mr. Mark Boyer at the time, and asked if there was anything they would like to accomplish. He continued by stating that Mr. Boyer said that they should not forget the DEC matching money.

Director Binkley asked if it is the City of Fairbank's plan to extend the utilities regardless of whether the townhouses went forward or not. He said that he understands the City is going to extend the main sixteen-inch line west out to Peger Road and across Peger Road regardless of whether the proposed townhouse project went forward or not.

Governor Sheffield asked what if Mr. Somers builds this and goes flat on his face. Mr. Burns stated that Mr. Somers has offered a personal guarantee, and beyond the personal guarantee when the condominium documents are brought together, because it is lease property, there is going to have to be reserves. He said that there is going to have to be a condominium management provision that addresses reserves for rent

because the condominium association has to be liable under AHFC's requirements. Mr. Burns stated that he suspects sometime down the road it will become appropriate replacing Mr. Somers personal guarantee with a properly documented escrow account from the condominium association. Director Binkley asked how Mr. Burns envisioned this happening. Mr. Burns stated that they could go several years until there is a stable association, charge a one-time assessment of each owner, and they could return to the railroad for a one time payment for ten years. Director Binkley asked if any of this was going to be addressed in the lease? Mr. Burns said no.

Director Binkley asked if anyone has looked at his personal financial statement to make sure that the guarantee is substantial. Mr. Burns stated that he has not looked at it, but the railroad's process is that any credit application goes through the Finance Department. Governor Sheffield asked what the Finance Department said about Mr. Somers financial statement. Mr. Burns said that they approved him for the contract. Director Binkley asked Director/President & CEO Hatfield if he was comfortable with the railroad's Credit Department's review of Mr. Somers credit application. Director/President & CEO Hatfield stated that he was, and he has confidence in the people who work for the Credit Department.

Director Binkley stated that he feels the Board has covered all the concerns that have come forward through the public comment process.

Governor Sheffield stated that the Board does not need a motion if they are all satisfied that the objections from the public comments have been clarified because the lease was approved at the last meeting. Commissioner Perkins asked if they had notified Mr. Beistline about this meeting. Mr. Burns stated yes that he phoned his office Monday, October 16, 1995. Director Burton stated that this sounds like a good deal for the railroad. Director Binkley said that one of the things he is still concerned about is the length of the term, the 105 years; however, the lease policy is very clear and allows for the two thirty-five-year options and he has applied for this and it is in conformance to the policy and he does not see anywhere around that aspect. He continued by stating that he feels that this is something the Board should look at in the future.

Governor Sheffield stated that this lease will stand approved.

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Commissioner Hensiey arrived at 11:40 a.m.  
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Item G - 5. Pruhs Investment Company, Inc. (Reconsideration)

Governor Sheffield stated that this lease is under the same situation as Contract No. 7050, Somers & Associations (Reconsideration). Governor Sheffield asked Mr. Burns if he had any additional comments that the Board does not have in their board books? Mr. Burns said no.

Mr. Burns stated that the comments applying to the Pruhs lease he would characterize as a fall out from the Somers & Associations lease.

Commissioner Perkins stated that his concern before was approving the lease before the public comment had expired. He said this lease is the right deal for the railroad.

Governor Sheffield stated that this lease stands approved.

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Governor Sheffield stated he would entertain a motion to recess to Executive Session for consideration of Item B (Status of Contracts, Litigation, and Legal Claims), Item D (Update on Labor Negotiations), Item E ( Update on Crowley Contract), a portion of Item H (1996 Budget Process), and Item K-1 (Contractual Matter with another Railroad). Director/President & CEO Hatfield moved that the Board recess to Executive Session to discuss Items B, D, E, a portion of H, and K-1, and the motion was seconded by Director Burton. There were no objections and the Board recessed to Executive Session at 11.50 a.m.

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The public meeting reconvened at 3:50 p.m.

Item F - Resolution No. 95-14, Relating to the Financing of the New 100 Ton Open Top Hopper Cars

Secretary James Blasingame stated that the Board approved the purchase of new 100 ton open top hopper rail cars at their September 20, 1995 Board Meeting. He further stated that the Resolution which is before them today (Resolution No. 95-14) pertains to the financing program to acquire the equipment, and Ms. Patricia Dunn, Vice President, Finance and Administration, would be speaking on this subject.

Ms. Dunn stated that they are proposing that Key Bank of Alaska finance the hopper

cars. She said that their rate is 6% and there is no prepayment penalty. Ms. Dunn stated that the railroad was offered a slightly lower rate from another institution; however, there is a substantial prepayment penalty. She said that Key Bank of Alaska gives the railroad more flexibility in case of refinancing or other reasons for prepayment, so they are recommending the 6% rate proposal and that this financing needs to be completed by December 15, 1995. She said that the arrangement with Key Bank of Alaska provides for the bank to disburse the full amount into an escrow type account and as the railroad accepts the hopper cars, then they will disburse the funds from this account. Ms. Dunn stated any remaining principal will be applied to the principal of the loan after the complete receipt of the hopper cars.

Director Binkley asked about National Bank of Alaska's proposal. He said that he looked at their proposal and it shows a variable rate 5.72% and annual payments of \$541,000; and Key Bank's proposal shows a 6% rate and annual payments of \$466,000; why is there an \$80,000 difference? Ms. Dunn said that the reason for this is because instead of a regular amortization schedule, the principal and interest changes every month although the payment stays the same. She stated that the National Bank of Alaska's example is a flat principal amount every month, but the interest varies every month, so the payment is different every month. Ms. Dunn stated because the railroad would be paying more principal up front the payment starts out much higher and gets lower toward the end of the loan term. She stated that it is a very favorable interest rate at this time, but after that they do not know what will happen.

Director/President & CEO Hatfield made a motion that the Board adopt Resolution No. 95-14, Relating to the Financing of the New 100 Ton Open Top Hopper Cars. Commissioner Perkins seconded the motion. Governor Sheffield asked if there was any further discussions. There were no further discussions and no objections and Resolution No. 95-14 was approved.

#### Item G - Approval of Leases Continued

##### Item G -1, Contract No. 7030, Orca Enterprises

Mr. Burns stated that at the Fairbanks Board Meeting the Board approved a lease for Orca Enterprises; however, they have come back to the Board to ask for an increase in the amount of land they would like to lease.

Director Burton moved that this lease be approved and Director/President & CEO Hatfield seconded the motion. There were no further discussions and no objections, and Contract No. 7030, Orca Enterprises was approved.

**Item G - 2. Contract No. 7065, David and Jeanne Gransbury**

Mr. Burns stated that this gentleman is already involved with the railroad, and has leases on two separate parcels. He said that he is requesting to integrate his leases so he can make improvements to the property. Mr. Burns stated that there is a moderate increase in the rent, and it is a request for a thirty-five-year lease term.

Director Binkley moved that this lease be approved and Commissioner Perkins seconded the motion. There were no further discussions and no objections, and Contract No. 7065, David and Jeanne Gransbury was approved.

**Item G - 3, Contract No. 6091, M. K. Properties**

Mr. Burns stated that M. K. Properties is the successor of various interests that have occupied this property. He said that it is a fenced construction yard, and some trucking is done out of this location. Mr. Burns stated that the purpose of this lease is there is a strip of land in between two leaseholders that effectively had been misunderstood and an object to some dispute. He continued by stating that the dispute is settled and M. K. Properties is incorporating this into their leasehold.

Director Binkley moved that this lease be approved and Director/President & CEO Hatfield seconded the motion. There were no further discussions and no objections, and Contract No. 6091, M. K. Properties was approved.

## **BRIEFING ITEMS**

**Item I, Financial Highlights**

Board Secretary James Blasingame stated that Ms. Dunn, Vice President, Finance & Administration, would be reviewing this with the Board.

Ms. Dunn stated that as of September's year-to-date the railroad has exceeded projected net income of \$2.4 million by \$4.4 million; the railroad is at \$6.8 million. She said that September did not meet budget because we anticipated the railroad to achieve a net income of more than \$800,000, but only made \$300,000 instead. Ms. Dunn stated that most of this was due to additional unexpected expenses including the flood.

She said that month-to-date revenue was \$5.906 million which exceeded the budget

slightly. Director Binkley asked about the flood money, which he was under the understanding that the railroad might be able to recoup some of the money. Ms. Dunn stated that at this point from the emergency response the railroad might be able to get back \$190,000. She said that they have not booked it yet.

Item H - Transportation Highlights and Revenue Forecast

Board Secretary James Blasingame introduced Mr. George Erickson, Vice President, Transportation Services to review the revenue forecast.

Mr. Erickson stated that they are pretty close to on target on their budget. He said that year-to-date they are above plan on every commodity except pipe. Mr. Erickson stated that on petroleum they are \$943,000 a head of plan. He said that they might lose two naphtha shipments this year. Mr. Erickson said that they are very close to target on coal. He stated that they have taken it up another \$200,000 because they are still running gravel trains. Mr. Erickson continued by stating that on the interline they are ahead of plan for the month of September. He said that Passenger Service continues to grow in revenue. Mr. Erickson stated that they have started to run a mixed passenger and freight train on the weekends, and a wine tasting excursion train ride is starting up in December.

Mr. Erickson showed the Board some graphs which are attached as Exhibit A.

Governor Sheffield thanked Mr. Erickson.

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Governor Sheffield introduced Mr. John Burn, Vice President, Real Estate and Facilities to review the revenue forecast from Real Estate.

Mr. Burns stated that since 1992 when he has come on board with the railroad there has been a 10% growth each year; however, but looking at the five-year plan the permit lease revenue is leveling out. He said that this is called a skeleton of a revenue projection. Mr. Burns stated that in 1996 and up they are looking at a growth in the range of 5% to 7%.

Governor Sheffield thanked Mr. Burns.

Item K - Update on Kenai Flood

Governor Sheffield introduced Director/President & CEO Hatfield.

Director/President & CEO Hatfield stated that the damage the railroad has sustained, that has been booked, is below \$100,000. He said that when the corporation applies to FEMA (Federal Emergency Management Administration) for reimbursement of the damages there will be a difference in the way it is calculated. Director/President & CEO Hatfield stated that the railroad will be reimbursed for the machine time and supervisory time that the railroad normally does not bill itself. He said that the result of this, is how much dredging will be required in Seward. He continued by stating that the survey's for the dredging will be done next month. Director/President & CEO Hatfield then stated that the railroad could be reimbursed by FEMA for approximately \$460,000 to \$600,000. He said that the railroad has an excellent relationship with FEMA. Director/President & CEO Hatfield continued by stating that the one thing the railroad did get criticized for was one of its bridges in the Seward area. It was designed in such a manner that it caused debris to gather and caused flooding of a subdivision up stream. He stated that it looks like FEMA will pay for this mitigation project to make it into a single span bridge to eliminate the flooding problem.

Commissioner Perkins stated that Resurrection River has been diverted, so what little sedimentation that was going in there will not be going in there now. He said that he believes that this will only last a couple of years. Director Binkley asked who diverted the river. Commissioner Perkins stated that the Department of Transportation diverted it.

#### Item K - 1. Contractual Matter with Another Railroad

Governor Sheffield stated that he would like to appoint a subcommittee to take care of an obligation of a contractual matter with another railroad. He said that he has appointed Director Lindsey, Director Binkley, and himself.

## VI OPPORTUNITY FOR PUBLIC COMMENT

Governor Sheffield introduced Mr. Charles McKee.

Mr. McKee stated that he would like to pass out a 1934 issue of lawful money. He said that his name is Charles McKee and he is speaking in front of the Board of the Alaska

Railroad Corporation Board of Directors Meeting on October 19, 1995. Mr. McKee stated that he has before him the Alaska Mining Laws both Federal and Territorial and he is going to pass them around so they can look at the fact that the Railroad Act was to accelerate the mining activity within the State of Alaska. He said that the reason being is so the State of Alaska could continue to enjoy the circulation of lawful money.

Mr. McKee stated that he has submitted a claim of lien and he did not have proper spelling or proper grammar in it, and the reason why he did it was to see if anyone would comment on it which would indicate that they read it. He said no one commented on his brief which completed Einstein math which he titled "Millennium" which he received 150 year copyright on it. Mr. McKee stated that he did not receive any comment on that, although it had correct spelling and grammar in it. He said that he was denied by no written comment, but he had received written comment simply because it was incorrect spelling and grammar. Mr. McKee stated that he also submitted it to Frank Murkowski, and he wrote the following to him; what you are about to read under my claim of lien agreed under seal is base line data requiring all Alaskan's statutes not to designate deaths by grant of faith and consequently that is the summary of what he was submitting for this claim of lien.

He said that the reason why he comes to the Board is because he wants to facilitate monies to the development of the Alaska Railroad system. He continued by saying that he would like to increase and expand its structure and he wanted to point out the reason why he is capable of doing so. Mr. McKee stated that he is not allowing the state to own and control his identity which is why he did not allow them to photograph his picture for the State Identification.

Mr. McKee said that this is for men only and they need to take this very seriously the State has no right to own your identity. He stated that he identifies himself with the love of Abba light-to-light, and consequently he is capable of increasing the value of money rather than money controlling him. Mr. McKee said that there is a difference between power or grace that has more power than power in and above itself will ever have.

He said that this information needs to be seriously considered because he is not bound to the lie. Mr. McKee stated that the lie being that money, whether it be this, gold or lawful money, or just paper currency which is not redeemable, but money never does make value in and of itself. He said that it requires people, and as soon as the people are controlled by the monetary system, which is nothing it cannot produce value in and above itself in order for it to be really legitimate, it has to incorporate men in to its system where it actually controls your identity where they have to submit to it, each and every state.

Mr. McKee stated that not all states require that you have to have photographed identification, whether it be State Identification or Driver's License and he has also commented to an insurance person that labor unions are inefficient and he said it was because actuaries get in there and write the rules of safety and the union memberships don't abide by those rules then they can be held accountable prior to their insurance coverage for job safety. He said that the gentleman took a very dim view of his awareness of the fact and stomped out as he addressed the situation to him. Mr. McKee stated that they turn around and indicate to the public that unions are inefficient and he turns around and tells the insurance actuaries why it is inefficient because they are in there on both sides of the equation, the public sector, government, and the private sector, unions, and non-represented people indicating that you have to buy insurance or you have to be in the union, and if you are in the union you have to comply by these regulations within the work rules of the union whether it be railroad union or whatever.

He said that he is here to indicate, that he does not have to comply with the protectionary aspect of what unscrupulously devised to sequester your true accreditation to creating wealth, controlling you in the monetary system and then when a purchase of fee simple land for estimated value of \$80 million. Mr. McKee stated when the monetary money they are talking about has no value and they are indicating to the people that work the system are also part of that non-value system and consequently this is peace time night so it is not a fluctuating situation. He said that it has a minted, it says \$5.00 on it face value, and it is smaller than a dime, and it cost him \$54.50 to purchase \$5.00 worth of gold.

Governor Sheffield thanked Mr. McKee.

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Governor Sheffield introduced Mr. Dave Morgan, Acting City Manager for the City of Whittier.

Mr. Morgan stated that he would like to thank Mr. Hatfield and Mr. Burns because of a couple of projects that they have been working on have moved a long, and the reason why it has happened is because Mr. Hatfield and Mr. Burns have significantly helped them.

Mr. Morgan said that Coastal and Alaska Interstate Gas contacted him yesterday and it looks like they will be exercising their option earlier than they thought. He stated that they now have a time line on natural gas coming into Whittier which at the earliest will

be next summer and the latest is the summer after depending on what they found during the construction phase of the activity. Mr. Morgan said that Ketchikan and several other communities have already begun to send letters of conversation to convert their system to L & G.

Mr. Morgan stated that they have met with the Boat Owners Association, Orson Smith who is leading the Harbor Expansion Project for the Corps. of Engineer, and another Mr. Smith from DOT, who is their engineer, and many of the City of Whittier's Council Members, and it looks like they will be able to go into the center of the City, and they have narrowed the design down to two designs and they are working very closely with the railroad on this. Mr. Morgan said that it looks like they are going to meet their time lines on having the design by January and hopefully put in place their contracts and financing next summer and try to have a new harbor.

Mr. Morgan stated that the good news is the geophysical came back from the Corps of Engineers on all the drilling, and it all came back clean. He said things seemed to be moving pretty well. Mr. Morgan stated that Mr. Burns and Mr. Hatfield have been briefing the City of Whittier on what has been going on with Crowley. He said that he hopes that once they get into these projects there can be a committee or a group from the Board and from the railroad, and one from the City Council and City Chamber. Governor Sheffield stated that on this issue he has spoken with Mr. Lou Dickinson, who use to be c the Alaska Railroad Board initially when the State purchased it and was also an owner in Dowl Engineers; he is going to serve on this committee a long with himself. He said he is going to ask one more person to serve to interface with the City of Whittier.

Governor Sheffield thanked Mr. Morgan for his comments.

## VII ANNOUNCEMENTS

There were no announcements.

## VIII DIRECTOR/CEO/STAFF COMMENTS

There were no Director/CEO/Staff comments.

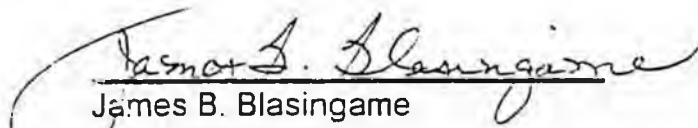
IX  
ADJOURNMENT

There being no further business, the meeting was adjourned at 5:10 p.m.

APPROVED BY:

  
\_\_\_\_\_  
Governor Bill Sheffield /  
Chairman of the Board

ATTESTED BY:

  
\_\_\_\_\_  
James B. Blasingame  
Board Secretary

Date Nov. 16, 1995

Regular Board Meeting  
October 19, 1995

DENNIS R. WASHINGTON

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INTERNATIONAL WAY  
POST OFFICE BOX 8182  
MISSOULA MONTANA 59807  
TELEPHONE (406) 523-1300  
FAX (406) 523-1399

October 4, 1995

Governor William Sheffield  
Chairman  
The Alaska Railroad Corporation  
327 Ship Creek Avenue  
Anchorage, AK 99510-7500

Dear Governor Sheffield:

I would like to open a confidential dialogue with you on how I might proceed with an offer to purchase The Alaska Railroad Corporation. I have attached a letter that I have sent to Governor Tony Knowles, President Drue Pearce, and Speaker Gail Phillips expressing my intentions and defining why I have such a strong interest in owning and operating the Railroad. I understand that the Railroad is set-up to be an independent, stand-alone company but whose stock is owned by the State of Alaska. I need your advice on how I can proceed to accomplish a transaction.

I stand ready to provide you with extensive background material on myself and the relevant ventures I'm involved in. I believe you will be convinced that I have the necessary resources and experience to complete this undertaking.

I would be pleased to come and meet with you to discuss the proposal. Please let me hear from you.

Sincerely,

  
Dennis Washington

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cc: Robert Hatfield-ARRC

Sec. 42.40.170. Executive sessions. (a) The question of holding an executive session shall be determined in accordance with AS 42.40.160. A subject may not be considered at an executive session unless it is mentioned in the motion calling for the executive session or is auxiliary to a subject mentioned. An action may not be taken at an executive session.

(b) Only the following subjects may be discussed in an executive session:

(1) matters, the immediate knowledge of which would clearly have an adverse effect upon the finances of the corporation;

(2) unless the person has requested to have the subjects discussed in public, subjects that tend to prejudice the reputation and character of a person;

(3) matters that, by law or municipal charter or ordinance, are permitted to be kept confidential from public disclosure;

(4) matters pertaining to personnel;

(5) matters pertaining to the corporation's legal position;

(6) land acquisition or disposal; and

(7) proprietary or other information of a type treated as confidential under the standards and practices of the United States Interstate Commerce Commission, including practices that protect information associated with specific shippers, divisions, and contract rate agreements. (§ 2 ch 153 SLA 1984)