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Utermohle
3/23/95

CS FOR SENATE BILL NO. 64(TRA)
IN THE LEGISLATURE OF THE STATE OF ALASKA
NINETEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE TRANSPORTATION COMMITTEE

Offered:
Referred:

Sponsor(s): SENATE TRANSPORTATION COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the dissolution of the Alaska Railroad Corporation and
2 providing for a successor corporation; and providing for an effective date."

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

4 • **Section 1. FORMATION OF SUCCESSOR CORPORATION.** (a) Within one year
5 from the effective date of this section, the board of directors of the Alaska Railroad
6 Corporation shall form a successor corporation under AS 10.06, subject to the provisions of
7 this Act, to own, operate, and manage the Alaska Railroad and to assume sole responsibility
8 for assets and liabilities of the Alaska Railroad Corporation.

9 (b) The successor corporation is a private corporation and is not a state agency, public
10 corporation, or other state entity.

11 (c) The board of directors of the Alaska Railroad Corporation shall serve as the board
12 of directors for the successor corporation until a new board is elected by the shareholders.

13 (d) The board of directors of the Alaska Railroad Corporation shall transfer the assets
14 and liabilities of the Alaska Railroad Corporation to the successor corporation.

1 (e) The board of directors of the Alaska Railroad Corporation shall assign to the
2 successor corporation all contracts, including collective bargaining agreements and agreements
3 with connecting carriers, shippers, or other persons concerning services, operation, property,
4 and facilities of the Alaska Railroad Corporation, entered into by the Alaska Railroad
5 Corporation and in effect on the date of the transfer of assets and liabilities to the successor
6 corporation, unless the contract does not allow assignment of the contract.

7 (f) Notwithstanding AS 42.40.300, the Alaska Railroad Corporation shall pay the costs
8 incurred for the formation and operation of the successor corporation before the effective date
9 of sec. 4 of this Act.

10 * **Sec. 2. ISSUANCE AND DISTRIBUTION OF STOCK; ORIGINAL BOARD OF**
11 **DIRECTORS.** (a) Upon formation of the successor corporation under sec. 1 of this Act, the
12 board of directors of the Alaska Railroad Corporation shall immediately issue shares of voting
13 stock in the successor corporation to the state. The stock shall represent the value of the
14 assets and liabilities of the Alaska Railroad Corporation at the time of transfer to the successor
15 corporation under this Act.

16 (b) At the time of issuing stock under this section, the board of directors shall notify
17 the governor of the time and place of the first stockholders' meeting. The meeting shall be
18 held within 90 days after the stock is issued.

19 (c) At the first stockholders' meeting, the governor shall, subject to sec. 3(b) of this
20 Act, elect seven individuals to serve as the new board of directors of the successor
21 corporation, and the board of directors of the Alaska Railroad Corporation shall resign as
22 directors of the successor corporation.

23 * **Sec. 3. MANAGEMENT OF SUCCESSOR CORPORATION.** (a) The governor shall
24 vote the shares of stock in the successor corporation that are held by the state.

25 (b) If the state is the majority shareholder in the successor corporation, the governor
26 shall elect to the board of directors one person who has at least 10 years of experience in the
27 management of railroads in the United States; one person who is a resident, an employee of
28 the corporation, and a member of a bargaining unit representing employees of the corporation;
29 and five persons who are residents and have broad experience and demonstrated competence
30 in business management, finance, or law.

31 (c) The powers of the successor corporation are vested in the board of directors.

1 (d) By February 1, 1996, the board of directors of the successor corporation shall
2 prepare and submit to the legislature a report on the feasibility and advisability of placing the
3 state-owned shares of stock in the corporation with a trustee for the purpose of voting the
4 shares of stock to maximize profits of the corporation and for the purpose of disposing of the
5 shares of stock to private ownership.

6 * Sec. 4. TRANSFER OF ASSETS AND LIABILITIES. The assets and liabilities of the
7 Alaska Railroad Corporation are transferred to the successor corporation.

8 * Sec. 5. DIVIDENDS. If, on the final day of the fiscal year of the successor corporation,
9 the state, including agencies and public corporations of the state, owns more than 50 percent
10 of the shares issued under this Act, the successor corporation shall pay dividends to all
11 stockholders of record on the last day of the fiscal year. Dividends shall be paid within six
12 months from the end of the fiscal year. The total amount paid as dividends under this section
13 must equal or exceed 30 percent of the net earnings of the successor corporation for the fiscal
14 year.

15 * Sec. 6. SALE OF SHARES HELD BY THE STATE. (a) The governor shall adopt
16 regulations under AS 44.62 (Administrative Procedure Act) governing the sale of state-owned
17 shares of stock in the successor corporation. Unless otherwise provided by the legislature by
18 law, the governor shall evaluate proposals to dispose of state-owned shares of stock in the
19 successor corporation to determine whether the disposal of the shares may hinder the ability
20 of the successor corporation to continue operation of the Alaska Railroad, whether the state
21 can recover the amount of funds it had expended in connection with the Alaska Railroad and
22 the Alaska Railroad Corporation, and whether the disposal of the shares is in the best interest
23 of the state.

24 (b) The governor, or legislature by appropriation, may dispose of state-owned shares
25 of stock in the successor corporation, if the disposal is in the best interest of the state.

26 * Sec. 7. THE ALASKA RAILROAD, INC. The name "The Alaska Railroad, Inc." is
27 reserved to the exclusive use of the successor corporation formed under sec. 1 of this Act.

28 * Sec. 8. AS 09.25.115(g) is amended to read:

29 (g) Each public agency shall establish the fees for the electronic services and
30 products provided under this section. The Telecommunications Information Council
31 may cancel the fees established by a public agency in the executive branch, except the

1 fees of the University of Alaska [AND THE ALASKA RAILROAD
2 CORPORATION], if the council determines that the fees are unreasonably high.

3 • Sec. 9. AS 09.25.115(i) is amended to read:

4 (i) A public agency other than a municipality [OR THE ALASKA
5 RAILROAD CORPORATION] shall separately account for the fees received by the
6 agency under this section and deposited in the general fund. The annual estimated
7 balance in the account may be used by the legislature to make appropriations to the
8 agency to carry out the activities of the agency.

9 • Sec. 10. AS 09.25.123(a) is amended to read:

10 (a) The Telecommunications Information Council shall supervise and adopt
11 regulations for the operation and implementation of AS 09.25.110 - 09.25.140 by
12 public agencies in the executive branch [, EXCEPT THE ALASKA RAILROAD
13 CORPORATION].

14 • Sec. 11. AS 09.25.220(2) is amended to read:

15 (2) "public agency" means a political subdivision, department,
16 institution, board, commission, division, authority, public corporation, council,
17 committee, or other instrumentality of the state or a municipality; "public agency"
18 includes the University of Alaska [AND THE ALASKA RAILROAD
19 CORPORATION];

20 • Sec. 12. AS 23.05.360(f) is amended to read:

21 (f) For purposes of holding hearings, the members of the board sit in panels
22 of three members. The chair designates the panel that will consider a matter. Each
23 panel must include a representative of management, a representative of labor, and a
24 representative from the general public. A member of one panel may serve on the other
25 panel when the chair considers it necessary for the prompt administration of
26 AS 23.40.070 - 23.40.260 (Public Employment Relations Act) [OR AS 42.40
27 (ALASKA RAILROAD CORPORATION ACT)].

28 • Sec. 13. AS 23.05.380 is amended to read:

29 Sec. 23.05.380. REGULATIONS. The agency shall adopt regulations under
30 AS 44.62 [(THE) Administrative Procedure Act] [(AS 44.62)] to carry out labor
31 relations functions under AS 23.05.360 - 23.05.390 and [,] AS 23.40.070 - 23.40.260

1 [, AND AS 42.40.730 - 42.40.890].

2 • Sec. 14. AS 23.10.430(c)(2) is amended to read:

3 (2) "employer" means a person who employs one or more other persons
4 and includes the state, the University of Alaska [, THE ALASKA RAILROAD,] and
5 political subdivisions of the state.

6 • Sec. 15. AS 23.10.440(e) is amended to read:

7 (e) In this section, "employer" means an employer that employs 15 or more
8 employees at one time and includes the state, the University of Alaska, [THE
9 ALASKA RAILROAD CORPORATION,] and political subdivisions of the state.

10 • Sec. 16. AS 23.10.550(7) is amended to read:

11 (7) "state" includes the University of Alaska [, THE ALASKA
12 RAILROAD,] and the executive, legislative, and judicial branches of state government
13 including public and quasi-public corporations and authorities established by law.

14 • Sec. 17. AS 36.10.180(a) is amended to read:

15 (a) The preferences established in AS 36.10.150 - 36.10.175 apply to work
16 performed

17 (1) under a contract for construction, repair, preliminary surveys,
18 engineering studies, consulting, maintenance work, or any other retention of services
19 necessary to complete a given project that is let by the state or an agency of the state,
20 a department, office, state board, commission, public corporation, or other
21 organizational unit of or created under the executive, legislative, or judicial branch of
22 state government, including the University of Alaska [AND THE ALASKA
23 RAILROAD CORPORATION], or by a political subdivision of the state including a
24 regional school board with respect to an educational facility under AS 14.11.020;

25 (2) on a public works project under a grant to a municipality under
26 AS 37.05.315 or AS 37.06.010;

27 (3) on a public works project under a grant to a named recipient under
28 AS 37.05.316;

29 (4) on a public works project under a grant to an unincorporated
30 community under AS 37.05.317 or AS 37.06.020; and

31 (5) on any other public works project or construction project that is

1 funded in whole or in part by state money.

2 * Sec. 18. AS 36.30.015(e) is amended to read:

3 (e) The [BOARD OF DIRECTORS OF THE ALASKA RAILROAD
4 CORPORATION AND THE] board of directors of the Alaska Aerospace Development
5 Corporation shall adopt procedures to govern the procurement of supplies, services,
6 professional services, and construction. The procedures must be substantially
7 equivalent to the procedures prescribed in this chapter and in regulations adopted under
8 this chapter.

9 * Sec. 19. AS 36.30.050(c) is amended to read:

10 (c) The lists may be used by the chief procurement officer or an agency when
11 issuing invitations to bid or requests for proposals under this chapter. The lists may
12 be used by the legislative council and [,] the court system [, AND THE ALASKA
13 RAILROAD CORPORATION].

14 * Sec. 20. AS 37.05.146(4)(E) is amended to read:

15 (E) funds managed by the Alaska Housing Finance Corporation
16 (AS 18.56.020), [THE ALASKA RAILROAD CORPORATION
17 (AS 42.40.010),] the Municipal Bond Bank Authority (AS 44.85.020), the
18 Alaska Aerospace Development Corporation (AS 14.40.821), or the Alaska
19 Industrial Development and Export Authority (AS 44.88.020);

20 * Sec. 21. AS 39.52.960(2) is amended to read:

21 (2) "agency" means a department, office of the governor, or entity in
22 the executive branch, including [BUT NOT LIMITED TO] the University of Alaska,
23 public or quasi-public corporations, and boards or commissions [, BUT EXCLUDING
24 THE ALASKA RAILROAD CORPORATION];

25 * Sec. 22. AS 39.52.960(4) is amended to read:

26 (4) "board or commission" means a board, commission, authority, or
27 board of directors of a public or quasi-public corporation, established by statute in the
28 executive branch [, BUT EXCLUDING THE ALASKA RAILROAD];

29 * Sec. 23. AS 39.52.960(12) is amended to read:

30 (12) "instrumentality of the state" means a state agency or
31 administrative unit, whether in the legislative, judicial, or executive branch, including

1 such entities as the University of Alaska [, THE ALASKA RAILROAD,] and any
2 public or quasi-public corporations, boards, or commissions; the term includes
3 municipalities;

4 • Sec. 24. AS 39.90.140(4) is amended to read:

5 (4) "public body" includes an officer or agency of

6 (A) the federal government;

7 (B) the state;

8 (C) a political subdivision of the state including

9 (i) a municipality;

10 (ii) a school district; and

11 (iii) a rural educational attendance area;

12 (D) a public or quasi-public corporation or authority established
13 by state law [INCLUDING THE ALASKA RAILROAD CORPORATION];
14 and

15 (E) the University of Alaska.

16 • Sec. 25. AS 44.12.200(b) is amended to read:

17 (b) In this section, "state agency" means a department, institution, board,
18 commission, division, authority, public corporation, committee, or other administrative
19 unit of the executive branch of state government, including the University of Alaska
20 [, THE ALASKA RAILROAD CORPORATION,] and the Alaska Aerospace
21 Development Corporation.

22 • Sec. 26. AS 44.19.519(2) is amended to read:

23 (2) "state agencies" means all departments, divisions, and offices in the
24 executive and legislative branches of state government and the University of Alaska;
25 it does not mean [THE ALASKA RAILROAD CORPORATION OR] an agency of the
26 judicial branch of government.

27 • Sec. 27. AS 44.99.020 is amended to read:

28 Sec. 44.99.020. USE OF PAPER. A state agency shall use both sides of paper
29 when feasible. In this section, "state agency" means a department, institution, board,
30 commission, division, authority, public corporation, or other administrative unit of the
31 executive, legislative, or judicial branch of state government, including the University

1 of Alaska [, THE ALASKA RAILROAD CORPORATION,] and legislative
2 committees.

3 * Sec. 28. AS 44.99.240(2) is amended to read:

4 (2) "state agency" means

5 (A) a department, institution, board, commission, division,
6 authority, public corporation, or other administrative unit of the executive
7 branch, including the University of Alaska [AND THE ALASKA RAILROAD
8 CORPORATION];

9 (B) a committee, division, or administrative unit of the
10 legislative branch, including the Alaska Legislative Council, the leadership of
11 each house, and the office of the ombudsman;

12 (C) an administrative unit of the judicial branch, including the
13 Alaska Judicial Council and the Commission on Judicial Conduct.

14 * Sec. 29. AS 44.99.400 is amended to read:

15 Sec. 44.99.400. COPYRIGHTS. A state agency may hold the copyright for
16 software created by the agency or developed by a private contractor for an agency, and
17 may enforce its rights to protect the copyright. In this section, "state agency" means
18 a department, institution, board, commission, division, authority, public corporation,
19 committee, or other administrative unit of the executive, judicial, or legislative branch
20 of state government, including the University of Alaska and [,] the Alaska Aerospace
21 Development Corporation [, AND THE ALASKA RAILROAD CORPORATION].

22 * Sec. 30. AS 46.14.990(18) is amended to read:

23 (18) "person" has the meaning given in AS 01.10.060 and also includes
24 an agency of the United States, a municipality, the University of Alaska, [THE
25 ALASKA RAILROAD CORPORATION,] and other departments, agencies,
26 instrumentalities, units, and corporate authorities of the state;

27 * Sec. 31. AS 46.17.900(7) is amended to read:

28 (7) "person" has the meaning given in AS 01.10.060, and includes the
29 state and political subdivisions of the state, including [THE ALASKA RAILROAD
30 CORPORATION AND] the University of Alaska;

31 * Sec. 32. AS 09.25.110(g); AS 23.05.370(a)(6); AS 36.30.990(1)(B)(ii); AS 42.40:

1 AS 44.33.124(12); and AS 44.99.350(3)(B) are repealed.

2 * Sec. 33. Sections 1 - 3, and 7 of this Act take effect July 1, 1995.

3 * Sec. 34. Sections 4 - 6, and 8 - 32 of this Act take effect 30 days after the election of
4 the board of directors of the successor corporation under sec. 2 of this Act. The governor
5 shall notify the revisor of statutes of the date the directors are elected.

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1 "An Act relating to the dissolution of the Alaska Railroad Corporation and
2 providing for a successor corporation; and providing for an effective date."

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

4 * Section 1. FORMATION OF SUCCESSOR CORPORATION. (a) Within one year
5 from the effective date of this section, the board of directors of the Alaska Railroad
6 Corporation shall form a successor corporation under AS 10.06, subject to the provisions of
7 this Act, to own, operate, and manage the Alaska Railroad and to assume sole responsibility
8 for assets and liabilities of the Alaska Railroad Corporation.

9 (b) The successor corporation is a private corporation and is not a state agency, public
10 corporation, or other state entity.

11 (c) The board of directors of the Alaska Railroad Corporation shall serve as the board
12 of directors for the successor corporation until a new board is elected by the shareholders.

13 (d) The board of directors of the Alaska Railroad Corporation shall transfer the assets
14 and liabilities of the Alaska Railroad Corporation to the successor corporation.

1 (e) The board of directors of the Alaska Railroad Corporation shall assign to the
2 successor corporation all contracts, including collective bargaining agreements and agreements
3 with connecting carriers, shippers, or other persons concerning services, operation, property,
4 and facilities of the Alaska Railroad Corporation, entered into by the Alaska Railroad
5 Corporation and in effect on the date of the transfer of assets and liabilities to the successor
6 corporation, subject to the concurrence of the other parties to the contract.

7 (f) Notwithstanding AS 42.40.300, the Alaska Railroad Corporation shall pay the costs
8 incurred for the formation and operation of the successor corporation before the effective date
9 of sec. 4 of this Act.

10 * Sec. 2. ISSUANCE AND DISTRIBUTION OF STOCK; ORIGINAL BOARD OF
11 DIRECTORS. (a) Upon formation of the successor corporation under sec. 1 of this Act, the
12 board of directors of the Alaska Railroad Corporation shall immediately issue shares of voting
13 stock in the successor corporation to the state. The stock shall represent the value of the
14 assets and liabilities of the Alaska Railroad Corporation at the time of transfer to the successor
15 corporation under this Act. The shares of stock shall have a par value of \$25 per share.

16 (b) At the time of issuing stock under this section, the board of directors shall notify
17 the governor of the time and place of the first stockholders' meeting. The meeting shall be
18 held within 90 days after the stock is issued.

19 (c) At the first stockholders' meeting, the governor shall, subject to sec. 3(b) of this
20 Act, elect seven individuals to serve as the new board of directors of the successor
21 corporation, and the board of directors of the Alaska Railroad Corporation shall resign as
22 directors of the successor corporation.

23 * Sec. 3. MANAGEMENT OF SUCCESSOR CORPORATION. (a) The governor shall
24 vote the shares of stock in the successor corporation that are held by the state.

25 (b) If the state is the majority shareholder in the successor corporation, the governor
26 shall elect to the board of directors one person who has at least 10 years of experience in the
27 management of railroads in the United States; one person who is a resident, an employee of
28 the corporation, and a member of a bargaining unit representing employees of the corporation;
29 and five persons who are residents and have broad experience and demonstrated competence
30 in business management, finance, or law.

31 (c) The powers of the successor corporation are vested in the board of directors.

1 (d) By February 1, 1996, the board of directors of the successor corporation shall
2 prepare and submit to the legislature a report on the feasibility and advisability of placing the
3 state-owned shares of stock in the corporation with a trustee for the purpose of voting the
4 shares of stock to maximize profits of the corporation and for the purpose of disposing of the
5 shares of stock to private ownership.

6 * Sec. 4. TRANSFER OF ASSETS AND LIABILITIES. The assets and liabilities of the
7 Alaska Railroad Corporation are transferred to the successor corporation.

8 * Sec. 5. DIVIDENDS. If, on the final day of the fiscal year of the successor corporation,
9 the state, including agencies and public corporations of the state, owns more than 50 percent
10 of the shares issued under this Act, the successor corporation shall pay dividends to all
11 stockholders of record on the last day of the fiscal year. Dividends shall be paid within six
12 months from the end of the fiscal year. The total amount paid as dividends under this section
13 must equal or exceed 30 percent of the net earnings of the successor corporation for the fiscal
14 year.

15 * Sec. 6. SALE OF SHARES HELD BY THE STATE. (a) The governor shall adopt
16 regulations under AS 44.62 (Administrative Procedure Act) governing the sale of state-owned
17 shares of stock in the successor corporation. Unless otherwise provided by the legislature by
18 law, the governor shall evaluate proposals to dispose of state-owned shares of stock in the
19 successor corporation to determine whether the disposal of the shares may hinder the ability
20 of the successor corporation to continue operation of the Alaska Railroad, whether the state
21 can recover the amount of funds it had expended in connection with the Alaska Railroad and
22 the Alaska Railroad Corporation, and whether the disposal of the shares is in the best interest
23 of the state.

24 (b) The governor, or legislature by appropriation, may dispose of state-owned shares
25 of stock in the successor corporation, if the disposal is in the best interest of the state.

26 * Sec. 7. THE ALASKA RAILROAD, INC. The name "The Alaska Railroad, Inc." is
27 reserved to the exclusive use of the successor corporation formed under sec. 1 of this Act.

28 * Sec. 8. AS 09.25.115(g) is amended to read:

29 (g) Each public agency shall establish the fees for the electronic services and
30 products provided under this section. The Telecommunications Information Council
31 may cancel the fees established by a public agency in the executive branch, except the

1 fees of the University of Alaska [AND THE ALASKA RAILROAD
2 CORPORATION], if the council determines that the fees are unreasonably high.

3 * Sec. 9. AS 09.25.115(i) is amended to read:

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5 RAILROAD CORPORATION] shall separately account for the fees received by the
6 agency under this section and deposited in the general fund. The annual estimated
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8 agency to carry out the activities of the agency.

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12 public agencies in the executive branch [, EXCEPT THE ALASKA RAILROAD
13 CORPORATION].

14 * Sec. 11. AS 09.25.220(2) is amended to read:

15 (2) "public agency" means a political subdivision, department,
16 institution, board, commission, division, authority, public corporation, council,
17 committee, or other instrumentality of the state or a municipality; "public agency"
18 includes the University of Alaska [AND THE ALASKA RAILROAD
19 CORPORATION];

20 * Sec. 12. AS 23.05.360(f) is amended to read:

21 (f) For purposes of holding hearings, the members of the board sit in panels
22 of three members. The chair designates the panel that will consider a matter. Each
23 panel must include a representative of management, a representative of labor, and a
24 representative from the general public. A member of one panel may serve on the other
25 panel when the chair considers it necessary for the prompt administration of
26 AS 23.40.070 - 23.40.260 (Public Employment Relations Act) [OR AS 42.40
27 (ALASKA RAILROAD CORPORATION ACT)].

28 * Sec. 13. AS 23.05.380 is amended to read:

29 Sec. 23.05.380. REGULATIONS. The agency shall adopt regulations under
30 AS 44.62 [THE] Administrative Procedure Act) [(AS 44.62)] to carry out labor
31 relations functions under AS 23.05.360 - 23.05.390 and [,] AS 23.40.070 - 23.40.260

1 [, AND AS 42.40.730 - 42.40.890].

2 * Sec. 14. AS 23.10.430(c)(2) is amended to read:

3 (2) "employer" means a person who employs one or more other persons
4 and includes the state, the University of Alaska [, THE ALASKA RAILROAD,] and
5 political subdivisions of the state.

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8 employees at one time and includes the state, the University of Alaska, [THE
9 ALASKA RAILROAD CORPORATION.] and political subdivisions of the state.

10 * Sec. 16. AS 23.10.550(7) is amended to read:

11 (7) "state" includes the University of Alaska [, THE ALASKA
12 RAILROAD,] and the executive, legislative, and judicial branches of state government
13 including public and quasi-public corporations and authorities established by law.

14 * Sec. 17. AS 36.10.180(a) is amended to read:

15 (a) The preferences established in AS 36.10.150 - 36.10.175 apply to work
16 performed

17 (1) under a contract for construction, repair, preliminary surveys,
18 engineering studies, consulting, maintenance work, or any other retention of services
19 necessary to complete a given project that is let by the state or an agency of the state,
20 a department, office, state board, commission, public corporation, or other
21 organizational unit of or created under the executive, legislative, or judicial branch of
22 state government, including the University of Alaska [AND THE ALASKA
23 RAILROAD CORPORATION], or by a political subdivision of the state including a
24 regional school board with respect to an educational facility under AS 14.11.020;

25 (2) on a public works project under a grant to a municipality under
26 AS 37.05.315 or AS 37.06.010;

27 (3) on a public works project under a grant to a named recipient under
28 AS 37.05.316;

29 (4) on a public works project under a grant to an unincorporated
30 community under AS 37.05.317 or AS 37.06.020; and

31 (5) on any other public works project or construction project that is

1 funded in whole or in part by state money.

2 * Sec. 18. AS 36.30.015(e) is amended to read:

3 (e) The [BOARD OF DIRECTORS OF THE ALASKA RAILROAD
4 CORPORATION AND THE] board of directors of the Alaska Aerospace Development
5 Corporation shall adopt procedures to govern the procurement of supplies, services,
6 professional services, and construction. The procedures must be substantially
7 equivalent to the procedures prescribed in this chapter and in regulations adopted under
8 this chapter.

9 * Sec. 19. AS 36.30.050(c) is amended to read:

10 (c) The lists may be used by the chief procurement officer or an agency when
11 issuing invitations to bid or requests for proposals under this chapter. The lists may
12 be used by the legislative council and [,] the court system [, AND THE ALASKA
13 RAILROAD CORPORATION].

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15 (E) funds managed by the Alaska Housing Finance Corporation
16 (AS 18.56.020), [THE ALASKA RAILROAD CORPORATION
17 (AS 42.40.010).] the Municipal Bond Bank Authority (AS 44.85.020), the
18 Alaska Aerospace Development Corporation (AS 14.40.821), or the Alaska
19 Industrial Development and Export Authority (AS 44.88.020);

20 * Sec. 21. AS 39.52.960(2) is amended to read:

21 (2) "agency" means a department, office of the governor, or entity in
22 the executive branch, including [BUT NOT LIMITED TO] the University of Alaska,
23 public or quasi-public corporations, and boards or commissions [, BUT EXCLUDING
24 THE ALASKA RAILROAD CORPORATION];

25 * Sec. 22. AS 39.52.960(4) is amended to read:

26 (4) "board or commission" means a board, commission, authority, or
27 board of directors of a public or quasi-public corporation, established by statute in the
28 executive branch [, BUT EXCLUDING THE ALASKA RAILROAD];

29 * Sec. 23. AS 39.52.960(12) is amended to read:

30 (12) "instrumentality of the state" means a state agency or
31 administrative unit, whether in the legislative, judicial, or executive branch, including

1 such entities as the University of Alaska [, THE ALASKA RAILROAD,] and any
2 public or quasi-public corporations, boards, or commissions; the term includes
3 municipalities;

4 * Sec. 24. AS 39.90.140(4) is amended to read:

5 (4) "public body" includes an officer or agency of

6 (A) the federal government;

7 (B) the state;

8 (C) a political subdivision of the state including

9 (i) a municipality;

10 (ii) a school district; and

11 (iii) a rural educational attendance area;

12 (D) a public or quasi-public corporation or authority established
13 by state law [INCLUDING THE ALASKA RAILROAD CORPORATION];
14 and

15 (E) the University of Alaska.

16 * Sec. 25. AS 44.12.200(b) is amended to read:

17 (b) In this section, "state agency" means a department, institution, board,
18 commission, division, authority, public corporation, committee, or other administrative
19 unit of the executive branch of state government, including the University of Alaska
20 [, THE ALASKA RAILROAD CORPORATION.] and the Alaska Aerospace
21 Development Corporation.

22 * Sec. 26. AS 44.19.519(2) is amended to read:

23 (2) "state agencies" means all departments, divisions, and offices in the
24 executive and legislative branches of state government and the University of Alaska;
25 it does not mean [THE ALASKA RAILROAD CORPORATION OR] an agency of the
26 judicial branch of government.

27 * Sec. 27. AS 44.99.020 is amended to read:

28 Sec. 44.99.020. USE OF PAPER. A state agency shall use both sides of paper
29 when feasible. In this section, "state agency" means a department, institution, board,
30 commission, division, authority, public corporation, or other administrative unit of the
31 executive, legislative, or judicial branch of state government, including the University

1 of Alaska [, THE ALASKA RAILROAD CORPORATION,] and legislative
2 committees.

3 * Sec. 28. AS 44.99.240(2) is amended to read:

4 (2) "state agency" means

5 (A) a department, institution, board, commission, division,
6 authority, public corporation, or other administrative unit of the executive
7 branch, including the University of Alaska [AND THE ALASKA RAILROAD
8 CORPORATION];

9 (B) a committee, division, or administrative unit of the
10 legislative branch, including the Alaska Legislative Council, the leadership of
11 each house, and the office of the ombudsman;

12 (C) an administrative unit of the judicial branch, including the
13 Alaska Judicial Council and the Commission on Judicial Conduct.

14 * Sec. 29. AS 44.99.400 is amended to read:

15 Sec. 44.99.400. COPYRIGHTS. A state agency may hold the copyright for
16 software created by the agency or developed by a private contractor for an agency, and
17 may enforce its rights to protect the copyright. In this section, "state agency" means
18 a department, institution, board, commission, division, authority, public corporation,
19 committee, or other administrative unit of the executive, judicial, or legislative branch
20 of state government, including the University of Alaska and [,] the Alaska Aerospace
21 Development Corporation [, AND THE ALASKA RAILROAD CORPORATION].

22 * Sec. 30. AS 46.14.990(18) is amended to read:

23 (18) "person" has the meaning given in AS 01.10.060 and also includes
24 an agency of the United States, a municipality, the University of Alaska, [THE
25 ALASKA RAILROAD CORPORATION,] and other departments, agencies,
26 instrumentalities, units, and corporate authorities of the state;

27 * Sec. 31. AS 46.17.900(7) is amended to read:

28 (7) "person" has the meaning given in AS 01.10.060, and includes the
29 state and political subdivisions of the state, including [THE ALASKA RAILROAD
30 CORPORATION AND] the University of Alaska;

31 * Sec. 32. AS 09.25.110(g); AS 23.05.370(a)(6); AS 36.30.990(1)(B)(ii); AS 42.40;

- 1 AS 44.33.124(12); and AS 44.99.350(3)(B) are repealed.
- 2 * Sec. 33. Sections 1 - 3, and 7 of this Act take effect July 1, 1995.
- 3 * Sec. 34. Sections 4 - 6, and 8 - 32 of this Act take effect 30 days after the election of
- 4 the board of directors of the successor corporation under sec. 2 of this Act. The governor
- 5 shall notify the revisor of statutes of the date the directors are elected.

9-LS0579F
Utermohle
3/1/95

CS FOR SENATE BILL NO. 64()
IN THE LEGISLATURE OF THE STATE OF ALASKA
NINETEENTH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): SENATE TRANSPORTATION COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the sale of the Alaska Railroad; and providing for an
2 effective date."

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

4 * Section 1. SALE OF THE ALASKA RAILROAD. (a) The governor shall issue by
5 July 1, 1996, a request for proposals to purchase the Alaska Railroad and all other assets of
6 the Alaska Railroad Corporation.

7 (b) By January 1, 1998, the governor shall enter into an agreement to sell the Alaska
8 Railroad to the most responsive offeror who agrees to

9 (1) continue operation of the railroad for a minimum of 20 years following the
10 date of sale of the Alaska Railroad;

11 (2) accept assignment of all contracts, including collective bargaining
12 agreements and agreements with connecting carriers, shippers, or other persons concerning
13 services, operation, property, and facilities of the Alaska Railroad Corporation, entered into
14 by the Alaska Railroad Corporation and in effect on the date of the sale of the Alaska

1 Railroad, subject to the concurrence of the other parties to the contract; and

2 (3) purchase the Alaska Railroad for an amount that exceeds either the fair
3 market value of the Alaska Railroad and all other assets of the Alaska Railroad Corporation
4 or the amount that the State of Alaska has expended to obtain, maintain, and subsidize the
5 Alaska Railroad and the Alaska Railroad Corporation.

6 (c) Notwithstanding other provisions of this Act, the State of Alaska shall retain an
7 easement for transportation, communication, and transmission purposes on all land within the
8 right-of-way of the Alaska Railroad received by the state under the Alaska Railroad Transfer
9 Act of 1982 (P.L. 97-468, Title VI; 96 Stat. 2556).

10 (d) The governor shall contract for an appraisal of the fair market value of the Alaska
11 Railroad and all other assets of the Alaska Railroad Corporation by a qualified railroad
12 appraiser. The results of the appraisal shall be submitted to the legislature by the 10th
13 legislative day of the Second Session of the Nineteenth Alaska State Legislature. A contract
14 for the appraisal under this section is exempt from AS 36.30.

15 ~~_____~~ (e) The governor shall report to the legislature by the 10th legislative day of each
16 regular session of the Alaska State Legislature regarding the procedures established for and
17 the progress toward the sale of the Alaska Railroad as mandated by this Act.

18 (f) Upon the completion of the sale of the railroad, the governor shall dissolve the
19 Alaska Railroad Corporation.

20 (g) The governor may adopt regulations under AS 44.62 to implement this Act.

21 (h) The sale of the Alaska Railroad under this Act is not subject to AS 36.30 or
22 AS 42.40.

23 * Sec. 2. This Act takes effect immediately under AS 01.10.070(c).

Alaska State Legislature

Senator Steve Rieger, Chair
Senator Robin Taylor, Vice Chair
Senator Lyda Green
Senator Al Adams
Senator Georgianna Lincoln



State Capitol
Room 516
Juneau, Alaska 99801
(907) 465-4921

Senate Committee on Transportation

Sponsor Statement on SB 64

SB 64 is intended to be a step toward privatization of the Alaska Railroad. It creates a capital structure for the Alaska Railroad Corporation in which ownership is represented by shares of stock. The stock can then be transferred to private ownership through sale.

The state's ownership of the Alaska Railroad has created a difficult situation both for the state and for the management of the railroad. Business decisions made by the railroad in a competitive environment are criticized by other businesses as unfair competition and the legislature is asked to intervene, in effect second-guessing the railroad's decisions. The railroad for its part is not developing its holdings to their fullest extent, for example in the railroad's policy of not taking equity positions in non-transportation-related business. In effect, as long as the Alaska Railroad is in state ownership it is subject to political concerns as well as business judgement.

The result is a situation in which the Alaska Railroad is not maximizing its potential.

SB 64 will not in itself privatize the railroad. However the change in capital structure should greatly facilitate the transfer to private ownership. As the percentage of private ownership increases, the railroad will become more like a private business. Once a majority of the shares are in private hands, the transition to a business entity will essentially be complete.

CS for Senate Bill No. 64 (TRA)

"An Act relating to the dissolution of the Alaska Railroad Corporation and providing for a successor corporation; and providing for an effective date."

General Comments

The Senate Transportation Committee Substitute for Senate Bill No. 64 addresses many of the specific concerns raised by the Alaska Railroad Corporation (ARRC). We appreciate the Committee's efforts in this regard.

The ARRC Board of Directors has not adopted a formal position on the proposed legislation. Under the Alaska Railroad Corporation Act (ARCA), we understand it is our responsibility to operate the railroad as a self-sustaining entity pending its eventual transfer into the private sector. Whether to privatize the Alaska Railroad, and how best to achieve this goal, involve important issues. It has generally been our view that these issues are more appropriately the purview of the legislature and governor.

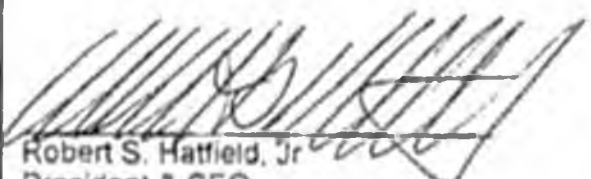
CSSB 64 (TRA) represents a thoughtful approach to achieve the goal of establishing a viable private sector entity to own and operate the railroad. Whether it will work (i.e., whether the stock shares will be marketable) is unknown. The legislature may want to analyze this question in detail before setting into motion the dissolution of the current state-owned corporation.

Trustee Concept

Another issue to note relates to the operation and management of the railroad during the interim period between establishing the new corporation and disposing of the stock shares. The ARRC previously suggested using a trust mechanism with a qualified financial institution as one method to consider. Under this approach, the appointed trustee would be under a fiduciary obligation to control the stock in the best interests of the new successor corporation and would also be required to actively seek a buyer for the stock. The trust agreement could also provide that the governor would have the final approval of any sale of the stock.

Section 3(d) was added in the CS as a way to allow examination of the trustee concept. However, as presently structured it will take a subsequent act of the legislature to take this step if recommended by the examination. The trustee approach may offer the best chance for the new entity to operate independently with the minimum amount of interference. The ARRC respectfully suggests more consideration of the trustee idea as this bill moves through the legislature, perhaps with the addition of specific and pertinent sale conditions designed to attract potential buyers.

I trust this responds to the request for a position paper on the CS. The ARRC stands ready to continue working with the legislature on this matter.


Robert S. Hatfield, Jr.
President & CEO

4/10/95
Date

Senate Bill - 64

"An Act relating to the dissolution of the Alaska Railroad Corporation and providing for a successor corporation; and providing for an effective date."

This bill has merit because it appears to establish the viable private sector type of economic entity with the powers and duties necessary to operate and manage the railroad on a self-sustaining basis that was originally intended by the 1984 State Legislature when it approved the transfer of the railroad to the state. Although Alaska Railroad Corporation (ARRC) only recently received a copy of SB 64 and has not had time to thoroughly analyze it, we have the following comments:

1. THE STATE SHOULD PAY FOR THE APPRAISAL.

Section 1 of the bill requires ARRC to obtain and pay for an appraisal of the value of assets and liabilities. When the state agreed to buy the Alaska Railroad from the federal government, the federal government obtained an appraisal of all of the real estate and personal property owned by the railroad at the time of transfer. The appraisal cost approximately \$1.7 million. In addition to this amount, the state expended approximately \$2 million for additional acquisition assessments, facility assessments, and legal advice pertaining to the transfer of assets. ARRC simply does not have the money to pay for these kinds of expenses. Since the state is requesting the appraisal and because it will be the primary beneficiary of the results of the appraisal, it should pay the costs thereof.

2. NEW BOARD OF DIRECTORS

Section 3 of the bill in effect requires the governor to appoint nine individuals to serve as

the new board of directors for the successor corporation. However, there is no mention of the qualifications for the new board members, whether the board will include representatives from ARRC's labor groups, the communities in which ARRC operates, or other public or private entities or what the powers and duties of the board will be. ARRC also questions why the number of directors was increased to nine.

3. ISSUANCE AND DISTRIBUTION OF STOCK

ARRC believes that the stock issued pursuant to Section 2 of the bill should be held in trust by a financial institution qualified for that purpose. The trustee would be under a fiduciary obligation to control the stock in the best interests of the new successor corporation and would also be required to actively seek a buyer for the stock. The trust agreement would also provide that the governor would have the final approval of any sale of the stock.

The foregoing represents ARRC's preliminary review of SB-64. ARRC may provide additional comments once it has had time to thoroughly analyze the myriad of legal and practical issues that may arise by the change contemplated by this bill.

FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. SB-64

Revision Date: _____ Dept. Affected: _____
 Title: An Act Relating to the Divolvement BRU: _____
of the Alaska Railroad Corporation. Component: _____
 Sponsor: Senate Transportation Committee
 Requester: Senator Rieger COMPONENT SERIAL NO. _____

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 89	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1008 GF/Program Receipts						
1006 GF/AMTA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY95) cost: 3

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

The costs to sell and appraise the Alaska Railroad Corporation are unknown.

During the 1984-1985 process to sell the Alaska Railroad to the State of Alaska, the U. S. Government spent an estimated \$1.7 million for various studies, appraisals, and financial assessments. The State of Alaska expended an estimated \$2.0 million for acquisition assessments, facilities assessments, legal advice, analysis of USRA evaluation and transfer reports.

Prepared by: James B. Blasingame Phone: 907-265-2680
 Division: _____ Date: _____
 Approved by: Robert S. Hatfield, Jr. Date: _____
 Agency: _____

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SENATE COMMITTEE REPORT

First Committee of Referral

DATE: 2/3/95

FURTHER: State Affairs
Finance

Date of 5-Day Notice: 2-2-95
(in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: 4/6/95

Transportation Committee considered SENATE BILL NO. 64

"An Act relating to the dissolution of the Alaska Railroad Corporation and providing for a successor corporation; and providing for an effective date."

and recommends:

- be replaced with CS SB 64 (TRA)
- adopt previous CS ()
- attached amendment(s)
- adopt Letter of Intent by Committee
- further referral to the Committee

Senate Bill:
 same title
 new title
House Bill:
 technical change
 new: SCR#

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>Lyle Moe</i>	<input checked="" type="checkbox"/>	<i>See below</i>	<input checked="" type="checkbox"/>		
<i>Robert Taylor</i>	<input checked="" type="checkbox"/>				
CHAIR: <i>Steve Klein</i>	<input checked="" type="checkbox"/>				

NEW FISCAL NOTE(S):

Department Date Zero Fiscal

<i>Alaska Railroad</i>	<i>2/7/95</i>	<input checked="" type="checkbox"/>	

PREVIOUS FISCAL NOTE(S):*

Department Date Zero Fiscal

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

DIVISION OF LEGAL SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3567 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

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

MEMORANDUM

January 30, 1995

SUBJECT: Corporate Structure of Alaska Railroad
(Work Order No. 9-LS0579\A)

TO: Senator Steve Rieger

FROM: George Utermohle *GU*
Legislative Counsel

This memorandum accompanies the bill that you requested relating to the corporate structure of the Alaska Railroad.

The bill mandates that the board of directors of the Alaska Railroad Corporation incorporate a new private corporation under the Alaska Corporations Code (AS 10.06). This new corporation, the successor corporation, will replace the current Alaska Railroad Corporation. Thirty days after the election of the board of directors of the successor corporation, the assets and liabilities of the Alaska Railroad Corporation will be transferred to the successor corporation and the Alaska Railroad Corporation (AS 42.40) will be repealed.

The draft bill establishes a mandate and the authority to dissolve the Alaska Railroad Corporation in favor of a successor corporation. However, the bill establishes only the barest framework for the complicated transactions that will be necessary to achieve the purposes of the bill. Broad discretion is delegated to the board of directors of the Alaska Railroad Corporation and the Governor to implement this bill.

In exchange for transferring certain assets of the Alaska Railroad Corporation to the successor corporation, the state receives all shares of stock issued in the successor corporation. The successor corporation is to be a private corporation subject to all laws that apply to private corporations, including taxation and antitrust laws. The successor corporation is not a state agency, public corporation, or other state entity. The state's ownership of shares in the successor corporation does not make it a public corporation any more than state investment in shares of IBM makes IBM a public corporation.

Though the successor corporation is not a public corporation, the state, as shareholder, will be liable for any liabilities of the corporation that exceed the value of its assets if such a situation should ever occur while the state still holds shares in the corporation. Also,

Senator Steve Rieger

January 30, 1995

Page 2

numerous rights and obligations bestowed upon persons by virtue of their status as shareholders in a corporation under AS 10.06 will fall upon the state.

The bill provides that the successor corporation shall pay dividends to shareholders if, on the last day of the corporation's fiscal year, the state holds more than 50 percent of the initial shares issued in the corporation. The dividend must equal or exceed 30 percent of the corporation's net earnings for the fiscal year.

If I may be of further assistance, please advise.

GU:klb

95-022.klb

Enclosure

Senate Bill - 64

"An Act relating to the dissolution of the Alaska Railroad Corporation and providing for a successor corporation; and providing for an effective date."

This bill has merit because it appears to establish the viable private sector type of economic entity with the powers and duties necessary to operate and manage the railroad on a self-sustaining basis that was originally intended by the 1984 State Legislature when it approved the transfer of the railroad to the state. Although Alaska Railroad Corporation (ARRC) only recently received a copy of SB 64 and has not had time to thoroughly analyze it, we have the following comments:

1. THE STATE SHOULD PAY FOR THE APPRAISAL.

Section 1 of the bill requires ARRC to obtain and pay for an appraisal of the value of assets and liabilities. When the state agreed to buy the Alaska Railroad from the federal government, the federal government obtained an appraisal of all of the real estate and personal property owned by the railroad at the time of transfer. The appraisal cost approximately \$1.7 million. In addition to this amount, the state expended approximately \$2 million for additional acquisition assessments, facility assessments, and legal advice pertaining to the transfer of assets. ARRC simply does not have the money to pay for these kinds of expenses. Since the state is requesting the appraisal and because it will be the primary beneficiary of the results of the appraisal, it should pay the costs thereof.

2. NEW BOARD OF DIRECTORS

Section 3 of the bill in effect requires the governor to appoint nine individuals to serve as

the new board of directors for the successor corporation. However, there is no mention of the qualifications for the new board members, whether the board will include representatives from ARRC's labor groups, the communities in which ARRC operates, or other public or private entities or what the powers and duties of the board will be. ARRC also questions why the number of directors was increased to nine.

3. ISSUANCE AND DISTRIBUTION OF STOCK

ARRC believes that the stock issued pursuant to Section 2 of the bill should be held in trust by a financial institution qualified for that purpose. The trustee would be under a fiduciary obligation to control the stock in the best interests of the new successor corporation and would also be required to actively seek a buyer for the stock. The trust agreement would also provide that the governor would have the final approval of any sale of the stock.

The foregoing represents ARRC's preliminary review of SB-54. ARRC may provide additional comments once it has had time to thoroughly analyze the myriad of legal and practical issues that may arise by the change contemplated by this bill.

FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. SB-54

Revision Date: _____ Dept. Affected: _____
 Title: An Act Relating to the Dissolution BRU: _____
of the Alaska Railroad Corporation. Component: _____
 Sponsor: Senate Transportation Committee
 Requester: Senator Rieger COMPONENT SERIAL NO. _____

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES						
---------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTLA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY95) cost: \$ _____

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

The costs to sell and appraise the Alaska Railroad Corporation are unknown.

During the 1984-1985 process to sell the Alaska Railroad to the State of Alaska, the U. S. Government spent an estimated \$1.7 million for various studies, appraisals, and financial assessments. The State of Alaska expended an estimated \$2.0 million for acquisition assessments, facilities assessments, legal advice, analysis of USRA evaluation and transfer report.

Prepared by: James B. Blaincane Phone: 907-265-2680
 Division: _____ Date: _____
 Approved by: President & CEO _____ Date: _____
 Agency: Robert S. Hatfield, Jr.

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Audit Report



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

November 17, 1994



Audit Control Number:

08-4479-95

Division of Legislative Audit

P.O. Box 113300, Juneau, Alaska 99811-3300

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

DIVISION OF LEGISLATIVE AUDIT

The Legislative Budget and Audit Committee is a permanent interim committee of the Alaska Legislature. The committee is made up of five senators and five representatives, with one alternate from each legislative chamber. The chairmanship of the committee alternates between the two chambers every legislature.

The committee is responsible for providing the legislature with audits of state government agencies. The programs and activities of state government now cost more than \$5 billion a year. As legislators and administrators try increasingly to allocate state revenues effectively and make government work more efficiently, they need information to evaluate the work of governmental agencies. The audit work performed by the Division of Legislative Audit helps provide that information.

As a guide to all their work, the Division of Legislative Audit complies with generally accepted auditing standards established by the American Institute of Certified Public Accountants and with government auditing standards established by the U.S. General Accounting Office.

Audits are performed at the direction of the Legislative Budget and Audit Committee. Individual legislators or committees can submit requests for audits of specific programs or agencies to the committee for consideration. Copies of all completed audits are available from the Division of Legislative Audit's offices in either Anchorage or Juneau.

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ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit



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Juneau, AK 99811-3300
(907) 465-3830
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November 17, 1994

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 FOLLOW-UP

November 17, 1994

Audit Control Number

08-4479-95

As stated in the Objective, Scope, and Methodology section of this report, the purpose of the audit was to update our review of the redevelopment and to present the current status of the significant issues and findings presented in our initial audit report on the Alaska Railroad Corporation's Ship Creek Redevelopment project, dated May 1, 1992.

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



Randy S. Welker, CPA
Legislative Auditor

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Report Conclusions	5
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Alaska Railroad Corporation	13

OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Title 24 of the Alaska Statutes and a special request by the Legislative Budget and Audit Committee, we conducted a follow-up audit of the Alaska Railroad Corporation's (ARRC) Ship Creek Redevelopment project. The objective, scope, and methodology of our review were as follows.

Objective

The objective of the audit was to update our review of the redevelopment and to present the current status of the significant issues and findings discussed in the Division of Legislative Audit report *Department of Commerce and Economic Development, Alaska Railroad Corporation, Ship Creek Redevelopment*, dated May 1, 1992.

Scope and Methodology

Our examination included reviewing relevant Alaska Statutes, ARRC leases and contracts, session laws of Alaska, accounting data and schedules, financial statements, ARRC board policies, ARRC's procurement code, media reports, court judgements, the Ship Creek Redevelopment master plan, and correspondence between parties.

Additionally, we conducted various interviews with management and staff of ARRC, the Anchorage Economic Development Corporation, the Department of Administration, the Municipality of Anchorage, and the Ship Creek developer, LoPatin and Company.

(Intentionally left blank)

ORGANIZATION AND FUNCTION

The Alaska Railroad Corporation (ARRC or the railroad) was established by Alaska Statute 42.40 after the railroad was purchased for \$22.3 million by the State from the federal government in January 1985. 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 over 450,000 passengers in 1993, the majority of its revenue is derived from freight transportation and real estate activities.

The site of the redevelopment project that is the primary subject of this audit totals approximately 120 acres and is located north of downtown Anchorage; it includes both ARRC's corporate headquarters and the railyards, as well as adjacent ARRC land that had been leased to private businesses and the Municipality of Anchorage. The expanse is primarily 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.

(Intentionally left blank)

REPORT CONCLUSIONS

As stated in the Objective, Scope, and Methodology section of this report, the purpose of the audit was to update our review of the redevelopment and to present the current status of the significant issues and findings discussed in the Division of Legislative Audit report *Department of Commerce and Economic Development, Alaska Railroad Corporation, Ship Creek Redevelopment*, dated May 1, 1992.

The concerns discussed in our initial audit dealt primarily with the redevelopment's master developer selection and negotiation of the master lease, the Inn-Vestment Associates of Alaska (IAA or the partnership) Comfort Inn hotel project, the Alaska Railroad Corporation (ARRC or the railroad) headquarters office building project, and compliance with the conditioning language and legislative intent of an appropriation for the redevelopment project. Several of the issues appear to have been satisfactorily resolved. Our primary concern at this point is whether the development will be successful. As discussed below, little tangible progress has been made to date; while a number of projects and works have been discussed, little construction has taken place. However, by mid-1995, considerably more will be known about the redevelopment's prospects for success. Two critical deadlines, each requiring separate specific actions, must be met by March and April of 1995 to respectively avoid lease default and/or possible reappropriation of monies targeted for the redevelopment. Whether and how these deadlines are met will provide substantial insight into the redevelopment's future.

The Ship Creek Redevelopment project has yielded little construction to date

The master lease between ARRC and Michigan-based LoPatin and Company (hereinafter referred to as LoPatin or the developer) became effective March 1, 1992. The lease is for a term of five years and initially included thirty-seven acres of ARRC land within the Ship Creek basin; this area was subsequently increased to include approximately sixty additional acres of adjacent land that had been leased by ARRC to the Municipality of Anchorage (MOA).

In the first two and one-half years of the lease, certain preliminary-type activities have taken place; however, very little construction has occurred. The developer has leased the old ARRC General Office Building (GOB) from the railroad and is presently completing renovation and code upgrades with a view toward subleasing. Additionally, LoPatin has leased a site from ARRC to be utilized as an RV park with certain infrastructure upgrades having taken place. Also, renovation and remodeling of another ARRC structure leased by the developer will yield a small amount of office space available for subleasing.

Phase I of LoPatin's master plan called for four centerpiece projects, including a tourist amenity, an office building complex, an upscale hotel property, and a residential housing component. When plans for these developments were announced, required zoning variances

were requested from MOA. Considerable opposition was encountered from various neighborhood associations and significant debate ensued. A compromise was reached that imposed height restrictions and altered the locations of certain developments. The railroad informed us that the process extended longer than anticipated and effectively forestalled construction during 1994. As such, in ARRC's and LoPatin's view, the development was set back for a year; until the zoning issue was resolved, the developer was reticent to pursue or finalize commitments for development.

Since the zoning problems have been addressed, LoPatin informed us that Phase I development is now proceeding. As of the date of this report, however, none of the four primary projects envisioned have commitments in place. The residential housing and the office building complex will hopefully break ground in 1996 or soon thereafter; perceived weakness for both in the marketplace was said to be the cause of this delay. While various entities have expressed interest, according to the developer, there is no current commitment for the upscale hotel, either. However, LoPatin feels that this project will come to fruition soon; the developer anticipates a commitment from a national hotel corporation by the first quarter of calendar year 1995, with construction commencing later that summer or autumn.

Likewise, the planned tourist amenity does not have a commitment in place. This project is considered to be one of the showpieces of the redevelopment, an attraction that will draw and retain people in Anchorage. The developer's current plan for this amenity is the Northern Crossroads Discovery Center, a multi-use facility including a theater and museum; LoPatin would be a shareholder in the for-profit corporation established for this purpose. LoPatin is planning on using the tax-exempt bonding authority of the railroad to finance the majority of the estimated \$55 million required to procure this facility. Alaska Statute (AS) 42.40.285 requires legislative approval of the issuance of bonds by ARRC; Chapter 77, Session Laws of Alaska (SLA) 1994 authorized the railroad to issue revenue bonds of not more than \$55 million for the construction and acquisition of the amenity. This approval is contingent upon the railroad's Board of Directors determining the project is feasible and financially viable. To make this determination, ARRC must conduct a study of such; the cost of this study must be borne by a private party, most likely the developer or lessee of the facility.

If the project is determined to be feasible and financially viable, ARRC may loan the proceeds of the bonds to a public or private entity to acquire, construct, and operate the center. The bonds are to be non-recourse obligations of ARRC and would only be payable from the revenues or assets provided to the railroad from the owner of the Discovery Center. Chapter 77 specifically requires that each bond sold contain on its face a statement that the bond is only payable from these proceeds and that the State is not liable for its payment. ARRC and LoPatin have conducted preliminary discussions with bond houses regarding placement; however, the railroad has not begun drafting the request-for-proposal for the feasibility study as of the date of this report. ARRC has stated that the feasibility study could be completed by the first quarter of calendar year 1995 and, if the project is determined to be viable, the bond package could be offered relatively shortly afterward; construction could begin in late 1995.

At this point, the redevelopment appears to be totally under LoPatin's control; it does not appear that ARRC is micro-managing the process. The master lease agreement requires LoPatin to obtain written approval from ARRC for plans and specifications prior to "significant work" (defined within the lease) being performed. However, ARRC appears content to allow LoPatin considerable latitude in the development of the specific projects, as long as they remain within the general scope of the master plan. While there is an obvious necessity for ARRC to remain aware of the progress of the specific projects and works, we agree that there is a benefit to allowing the developer leeway in managing the overall development; this must be tempered with ARRC's management of the developer to ensure performance goals are realized within specified timeframes. Additionally, as the railroad is a publicly-owned corporation and therefore the redevelopment project taking place on publicly-owned lands, ARRC must ensure that the redevelopment process is conducted in an appropriate manner; the public process must continually be met.

A default provision in the master lease requires action by LoPatin

The master lease agreement provides that LoPatin may extend the term of the accord for up to two additional terms not to exceed five years each if specific development goals are reached.

According to the lease, the developer is required to "*diligently pursue such [private investment] commitments . . . to a final result of the issuance of certificate(s) of occupancy for development projects on the leased premises totalling not less than \$7.0 million within three (3) years of [March 1, 1992].*"

The lease is silent on what "diligently pursue" constitutes or how the requirements of this paragraph are to be measured. Additionally, the lease language as presented appears open to different interpretations. However, it appears that, at an absolute minimum, some proof that the developer has aggressively sought commitments of at least \$7 million by March 1995 must be evident to avoid default. Both LoPatin and ARRC are confident that these commitments will be in place prior to this time. According to unaudited data provided by ARRC, over \$900,000 has been spent by LoPatin on the GOB refurbishing, approximately \$800,000 is the estimated cost of renovating the smaller office structure, and infrastructure work has taken place on the RV park. Additionally, the hotel project agreement is estimated to be finalized by March 1995; in ARRC's view, this could represent between \$12 million and \$18 million depending upon the scope of the project.

Under the master lease, ARRC cash outflows exceeded receipts by \$533,000

The master lease agreement between LoPatin and ARRC provides that the developer will pay annual rent to the railroad for the leased acreage. The accord affords LoPatin the opportunity to reduce the amount paid through credits for qualifying start-up costs as defined in the Internal Revenue Code, subject to a yearly maximum; qualifying start-up costs may exceed

the annual rent with the excess paid to the developer. Additionally, rents due ARRC from pre-existing leases in the redevelopment area are assigned to LoPatin.

The result of this agreement is that, through mid-October 1994, the railroad has paid approximately \$533,000 to LoPatin over and above amounts received from the developer; this is an unaudited cumulative figure since the inception of the lease in March 1992. As individual projects progress and rents are renegotiated based upon criteria provided within the master lease, ARRC believes this balance will shift in the railroad's favor.

The \$5.5 million appropriation for infrastructure is not yet available

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 appropriation stated that receiving these funds was conditional upon a development agreement being approved by the Anchorage Economic Development Corporation (AEDC) and ARRC that included private investment commitments equal to or exceeding the appropriated amount. Accompanying legislative intent language provided that if this agreement was not approved by AEDC and ARRC by April 30, 1992, the funds would then be available for reappropriation.

In our previous audit on the subject, we noted that the matching private investment section of the development agreement did not provide assurance that the conditioning provision had been met; as such, the grant monies should not have been available for expenditure. However, the Department of Administration (DOA) had previously issued the standard 20% advance of the grant to MOA. DOA's realization that the conditioning provisions of the appropriation had not been met prompted a request that MOA either document the required private investment commitments, petition the legislature to change the conditioning language, or return the advanced \$1.1 million. Chapter 41, SLA 1993, while not removing the matching requirement, amended the legislative intent language accompanying the appropriation by stating that the intention of the legislature is that the appropriation be available for reappropriation if the required private investment commitments have not been obtained by April 30, 1995.

The current status of the grant monies is that no substantive change has occurred that would permit the release of the funds; sufficient private investment commitments have not been obtained and documented and the municipality is still retaining the advanced funds. MOA has stated that it believes the conditioning language has been met through the inclusion of the Comfort Inn hotel project and the new ARRC headquarters building; the municipality's argument is that both represent sufficient private investment. We disagree. As discussed further below, the Comfort Inn hotel project has ARRC as a 40% owner that is jointly and severally liable for all debts, while the new headquarters building was a custom design/build for ARRC in return for a long-term office lease; substance over form must prevail in determining what is to be considered private investment. Additionally, ARRC and AEDC agreed to specifically exclude these projects from consideration of matching commitments during formulation of the Ship Creek development agreement in 1992.

MOA has indicated that it intends to seek reimbursement from the grant monies for approximately \$546,000 in infrastructure improvements completed prior to DOA informing them the conditioning language had not been met. We believe that these costs should not be considered as reimbursable until the conditioning language is met.

As discussed earlier, LoPatin must, in order to comply with the master lease requirements, demonstrate diligent pursuit of private investment commitments totalling at least \$7 million by March 1, 1995. Both LoPatin and ARRC are confident that this will occur and that sufficient private investment commitments will be obtained and documented prior to the date the legislature intends the monies to be available for reappropriation. As discussed earlier, the work underway on the old ARRC GOB, the RV park, and the renovation of the other ARRC structure into office space will contribute to this end as will a hotel agreement, if it constitutes an enforceable contract. DOA has affirmed that a minimum of \$5.5 million in commitments must be documented prior to grant reimbursement; no piecemeal approach will be permitted.

The status of ARRC's Comfort Inn hotel investment is still unknown

As we discussed in the previous audit, in 1991 ARRC entered into a partnership with four groups of husband and wife investors from Spokane, Washington for the purpose of financing, constructing, operating, and maintaining a ninety-six room Comfort Inn hotel on a site within the Ship Creek basin owned by ARRC. In return for providing a thirty-five year lease of approximately 1.6 acres upon which the hotel was constructed, the railroad was given a 40% interest in the IAA partnership.

As the partnership agreement provides that all partners have unlimited liability, we were concerned that ARRC had entered into this agreement without clearly documenting the other partners' financial capacities. This concern was heightened when the other investors' initial contributions to the partnership did not consist of tangible assets in return for their 60% capital interest. For the previous audit, ARRC declined to provide IAA financial statements for our review. However, for our current engagement, the railroad agreed to provide us with unaudited partnership financial statements and to furnish us with the audited statements when completed. Our reporting of the financial aspects of the project is constrained by AS 42.40.220(b) which limits public disclosure of proprietary information related to ARRC.

IAA contracted with a public accounting firm to perform a financial audit of the partnership from inception through 1993. However, ARRC has stated that the then-managing partner refused to provide sufficient records and documentation to the auditors. This scope limitation required the public accounting firm to issue a disclaimer of opinion on the financial statements. As such, no objective assessment of the viability of the railroad's investment can be made. ARRC informed us that the partnership is pursuing legal action against the former managing partner to allow the auditors sufficient access to the records to complete the 1994 audit.

We strongly urge the railroad to obtain access to all of the partnership's records and have an audit completed for the entire period since inception, not just 1994. The former managing partner's refusal to provide records is a "red flag" that should not be ignored.

The Comfort Inn hotel is still without permanent financing

IAA obtained interim financing for the initial stages of the project including construction and start-up phases from an Alaskan bank. In the three years since that occurred, the partnership has still not secured long-term financing. We understand that IAA is currently negotiating with two financial institutions based outside of Alaska. While utilizing interim financing on a long-term basis can heighten exposure to interest-rate fluctuation risk, market conditions during this time period have been such that this has not been a significant factor. Nonetheless, to hedge against volatility, it appears to be in the partnership's, and therefore ARRC's, best interest to secure this financing in the near future. However, we believe that financing will be difficult to obtain as long as the partnership's financial statements are clouded by the independent auditor's disclaimer of opinion.

Equity investments in non-transportation activities are now prohibited

One of the issues raised in the previous audit with far-reaching consequences was that of ARRC's 40% equity holding of the IAA partnership. Alaska Statute 42.40.250 gives ARRC the right to invest in equities; this is appropriate given the profit-oriented nature of the corporation. However, if the railroad 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.

ARRC's Board of Directors addressed this concern for future developments through the issuance of Board Rule No. 17, adopted November 23, 1993. This rule states, in part, that

it is the policy of [ARRC] not to use its real estate or other corporate assets to obtain an equity position in a non-transportation activity. A "non-transportation activity" is any activity not related to the core business of transportation. For purposes of the Policy, the term is specifically deemed to include hotels and other lodging facilities. (emphasis added)

The rule continues that "extraordinary" situations or circumstance may arise where a public consensus may be generated supporting investment in an otherwise prohibited activity. The Board may authorize such activity if the investment is proposed by a third party, is in the public's interest, and does not compete with a viable private enterprise. However, such an activity can only commence subsequent to notice being provided to the public, the governor, and the legislature.

This policy addresses this important issue for new projects; the IAA/Comfort Inn project is not retroactively affected. However, as discussed below, ARRC is aggressively reviewing developments in a number of different communities where it has substantial land holdings;

this rule will impact the manner in which many of these projects will be structured. Further, as delineated in the master lease agreement with LoPatin, ARRC has the opportunity, on a project-by-project basis, of taking equity positions in the Ship Creek Redevelopment activities; this policy will likely have considerable impact in this arena also.

We concur with the Board's recognition of the difficulties that are inherent to a publicly-owned corporation maintaining significant equity investments in companies competing in the private sector. The policy as adopted appears to be sufficient to address our concerns regarding future projects. The new rule is evident in ARRC's plans to develop its extensive land holdings in other Alaskan communities, specifically Fairbanks and Seward. Planned hotel projects in both communities are being developed without railroad involvement as owners; ARRC's role is limited to leasing the site upon which the hotels are to be constructed.

One remaining lawsuit

In the previous audit, we discussed three distinct lawsuits filed naming ARRC or the IAA partnership as a result of Ship Creek Redevelopment activities. One of the suits was settled prior to the release of the previous audit and was discussed therein. Of the other two, one had a preliminary judgement issued and is currently being appealed while the other has been resolved.

One lawsuit was filed against the state Department of Labor (DOL) by IAA and related to the Comfort Inn hotel construction. Due to the substantial involvement of the railroad, DOL held the position that the development 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, and AS 36.10, requiring a local hire employment preference. DOL's attempt to enforce these provisions was met with substantial opposition from the partnership which filed a motion in state Superior Court requesting a summary and declaratory judgement. In June 1993, the court granted that judgement, ruling that the Comfort Inn project was not subject to AS 36.05 as it was neither public construction nor public works as defined by AS 36.95.010. However, DOL has appealed the case to the state Supreme Court. Oral arguments have been heard and a decision is expected in early 1995. If DOL prevails, the partnership estimates they would be required to pay an additional \$550,000 to \$600,000 in wages and fringe benefits.

The other lawsuit was an administrative appeal against ARRC by Historical Redevelopment Corporation (HRC), an unsuccessful offeror for the design/build contract for the railroad's new office building. HRC charged ARRC in state Superior Court with a myriad of allegations regarding the procurement of the new structure. In September 1992 the court dismissed the case.

ARRC still does not maintain detailed procurement regulations

While not the primary focus of our previous audit, in our report we did note a number of occurrences where ARRC had difficulty complying with its own procurement rules. While individual procurements were not specifically reviewed as a part of this follow-up audit, we do recognize that ARRC has made a number of modifications to its procurement rules, some of more substance than others. Our cursory review noted that certain provisions appear to have been added as a result of procurement protests or appeals.

However, ARRC still 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.

ALASKA RAILROAD CORPORATION



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December 27, 1994

Randy S. Welker, CPA, Legislative Auditor
Legislative Budget and Audit Committee
Division of Legislative Audit
P.O. Box 113300
Juneau, Alaska 99811-3300

RECEIVED
DEC 29 1994

LEGISLATIVE AUDIT

Review of Legislative Audit 08-4479-94

Dear Mr. Welker:

Alaska Railroad Corporation staff have reviewed the Preliminary Audit Report. Subject: Ship Creek Redevelopment Follow-up dated November 17, 1994 and offer the following comments:

- On Page 5 - the references to LoPatin renovating the Old General Office Building (GOB) would be more accurate as follows: *LoPatin has leased from the ARRC, two floors of the GOB, and is completing a \$1,000,000 code renovation and upgrade. LoPatin has tenants for over 80% of these two floors. This project accommodates 'The World Trade Center' group on the schedule originally intended for the new Office Building (delayed by zoning).*
- On Page 5 - the references to LoPatin developing an RV Park on ARRC land in Ship Creek would be more accurate as follows: *the project includes utilities and a building. The total investment is \$800,000.*
- On Page 5 - the reference to another ARRC structure, incorrectly assigns this project to LoPatin. While it falls within LoPatin's lease area, and fits LoPatin's master development site plan, it would be more accurately stated as follows: *LoPatin has allowed another developer to move an ARRC building of historical interest onto one of the master development sites and renovate it for offices, at a cost of \$800,000. The project is already leased.*

December 27, 1994

Review Leg/Aud cont.

On Page 7 - Regarding the statement that the 'project (is) taking place on publically owned lands'. This presentation requires clarification. ARRC lands were transferred directly to the Corporation from the Federal government, were never part of the State Lands selection process, and are not managed by the various state agencies and processes that the public associates with the term, 'publically owned lands'. These lands are corporate assets, and managed as assets, by a process that provides for public notice and public testimony.

On Page 7 - and continuing on Page 8; the statement 'qualifying costs may exceed the rent, the excess can be paid to the developer.' is misleading. The following insertion would make a more accurate presentation. *The excess amount is subject to a \$150,000/year maximum, and applies only to the first five years. Further, in this agreement the expenses will always exceed the basic rent. All new rents will be covered under new leases.*

On Page 8 - The ARRC and AEDC discussion about excluding the headquarters building presumed simply, that because the ARRC was the building tenant for the first 20 years, the project was effectively a Railroad project. *That discussion did not reflect the value of a twenty year tenant in a structure with 50-70 year life, situated on a 35 year ground lease with an option for 35 years.*

Regarding the Comfort Inn, the project has been on 'rolled over' construction financing. The partnership has received a commitment for 'non-recourse' financing, thus *ARRC is no longer jointly and severally liable, indeed there is 'no recourse' on even the 40% that ARRC owns.*

On Page 10 As stated above the Comfort Inn now has 'non recourse' permanent financing.

December 27, 1994

Review Leg/Aud cont.

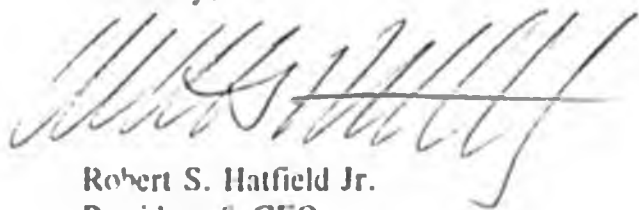
On Page 12 - 'ARRC still does not maintain detailed procurement regulations similar to those followed by executive branch agencies of the State'.

This comment appears to be made without knowledge of the revised procurement regulations adopted by the Board of Directors in April 1993. These regulations were prepared by ARRC legal staff, who put together in one document the State Code and the State Regulations.

Copies of these regulations were previously provided to your office. I have attached a copy of the regulations as well as a copy of a 'User's Guide' that was prepared and distributed to all affected departments and employees.

If you have any questions about the corrections we have suggested, please call me personally at 265-2403. Generally, we agree with your conclusion that 1995 will be an important year for the Ship Creek Redevelopment Project. We are, as you have indicated, optimistic that the Developer will successfully meet our requirements.

Sincerely,



Robert S. Hatfield Jr.
President & CEO

cc: ARRC Directors