

HB

55

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. HB 55

Revision Date: _____ Dept. Affected: Department of Law
 Title: ... relating to the fiscal operations of the BRU: Civil Division
Alaska Railroad Corporation and to land ... for railroad purposes ... Component: General Legal Services
 Sponsor: House Rules Committee by request of LB&A
 Requester: House Transportation Committee COMPONENT SERIAL NO. 2087

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES	322.5	322.5	322.5	322.5	322.5	322.5
TRAVEL	8.7	8.7	8.7	8.7	8.7	8.7
CONTRACTUAL	58.5	58.5	58.5	58.5	58.5	58.5
SUPPLIES	6.3	6.3	6.3	6.3	6.3	6.3
EQUIPMENT	19.5	19.5	19.5	19.5	19.5	19.5
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	415.5	415.5	415.5	415.5	415.5	415.5

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	415.5	415.5	415.5	415.5	415.5	415.5
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	415.5	415.5	415.5	415.5	415.5	415.5

Estimate of any current year (FY97) cost: \$ 0.0

POSITIONS

FULL-TIME	3.0	3.0	3.0	3.0	3.0	3.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

This bill would place the Alaska Railroad Corporation under the Executive Budget Act (AS 37.07) and would transfer ownership of all railroad land to the state. Under this bill, land necessary for railroad operations would be managed by the corporation. The remainder of what is presently railroad land would be managed by the Department of Natural Resources.

The Alaska Railroad Corporation has its own legal counsel to advise it on land management questions. Should ownership of this land be conveyed to the state, legal advice would be provided by the Department of Law. A number of the properties of the ARRC have pre-existing environmental contamination problems. Hazardous substance cleanup and liability issues need to be resolved prior to transfer of title to these lands to the State. DNR will need legal assistance from the Department of Law in resolving these issues. Given that 38,000 acres of land are involved in the proposed transfer of title, at least two attorneys will be needed to assist in the environmental liability aspects of the transfer.

Prepared by: Fred Fisher Phone: 465-3672
 Division: Administrative Services Division *Fred Fisher for* Date: 2/7/97
 Approved by Commissioner: Bruce M. Botelho, Attorney General Date: 2/7/97
 Agency: Department of Law

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FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. HB 55

ANALYSIS CONTINUATION:

The federal Bureau of Land Management (BLM) has still not transferred title to certain Alaska Railroad lands in Anchorage and Fairbanks to the ARRC under the federal Alaska Railroad Transfer Act of 1982 because of environmental cleanup issues. One of the properties to which the ARRC has been granted an exclusive use license has been listed on the Superfund National Priorities List by the U.S. Environmental Protection Agency (EPA) and the ARRC was named as a defendant by the United States in an EPA cleanup law suit. The ARRC has incurred significant legal costs concerning cleanup and liability issues for this and other similar properties. The Department of Natural Resources will likely need similar legal assistance concerning these lands. If the State becomes involved in litigation concerning these lands, at least one additional attorney and potentially the hiring of outside counsel, would be required.

A serious issue arises in section 25 of the bill which provides no flexibility for resolving cleanup and liability issues prior to DNR taking title. As written, the State could incur cleanup liabilities in the tens of millions of dollars in addition to those already potentially incurred by ARRC itself. These liabilities may involve very large future expenditures from the Oil and Hazardous Substance Response Fund or from the General Fund.

The cost estimate is based on the department's standard attorney cost schedule (\$127,000) and includes clerical support, communications, space, supplies, data processing, and other normal overhead expenses. An additional \$5,000 per position is included for direct case travel, and \$6,500 per position for one-time equipment purchases.

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. HB55

Revision Date: _____ Dept Affected: Natural Resources
 Title: An Act relating to the fiscal operation of BRU: Resource Development
the Alaska Railroad Corporation and to land acquired... Component: Land Development
 Sponsor: Rules by Request of LB&A
 Requestor: (H)TRA Component Serial No. 431

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY98	FY99	FY00	FY01	FY02	FY03
PERSONAL SERVICES	155.8	155.8	103.0			
TRAVEL						
CONTRACTUAL SUPPLIES	1.5	1.5				
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	157.3	157.3	103.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	157.3	157.3	103.0			
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	157.3	157.3	103.0	0.0	0.0	0.0

Estimate of any current year (FY97) cost: \$ none

POSITIONS

FULL-TIME	2.75	2.75	1.75	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

Assumption: That the bill does not allow direct transfer of excess lands from the ARRC to municipalities; also that the ARRC Realty Office will continue to function and initiate and maintain existing and future leases and contracts within the area reserved for use, maintenance and operation of ARRC.

TITLE ISSUES:

The magnitude of the acreage involved is approximately 36,000 acres for the total land transferred from the federal government to ARRC. It is estimated that the ARRC needs approximately 18,000 to 22,000 acres for operations. That leaves approximately 14,000 to 18,000 acres to be transferred to DNR and subsequently to municipalities. (continued on page 2)

Prepared by: Jane Angvik, Director *Jane Angvik* Phone: 269-8503
 Division: Land Date: 2/5/97
 Approved by Commissioner: *John Stives* Date: _____
 Agency: Natural Resources

Fiscal Note HB-55, continuation

BLM has conveyed the majority of the land to be transferred by the Alaska Railroad Transfer Act to the Alaska Railroad Corporation (ARRC). ARRC has received 3 patents from BLM (Anchorage-2.92 acres, Talkeetna -26.56 acres, and Nenana -6,885.65 acres). The remainder of the railroad land has been conveyed by Interim Conveyance and Exclusive Licenses. Two areas have not been adjudicated by BLM: downtown Anchorage and downtown Fairbanks. BLM reports that there are hazardous materials problems in the areas. Reportedly CIRI has filed litigation affecting the port facilities in Anchorage.

BLM prepared patent documents five years ago to be signed by the Secretary of Transportation as required by ARTA. Apparently, these documents have not been signed because of problems with the CERCLA/hazardous material language. Resolution of these title issues will be time-consuming and require legal assistance from the Attorney General's Office-environmental division or contracting private sector attorneys.

A mechanism is needed to transfer existing land title from the ARRC to the State of Alaska from the existing title (the quitclaim deed) and for future land conveyances from BLM. The chain of title needs to be clear. Litigation reports must be provided by ARRC and reviewed by DNR Title Staff.

Title

71000	1 NRO II	2 yrs. @ \$52.8	=	\$105.6
74000	Supplies	2 yrs. @ \$1.5 per year	=	\$3.0
TOTAL TITLE COST ESTIMATE				\$108.6

Cadastral Survey

Once the corridor has been identified, the US Surveys that conveyed the land to ARRC will be paper platted to separate corridor from land to be conveyed to the state. If the state land is selected by a municipality under AS 29.65 the municipality is required to have the land surveyed at its expense. If other third-party interests are created on the state land, the state may require the party to survey the boundary between ARRC land and state land. Survey personnel costs are for issuance of survey instructions and plat reviews. Preliminary review indicated that there are approximately 14 areas where there are lands excess to the operation of ARRC.

71000	.25 Land Surveyor Asst. - 3 years @ \$15.4	=	\$46.2	
	.10 Land Surveyor - 3 years @ \$ 7.0	=	\$21.0	
TOTAL SURVEY COST ESTIMATE				\$67.2

Municipal Entitlements

Processing anticipated municipal entitlements, based on 14,000 to 18,000 acres of land that may be selected by affected municipalities.

71000	1 NRO II - 3 years @ \$52.8	=	\$158.4	
	.25 NRM I - 3 years @ \$15.1	=	\$45.3	
	.25 NRO I - 3 years @ \$12.7	=	\$38.1	
TOTAL ENTITLEMENTS COST ESTIMATE				\$241.8

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. HB 55

Revision Date: _____ Dept Affected: Natural Resources
 Title: "An Act relating to the fiscal operation of the BRU: Management and Administration
Alaska Railroad Corporation and to land acquired ... Component: Information Resource Management
 Sponsor: Rules by Request of LB&A
 Requestor: (H)TRA Component Serial No. 427

Expenditures/Revenues	(Thousands of Dollars)					
	FY98	FY99	FY00	FY01	FY02	FY03
OPERATING EXPENDITURES						
PERSONAL SERVICES	29.0					
TRAVEL						
CONTRACTUAL						
SUPPLIES	1.0					
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	30.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE	(Thousands of Dollars)					
	FY98	FY99	FY00	FY01	FY02	FY03
1002 Federal Receipts						
1003 GF Match						
1004 GF	30.0					
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	30.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY97) cost: \$ none

POSITIONS	FY98	FY99	FY00	FY01	FY02	FY03
FULL-TIME	0.5	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

HB55 revises fiscal operations of the Alaska Railroad Corporation and land acquired by the State of Alaska under the pending eventual transfer of the railroad to the private sector for its ownership or operation, or both, consistent with the Alaska Railroad Transfer Act of 1982.

The Department of Natural Resources is responsible for tracking and updating all resource activity on state land. Section 6 names the Department of Natural Resources as the acting state agency who will receive title to all rail property transferred under 45 U.S.C. 1201-1214 (Alaska Railroad Transfer Act of 1982). To ensure accurate and proper record handling of land transactions on state land, the Department of Natural Resources would perform record updates to existing status plats, and develop an Alaska Railroad Land Database. Costs associated with the above activities is approximately \$30.0 (\$29.0 for personal services, 1/2 of a full-time position; and \$1.0 in cartographic supplies).

Prepared by: Carol Carroll, Director Phone: 465-4730
 Division: Support Services Date: 5-Feb-97
 Approved by Commissioner: *Michael J. ...* Date: 2-5-97
 Agency: Natural Resources

Sponsor Statement

HB 55

"An Act relating to the fiscal operations of the Alaska Railroad Corporation and to land acquired by the State of Alaska under the Alaska Railroad Transfer Act of 1982 or other wise acquired for railroad purposes; and providing for a effective date."

The Alaska Railroad has been a symbol of Alaska's history since the early 1920's and has been operating under state ownership for over 12 years. The federal government transferred the railroad to the State of Alaska in 1985 with a provision to transfer the 36,000 acres of railroad lands after the state operated the railroad for at least 10 years. While the railroad has continued to provide rail service for Alaska, no single financial or capital plan has been established for the railroad or its parent quasi-state owned corporation. During this 12 year span the corporation has had little state oversight. Currently, the Alaska Railroad Corporation (ARRC) is the only state owned corporation not under the Executive Budget Act (AS 37.07).

House Bill 55 will make two changes to the railroad and the corporation. The bill will place the Alaska Railroad under the Executive Budget Act; and will transfer land not needed for rail operations to the state's Department of Natural Resources (DNR). After numerous audit requests, OMB procurement investigations, and many Legislative Budget & Audit Committee hearings spurred by concerned citizens, the LB&A committee recommended and approved introduction of House Bill 55.

If enacted the bill will provide ARRC with the proper financial management exercised by the Governor and the Legislature by bringing the railroad corporation under AS 37.07. Under the Executive Budget Act, the railroad can apply for appropriation from the Legislature to fund the operating, capital and debt service expenditures of the corporation.

Enactment of HB 55 will strengthen the financial integrity of the Alaska Railroad Corporation by securing sound procurement practices, strong

Sponsor Statement

financial management, and sensible Alaskan resident plans for expansion and service.

Other state corporations placed under the Executive Budget Act have benefited greatly. For example, Alaska Housing Finance Corporation was placed under the Executive Budget Act in 1995. AHFC's recent audits show high profits while maintaining a stellar service for Alaska's housing needs. Up 30% from four years ago, AHFC received a perfect score of 100% in the Federal Department of Housing & Urban Development's (HUD's) annual evaluation of the agency. HUD's perfect score recognizes that AHFC has initiated annual budgeting procedures that resulted from the Executive Budget Act review.

There are about 36,000 total acres owned by the Alaska Railroad in Alaska. It is estimated ARRC only needs about 18,000 to 22,000 acres of land for rail operations and rights-of-way. Under HB 55, railroad lands would be transferred from the Federal Bureau of Land Management to DNR, not to ARRC. The railroad corporation would continue to control land needed for maintenance and operation of the rail lines.

In addition, lands not needed for operations can be selectively bought and traded from DNR by local governments like the City of Whittier, Denali Borough and the Municipality of Anchorage. Currently, the City of Whittier is in dire need of land for expansion and industrial growth, yet ARRC owns 52% of the city's core business area and 74% of the harbor's waterfront land; leaving no room for a planned expansion of their harbor and a plan for a new road.

HB 55 does not seek to privatize the railroad or in any other way diminish its existence as a public corporation of the state. The railway has become an integral part of Alaska's economy and folklore. Consequently, HB 55 is the right step forward to enhance the future of the railroad.

The legislation will not address every facet of the Alaska Railroad nor is it meant to. HB 55 will give Alaskans the ability to manage their railroad through the system of checks and balances only offered by a strong democracy and an open door policy.

LEGAL SERVICES

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STATE OF ALASKA

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

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

MEMORANDUM

January 17, 1997

SUBJECT: Sectional Summary of HB 55; An Act relating to fiscal operations of the Alaska Railroad Corporation and to land acquired by the State of Alaska under the Alaska Railroad Transfer Act of 1982 or otherwise acquired for railroad purposes. (HB 55)

TO: Representative Terry Martin
Attn: Chris Knight

FROM: George Utermohle *GU*
Legislative Counsel

You have requested a sectional summary of HB 55; An Act relating to fiscal operations of the Alaska Railroad Corporation and to land acquired by the State of Alaska under the Alaska Railroad Transfer Act of 1982 or otherwise acquired for railroad purposes.

As a preliminary matter, note that a sectional summary of a bill is not an authoritative interpretation of the bill. The bill itself is the best statement of its contents.

Section 1 of the bill amends sec. 1(b), ch. 153, SLA 1984 to expand the purposes for which the State of Alaska acquired the Alaska Railroad.

Section 2 of the bill amends AS 37.07.120(1) to amend the definition of "agency", for the purposes of the Executive Budget Act (AS 37.07), to include the Alaska Railroad Corporation.

Section 3 of the bill amends AS 42.40.100 to provide that the board of directors of the Alaska Railroad Corporation shall apply to the legislature for appropriations for the operating and capital expenditures of the Alaska railroad.

Section 4 of the bill amends AS 42.40.250 to provide that the Alaska Railroad Corporation may acquire title to personal property in its own name and real property on behalf of and in the name of the state.

Section 5 of the bill amends AS 42.40.285 by adding a new subsection to provide that the State of Alaska may not exchange, donate, sell, or otherwise convey its entire interest in land acquired under the federal Alaska Railroad Transfer Act or otherwise acquired for the

Sectional

Representative Terry Martin

January 17, 1997

Page 2

railroad purposes of the Alaska Railroad Corporation, unless the disposal is approved by the legislature by law.

Section 6 of the bill amends AS 42.40.350 to provide that the State of Alaska, acting through the Department of Natural Resources shall receive title to land granted to the state under the federal Alaska Railroad Transfer Act. Land within a utility corridor (railroad right-of-way) shall be reserved for the use of the Alaska Railroad Corporation. Rail land necessary for the use, maintenance, or operation of the Alaska Railroad shall be reserved for use by the Alaska Railroad Corporation. Land within railroad rights-of-way received by the state under the federal Alaska Railroad Transfer Act may not be leased or otherwise disposed of unless the land is required to be used for transportation, communication, and transportation purposes in perpetuity.

Section 7 of the bill amends AS 42.40.350 to provide that rail land not reserved for use by the Alaska Railroad Corporation is available for selection by and conveyance to municipalities under AS 29.65, if the legislature approves the conveyance by law. Unreserved rail land is to be managed by the Department of Natural Resources.

Sections 8 - 11 of the bill amend AS 42.40.360 and 42.40.370 to provide that the Alaska Railroad Corporation may request the Department of Natural Resources to reserve state land for railroad purposes.

Section 12 of the bill amends AS 42.40.385(a) to provide that the Alaska Railroad Corporation may acquire land by eminent domain only on behalf of and in the name of the State of Alaska.

Sections 13 - 18 of the bill amend several sections of AS 42.40 to conform to changes made by other provisions of the bill and to clarify that title to land used or acquired by the Alaska Railroad Corporation is held by the State of Alaska.

Section 19 of the bill amends AS 42.40.540 to require that the Alaska Railroad Corporation request, in accordance with the Executive Budget Act (AS 37.07), appropriations to carry out the purposes of AS 42.40.

Section 20 of the bill amends AS 42.40.900(a) to provide that lawsuits involving land under the jurisdiction of the Alaska Railroad Corporation must be brought against the corporation and not the state.

Section 21 of the bill amends AS 42.40.900(b) to repeal the exemption of the Alaska Railroad Corporation from the Executive Budget Act (AS 37.07) and the appropriation lapse provisions of AS 37.25.

Representative Terry Martin

January 17, 1997

Page 3

Section 22 of the bill provides for the repeal of provisions allowing the Alaska Railroad Corporation to convey its entire interest in land with the approval of the legislature (AS 42.40.285(1)) and allowing the commissioner of natural resources to convey land to the Alaska Railroad Corporation for less than its appraised value (AS 42.40.370(b)).

Section 23 of the bill sets out when the Alaska Railroad Corporation is to prepare its first budget under AS 37.07.

Section 24 of the bill ratifies any transfer of title to land made by the Alaska Railroad Corporation prior to the effective date of this Act.

Section 25 of the bill provides that title to all land received or acquired by the Alaska Railroad Corporation prior to the effective date of this Act is transferred to the State of Alaska.

Section 26 of this bill provides this Act takes effect immediately.

GU:jdr

97-017.jdr

*Back-up material for House Bill 55 -
The Executive Budget Act and the Alaska Railroad Corporation*

1. A) Memorandum relating to the legality of the Alaska Railroad to appropriate money without legislative oversight. B) Governor Bill Sheffield's Attorney General wrote a letter concerning un-authorized appropriations.
2. Conclusions and findings by the Division of Legislative Audit concerning recent and past audits.
3. A) ARRC financial statements from 1985 through 1995. B) State appropriations to the Alaska Railroad. C) Federal appropriations before formation of the ARRC. D) Federal appropriations in 1995 and 1996 of \$20,000,000 total.
4. Total acres of land 43,374.5 in three different categories. Current status of all railroad lands.
5. Alaska Railroad land reserves in different municipalities and borough areas.
6. A) Resolution from the State Chamber of Commerce relating to advantages of Privatization of the ARRC. B) City of Whittier's resolution requesting the Legislature to appropriate non-operational railroad land to the City of Whittier for fair market value. C) Letter from City of Whittier to the ARRC requesting land for downtown expansion projects.
7. Questions and Answers concerning the Alaska Railroad Corporation (ARRC).

LEGAL SERVICES

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Mail Stop 3101

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

MEMORANDUM

February 7, 1997

SUBJECT: Alaska Railroad Corporation (HB 55)

TO: Representative Terry Martin
Attn: Christopher Knight

FROM: Tamara Brandt Cook *TBC*
Director

You has asked me whether the Alaska Railroad Corporation may constitutionally spend revenue it generates without an appropriation. The corporation is exempted from a number of laws under AS 42.40.920(b), including the Executive Budget Act. It is far from certain to me that an exemption from the Executive Budget Act necessarily means that money involved in the exemption may be spent without an appropriation. To the extent that the state constitution requires an appropriation before money is spent, that requirement controls.

The federal Alaska Railroad Transfer Act contains a provision dedicating revenue generated by the railroad to railroad purposes. I am not convinced that a dedication of revenue, however valid under Article IX, sec. 7, places that revenue outside of the appropriation requirement of Article IX, sec. 13. It is possible that a court could conclude that, while revenue may be used only for railroad purposes, before it is so used it must be appropriated. In short, the legislature may still have the right and constitutional obligation to review proposed railroad expenditures and determine whether money will be spent for a particular railroad purpose, rather than another railroad purpose, and in what amount. The Attorney General's office has likewise concluded that a good probability exists that revenue of the Alaska Railroad Corporation is subject to appropriation before expenditure. (Memorandum, 366-575-84, May 26, 1984, copy attached)

It has been argued that money of a public corporation (like the Alaska Railroad Corporation) with an existence independent from the state is not in the state treasury and, therefore, not subject to appropriation. The Attorney General has, however, concluded that money in one public corporation (AHFC) is subject to appropriation to the extent that it is unencumbered. (Informal Opinion, 366-463-85, April 24, 1985, copy attached) That opinion was cited by the Alaska Supreme Court with approval and the court has specifically recognized that money appropriated from AHFC must be counted as "available for appropriation" for purposes of applying Art. IX, sec. 17, relating to the budget reserve fund. (*Hickel v. Cowper*, 874 P.2d 922 (Alaska 1994) footnotes 11 and 23) This conclusion of the court necessarily

Representative Terry Martin

February 7, 1997

Page 2

presupposes that the legislature does, indeed, have the power to make appropriations from AHFC's unencumbered assets. If revenues of that public corporation are subject to appropriation, it would seem quite likely that the revenues of the Alaska Railroad Corporation would also be treated as subject to appropriation by the court.

TBC:pl

97-030.plm

Enclosures

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

April 24, 1985

Hon. Al Adams, Chairman
House Finance Committee
Alaska House of Representatives
Pouch V
Juneau, AK 99811

REPLY TO:

1031 W 4th AVENUE
SUITE 200
ANCHORAGE, ALASKA 99507
PHONE: (907) 276-3550

1st NATIONAL CENTER
100 CUSHMAN ST.
SUITE 400
FAIRBANKS, ALASKA 99701
PHONE: (907) 452-1568

POUCH K - STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

Re: Legislative power of appropriation over funds of public corporations
Our file: 366-463-85

Dear Representative Adams:

You have requested our advice whether the legislature's power of appropriation includes the power to appropriate money administered by the Alaska Housing Finance Corporation (AHFC). AHFC was created to administer a state enterprise consisting almost entirely of making housing loans or providing a secondary mortgage market for housing loans originated by private lending institutions. AHFC is a state agency with the power to incur indebtedness if repayment is secured by pledging revenue earned from AHFC enterprises. See Alaska Const. art. IX, § 11. The pledge is secured by dedicating money, including revenues earned from the loan enterprise, to special accounts established for the benefit of bondholders. You desire to know whether the legislature may appropriate directly from AHFC's Alaska housing finance revolving loan fund (AS 18.52.082) for a purpose unrelated to AHFC. In addition, you ask if the unobligated balance of an appropriation from the general fund to the revolving fund may be reappropriated for another purpose.

First, we believe there is little doubt that the legislature may reappropriate the unencumbered and unobligated balance of an existing appropriation. See Inf. Op. Att'y Gen. (Sept. 26; 366-132-81). The legislature is merely reducing the authorization to spend money. The formal act of appropriating money does not invest a person or entity with the right to ultimately expend the money unless a valid, binding contract is made with that entity. It is very doubtful that a political subdivision of the state being entirely a creature of statute could claim a vested right to expend money under an appropriation absent the intervention of innocent third parties. Based on these principles, we

conclude that the unexpended and unobligated balance of an appropriation to the AHFC revolving fund may be appropriated for purposes unrelated to AHFC.

We next turn to the more difficult question of whether the balance of the AHFC revolving fund may be appropriated by the legislature for a purpose unrelated to AHFC. The AHFC revolving fund serves as a central pool of money consisting of the following:

- (1) appropriations from the legislature;
- (2) assets transferred there by AHFC; and
- (3) unrestricted repayments of principal on loans made or purchased by AHFC.

The assets of the revolving fund are transferred to separate funds when necessary to satisfy covenants made with bondholders. Amounts remaining in the fund do not secure specific bond issues of AHFC and remain unrestricted for use by AHFC "for the purposes of the corporation." Id.

The answer to your question turns on whether the revolving fund is within the state treasury or, failing that, if the fund is an asset of the state which may be appropriated by the legislature. Revolving funds administered by state agencies are generally included in the state treasury for financial reporting purposes. However, the AHFC revolving fund is not carried on the state's ledgers as an asset of the state treasury. Rather, the revolving fund is an asset of AHFC. In a recent appropriation Act, the legislature has specifically appropriated to the AHFC revolving fund interest earned on loans made or purchased by AHFC on deposit in the fund. See sec. 1, ch. 129, SLA 1984. This was done to remove any question that AHFC had improperly dedicated an unrestricted revenue source of the state for a special purpose in violation of the dedicated fund prohibition set out in section 7, article IX of the Alaska Constitution. This provides some evidence that the legislature considers unrestricted earnings of AHFC to be subject to appropriation. It is important to note that we have identified these earnings as "unrestricted." This means that the rights of innocent third parties to retain the fund balance as security for the payment of debt service on bonds have not intervened to restrict the ability of AHFC to spend them. We believe that the AHFC revolving fund is not in the state treasury. The effect of this conclusion is that AHFC may spend money in the fund without further appropriation. However, money earned from investments or assets of the

fund have customarily been considered a state asset which may be transferred and deposited into the general fund.

The question then becomes: if the AHFC revolving fund is not in the state treasury, but is an asset of a state agency, is the fund subject to appropriation? We believe that unrestricted money in the fund is probably available for appropriation. No specific authority was located to support this conclusion. We base our opinion on a belief that the legislative power of appropriation will be liberally construed by the courts. The appropriation power is often described as plenary. That is, the power to appropriate is limited only by express provisions set out in the Alaska Constitution. Judicial decisions reciting this principle are legion. See, e.g., San Francisco Labor Council v. Regents of University of California, 608 P.2d 277 (Cal. 1980); City of Sand Springs v. Department of Public Welfare, 608 P.2d 1139, 1148 (Okla. 1980). Absent a specific prohibition in the Alaska Constitution against appropriating assets of an executive branch agency held outside the state treasury, we believe that the legislature may do so. This opinion does not hold that the legislature must appropriate revenue of a public corporation before it can be spent, only that the legislature may exercise control over unrestricted assets of a public corporation. To deny this power would establish an entity capable of segregating unrestricted state revenue forever. At some point, this would do violence to the dedicated fund prohibition set out in article IX, section 7 of the Alaska Constitution.

We believe it is also our responsibility to inform you that there is a contrary view on this subject. The argument could be made on behalf of bondholders that AHFC has undertaken certain obligations to bondholders which are binding on AHFC and the legislature. AHFC bonds are issued as general obligations of the corporation. Typically, AHFC covenants in its indenture that it will "defend, preserve and protect the pledge of the program obligations, pledged revenues, and other assets." Bondholders could attack any direct appropriation of the AHFC revolving fund as a violation of the covenant to preserve assets. We believe this covenant will not restrict legislative appropriations of unrestricted assets of AHFC which are unnecessary to secure the repayment of debt service on bonds. See Opinion of the Justices, 313 N.E.2d 282 (Mass 1977); Opinion of the Justices, 136 N.E.2d 223 (Mass 1956). This means that the directors of AHFC must be certain that an appropriation of corporation assets will not jeopardize its ability to pay debt service on outstanding bonds.

To prepare for and meet any challenge to the appropriation of AHFC assets, we recommend that the legislature not only

appropriate the asset but also amend the enabling Act of AHFC to assure bondholders that an impairment of their security will not occur. Under this approach, a valid transfer of assets requires not only an appropriation from the AHFC revolving fund but also an amendment to AS 18.56.020 which provides authority for AHFC to transfer unrestricted surplus to the general fund. */ Authorization by general law for the transfer of assets of public corporations has been used in the past. In 1980, the legislature transferred the assets of the Alaska State Development Corporation (AS 44.59.010), the Small Business Development Corporation (AS 44.60.020), and the Alaska Toll Bridge Authority (AS 44.57.010) to the Alaska Industrial Development Authority. Sec. 42, ch. 106, SLA 1980. The transfer was made not in an appropriations bill, but in a bill proposing the enactment of general law. It is curious to note that no corresponding appropriation was made. This approach is consistent with another familiar adage of public finance law that appropriation bills may not be used to amend substantive law. Legislative Budget & Audit Committee v. Hammond, No. 1JU-80-1163 CIV (Alaska Super., May 25, 1983). It could be argued that AS 18.56.020 implies that the assets of AHFC will be transferred to the state treasury only upon termination. Because an appropriation cannot amend existing law, a transfer from the fund before dissolution of AHFC would be subject to question.

While we believe that a direct appropriation of surplus AHFC assets is legally defensible, to avoid any question as to the validity of a transfer appropriation, we recommend that the legislature

- (1) enact an amendment to AS 18.56.020 authorizing interim transfers of unrestricted surplus assets of AHFC to the general fund;
- (2) provide that the board of directors shall annually determine the amount of surplus available for transfer; and

*/ AS 18.56.020 provides:

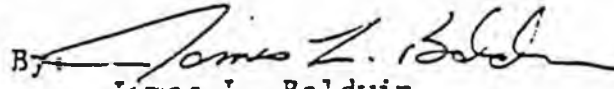
ALASKA HOUSING FINANCE CORPORATION. The Alaska Housing Finance Corporation is a public corporation and government instrumentality within the Department of Revenue, but having a legal existence independent of and separate from the state. The corporation may not be terminated as long as it has bonds, notes or other obligations outstanding. Upon termination of the corporation, its rights and property pass to the state.

(3) appropriate the assets from the fund to the general fund in accordance with the transfer authorization.

We hope this memorandum has answered your questions.

Sincerely yours,

NORMAN C. GORSUCH
ATTORNEY GENERAL

By 
James L. Baldwin
Assistant Attorney General

JLB/pjs

MEMORANDUM

State of Alaska

TO: Honorable Al Adams, Chairman
House Finance Committee
Alaska State Legislature

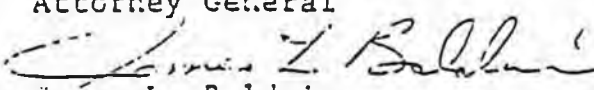
DATE: May 26, 1984

FILE NO: 366-575-84

TELEPHONE NO: 465-3600

FROM: Norman C. Gorsuch
Attorney General

SUBJECT: Appropriation of
Alaska Railroad
revenue


By: James L. Baldwin
Assistant Attorney General

Luann Cutler, on your behalf, has requested our opinion whether revenues of the Alaska Railroad must be appropriated before expenditure. Under the provisions of the Alaska Railroad Transfer Act (45 U.S.C. § 1207 -- 45 U.S.C. § 1214), "revenues generated by the state-owned railroad shall be retained and managed by the state-owned railroad for railroad and related purposes." 45 U.S.C. § 1207(a)(5).

This constitutes a dedication of revenue mandated by federal law. Even if a revenue source is dedicated for a specific purpose, amounts may not be expended by an agency within the executive branch from that revenue source unless appropriated by law. Alaska Const. art. IX, §§ 12, 13; see also, Kelley v. Hammond, C.A. No. 77-4, 1st Jud. Dist. (Alaska 1977). The important distinction of a validly dedicated revenue source is that money may not be expended for a purpose other than the Alaska Railroad, not necessarily that the money may be expended without appropriation.

We acknowledge that if the railroad's function is assigned to a public corporation which is established as a political subdivision of the state, an argument can be made that railroad revenue is not a part of the state treasury, much the same as the revenues collected by municipal corporations. If this view is adopted in Alaska, railroad revenues could be expended without appropriations. To date, this view has been repudiated at the superior court level. Kelley v. Hammond, C.A. No. 77-4, 1st Jud. Dist. (Alaska 1977).

We hope this opinion answers your question.

JL2/mg

Alaska Railroad Corporation

Financial Audits

- The financial affairs of the Alaska Railroad Corporation are audited annually by a public accounting firm. The corporation typically receives a "clean" opinion on its financial statements.

Performance Audits

- Alaska statute also requires the corporation to have an annual performance audit conducted by a recognized railroad management expert. This audit is conducted presently by Mercer Management Consulting and is presented to the Board of Directors of the corporation annually.

Significant Special Audits

Ship Creek Redevelopment Follow-up, November 17, 1994

- This audit was conducted to follow up on the findings and conclusions we made in our original review (1992) of this project. Several of the issues we initially raised appeared to have been satisfactorily resolved. Our concern in this review was whether the development would be successful.
- The redevelopment project had yielded little construction to date. None of the four centerpiece projects envisioned had commitments in place.

Anchorage Gravel Activities, July 3, 1996

- The report addresses our concerns that the Alaska Railroad Corporation's (ARRC) agreement with the Flamingo Brothers Partnership to market and extract gravel from the corporation's Anchorage property may not have been in the best interest of the corporation.
- ARRC's public procurement process was not followed. In the corporation's opinion, the gravel agreement was the disposal of real property and therefore, not subject to its procurement rules. We believe it was a commodity sale that should have been subject to the provisions of those rules.
- ARRC's real estate leases are inappropriately offered on a "first come, first served" basis.
- ARRC's justification of the project was unclear.

- ARRC's lack of public process excluded the community.
- We recommended ARRC improve its monitoring of employee conflict of interest disclosure statements.

Chena Landings Development, August 20, 1996

- This audit reviewed ARRC's management of the development project related to utility procurement, leasing, and public amenities.
- The utility project was delayed by planning and design difficulties.
- Request for proposal criteria and evaluation procedures were inadequate.
- The corporation lacked documentation regarding project development planning.
- Leases are not competitively offered: ARRC inappropriately uses a "first come, first served" approach to leasing property.

Ongoing or Pending Audits

Alaska Railroad Corporation, Equipment Purchases/Disposals

Alaska Railroad Corporation, Real Estate Appraisal Methodology

Auditor Observations

The Alaska Railroad Corporation has been under the "legislative microscope" for the last few years. The Audit Division has conducted five audits of the corporation since 1992 and has one audit in progress and another pending. Of those seven audits, two deal with rail operations, and five involve the corporation's management of real estate.

During the interim, the Legislative Budget and Audit Committee also pursued a greater understanding of the corporation and its assets. We believe that it is important that the Legislature understand the operation of the corporation and be aware of issues that impact its operation. The Legislative Budget and Audit Committee appears to be the appropriate vehicle currently available to provide that oversight.

The Alaska Railroad Corporation finds itself in an unenviable position. On one hand, it is operating under a statutory mandate to generally manage the corporation on a self-sustaining basis. On the other hand, as a corporation wholly owned by the State, the corporation must be

held to certain standards of openness and public accountability. It is in this vein that we often find ourselves at odds with the corporation. We believe that as long as the corporation is owned by the public, public accountability must come first.

We also believe that the corporation can be run in an efficient manner and still uphold those public accountability standards. Management by corporate officers and policy direction by the board of directors should strive for the appropriate balance. In our opinion, we have seen recent signs of improvement in this effort by the board, primarily through our contact with the chairman. We are hopeful that the appointment of a new chief executive officer will further foster these goals.

Without going into great detail on issues we remain concerned about regarding the Alaska Railroad Corporation, we offer these summary observations and would be happy to discuss them further with any member or committee of the Legislature. They are in no particular order of significance.

- The corporation's budget is not subject to the Executive Budget Act. We see no reason why the corporation should be exempt or even whether constitutionally, it can be. Similarly, significant federal funds have been received by the corporation for capital rehabilitation and improvements without any legislative oversight.
- The corporation has shown a profit for the last two fiscal years (calendar year end). Total net income for 1996 (unaudited) and 1995 was \$8.0 million and \$7.9 million, respectively. The net income from operations represented \$4.0 million and \$4.1 million, respectively. Approximately half of the corporation's income is generated from management of its real estate. The majority of this real estate is considered non-rail use property.
- A much talked about concern is deferred maintenance, however, little is factually known about the extent or estimated cost of that maintenance. We believe that a serious discussion needs to take place. It is possible, or even likely, that without the federal funding authorized the last two years (\$10 million per year) the railroad's income statement would look significantly different. Neither the financial statements nor the notes to the financial statements reflect any estimate of the amount of deferred maintenance.
- An observation that is important to understanding the fragile nature of the corporation's financial health is its dependence on two major customers. As disclosed in the notes to the financial statements for 1995, these two customers accounted for 45% of the corporation's revenue. The corporation's existence is dependent on those two customers.
- Through a combination of statute and corporation rules, the salary of railroad employees is confidential and therefore can not be disclosed to the public. Statute provides that the corporation may by rule designate and withhold public disclosure of matters of a

privileged or proprietary nature. Statute goes on to describe matters as including personnel records. Corporation rules include salary as a personnel record.

- Alaska Statute 42.40.260(b) requires the annual report of the corporation to include an analysis of potential sale arrangements whereby the corporation may be transferred into private ownership. The corporation has not pursued sale discussions with potential or interested buyers. The corporation has gone so far as to notify interested parties that the Board of Directors is not interested in selling the railroad.
- Statute requires the corporation to have an annual performance audit conducted by a recognized railroad expert to assure that the railroad is being managed and operated effectively and efficiently. There are two reports generated from this review. A confidential report is produced for the use of railroad management. A public version of the report is issued that does not go into nearly as much detail. We recommend that the legislature annually request a confidential briefing on the detail version of the performance report.

ARR Financial Statement History

	1985	1986	1987	1988	1989	1990	1991	1992		1994	1995
Operating Revenue	\$57,092	\$47,239	\$45,457	\$51,207	\$55,065	\$61,913	\$61,773	\$61,840	:	\$51,854	\$60,272
Operating Expenses	\$55,413	\$54,264	\$46,490	\$48,898	\$55,453	\$59,904	\$59,630	\$62,427	:	\$57,971	\$56,152
Income from Operations	\$1,679	(\$7,025)	(\$1,033)	\$2,309	(\$388)	\$2,009	\$2,143	(\$587)		(\$6,117)	\$4,120
Real Estate Income	\$4,095	\$4,934	\$4,821	\$4,438	\$3,932	\$3,718	\$3,592	\$3,616	\$3,941	\$4,568
Other Income	\$1,920	\$1,719	\$890	\$585	\$637	\$879	\$436	\$509	\$544	\$222	\$191
Interest Expense	(\$561)	(\$613)	(\$1,661)	(\$1,526)	(\$1,204)	(\$2,066)	(\$1,729)	(\$1,189)	(\$1,114)	(\$1,256)	(\$1,008)
Net Income	\$7,133	(\$985)	\$3,017	\$5,806	\$2,977	\$4,540	\$4,442	\$2,349	(\$2,673)	(\$3,210)	\$7,871
Passenger Revenues	\$4,344	\$4,574	\$5,434	\$5,601	\$6,025	\$6,973	\$8,173	\$8,460	\$8,855	\$9,012	\$9,749
Average # of Employees	668					577	580	570			

	Total 1991-1995	Total 1986-1995	Total 1994-1995
Operating Revenue	\$292,659	\$553,540	\$112,126
Operating Expenses	\$299,002	\$564,011	\$114,123
Income from Operations	(\$6,343)	(\$10,471)	(\$1,997)
Real Estate Income	\$19,516	\$41,359	\$8,509
Other Income	\$1,902	\$6,612	\$413
Interest Expense	(\$6,296)	(\$13,366)	(\$2,264)
Net Income	\$8,779	\$24,134	\$4,661

ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Finance



P.O.Box 113200
Juneau, AK 99811-3200
(907) 465-3795
FAX (907) 463-4885

MEMORANDUM

DATE: January 28, 1997

TO: Representative Terry Martin
House Finance Committee

FROM: Mike Greany, Legislative Fiscal Analyst
Division of Legislative Finance

BY: Dave Tonkovich, Fiscal Analyst
Division of Legislative Finance

SUBJECT: State Appropriations to the Alaska Railroad

A handwritten signature in black ink, appearing to be "Mike Greany".

At your request we've prepared a list of state appropriations to the Alaska Railroad:

SLA84, Ch. 171, Sec. 319 (Department of Commerce and Economic Development)

Alaska Railroad Acquisition	\$22,271,000 GF
Alaska Railroad Capital Equipment and Improvements	6,000,000 GF
Railroad Working Capital Fund	4,900,000 GF

SLA90, Ch. 208, Sec 145

Locomotives, Rolling Stock, and associated equipment cost (Associated with Wishbone Hill Coal Project)	\$9,000,000
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ALASKA RAILROAD REVOLVING FUND

ESTIMATES

APPROPRIATIONS

1975	\$6,500,000	1975	\$6,031,000
1976	0	1976	9,000,000
1977	6,000,000	1977	6,000,000
1978	3,000,000	1978	3,000,000
1979	3,000,000	1979	9,300,000
1980	5,000,000	1980	6,500,000
1981	10,640,000	1981	10,640,000
1981 (Supp.).....	2,000,000	1981 (Supp.).....	2,000,000
1982	6,160,000	1982	6,160,000
1983	0	1983 (2nd Cont. Res.).....	7,600,000
1984	0	1984	0

FY 1997

110 STAT. 2962

PUBLIC LAW 104-205—SEPT. 30, 1996

PUBLIC LAW

HIGH-SPEED RAIL TRAINSETS AND FACILITIES

For the National Railroad Passenger Corporation, \$80,000,000, to remain available until September 30, 1999, to pursue public/private partnerships for high-speed rail trainset and maintenance facility financing arrangements.

RAILROAD REHABILITATION AND IMPROVEMENT PROGRAM

The Secretary of Transportation is authorized to issue to the Secretary of the Treasury notes or other obligations pursuant to section 512 of the Railroad Revitalization and Regulatory Reform Act of 1976 (Public Law 94-210), as amended, in such amounts and at such times as may be necessary to pay any amounts required pursuant to the guarantee of the principal amount of obligations under sections 511 through 513 of such Act, such authority to exist as long as any such guaranteed obligation is outstanding: *Provided*, That no new loan guarantee commitments shall be made during fiscal year 1997.

NEXT GENERATION HIGH-SPEED RAIL

For necessary expenses for Next Generation High-Speed Rail studies, corridor planning, development, demonstration, and implementation, \$24,757,000, to remain available until expended: *Provided*, That funds under this head may be made available for grants to States for high-speed rail corridor design, feasibility studies, environmental analyses, and track and signal improvements.

TRUST FUND SHARE OF NEXT GENERATION HIGH-SPEED RAIL

(LIQUIDATION OF CONTRACT AUTHORIZATION)

(HIGHWAY TRUST FUND)

For grants and payment of obligations incurred in carrying out the provisions of the High-Speed Ground Transportation program as defined in subsections 1038(c) and 1036(d)(1)(B) of the Intermodal Surface Transportation Efficiency Act of 1991, including planning and environmental analyses, \$2,865,000, to be derived from the Highway Trust Fund and to remain available until expended.

ALASKA RAILROAD REHABILITATION

To enable the Secretary of Transportation to make grants to the Alaska Railroad, \$10,000,000 shall be for capital rehabilitation and improvements benefiting its passenger operations.

RHODE ISLAND RAIL DEVELOPMENT

For the costs associated with construction of a third track on the Northeast Corridor between Davisville and Central Falls, Rhode Island, with sufficient clearance to accommodate double stack freight cars, \$7,000,000 to be matched by the State of Rhode Island or its designee on a dollar for dollar basis and to remain available until expended: *Provided*, That as a condition of accepting such funds, the Providence and Worcester (P&W) Railroad shall enter

Contracts.

into an agreement with the Federal Railroad Administration up to the first \$13,000,000 action initiated by the P&W with Amtrak relating to the Davisville and Central Falls freight operations.

GRANTS TO THE NATIONAL

To enable the Secretary of the National Railroad Passenger Corporation, U.S.C. 24104, \$666,450,000 of which \$342,000,000 shall be for mandatory passenger rail vehicles or for the hire of employee, other than the employee, while in official travel status.

FEDERAL TRUST

ADMINISTRATION

For necessary administrative program: United States Code, \$41,400,000

F

For necessary expenses under sections 5311, and 5336, to remain available until expended: *Provided*, That no more than \$400,000,000 may be derived from the Highway Trust Fund and to remain available until expended: *Provided*, That no more than 200,000,000 shall be available for the funds provided under 49 U.S.C. 5336(d): *Provided*, That no more than five percent of the amount eligible to receive under

or the rat lei

ties when the limitation is operating in the area.

FY 1996
Oct 1 - Sept 30th

109 STAT. 446

PUBLIC LAW 104-50—NOV. 15, 1996

PUBLIC LAW

seq.) and 49 U.S.C. 24909, \$115,000,000, to remain available until September 30, 1998.

RHODE ISL.

RAILROAD REHABILITATION AND IMPROVEMENT PROGRAM

The Secretary of Transportation is authorized to issue to the Secretary of the Treasury notes or other obligations pursuant to section 512 of the Railroad Revitalization and Regulatory Reform Act of 1976 (Public Law 94-210), as amended, in such amounts and at such times as may be necessary to pay any amounts required pursuant to the guarantee of the principal amount of obligations under sections 511 through 513 of such Act, such authority to exist as long as any such guaranteed obligation is outstanding: *Provided*, That no new loan guarantee commitments shall be made during fiscal year 1996.

For the costs associated on the Northeast Corridor Rhode Island, with sufficient freight cars, \$1,000,000 to it or its designee on a dollar until expended: *Provided*, funds, the Providence and into an agreement with the or the Federal Railroad Ad up to the first \$6,000,000 action initiated by the P& with Amtrak relating to the Davisville and Central Fall freight operations.

NATIONAL MAGNETIC LEVITATION PROTOTYPE DEVELOPMENT

GRANTS TO THE NATIONAL

(LIMITATION ON OBLIGATIONS)

(INCLUDE)

(HIGHWAY TRUST FUND)

None of the funds in this Act shall be available for the planning or execution of the National Magnetic Levitation Prototype Development program as defined in subsections 1036(b) and 1036(d)(1)(A) of the Intermodal Surface Transportation Efficiency Act of 1991.

To enable the Secretary of the National Railroad P U.S.C. 24104, \$635,000,000 of which \$305,000,000 shall be for mandatory passenger: be for transition costs \$230,000,000 shall be for up to \$15,000,000 of the for capital improvements: be transferred to the No *Provided further*, That for ments shall not be made *further*, That none of the for lease or purchase of of vehicle operators for president of the Corporati vehicles for those officers:

NEXT GENERATION HIGH SPEED RAIL

For necessary expenses for Next Generation High Speed Rail studies, corridor planning, development, demonstration, and implementation, \$19,205,000, to remain available until expended: *Provided*, That funds under this head may be made available for grants to States for high speed rail corridor design, feasibility studies, environmental analyses and track and signal improvements.

FEDERAL T

TRUST FUND SHARE OF NEXT GENERATION HIGH SPEED RAIL

ADMINI

(LIQUIDATION OF CONTRACT AUTHORIZATION)

(HIGHWAY TRUST FUND)

For grants and payment of obligations incurred in carrying out the provisions of the High Speed Ground Transportation program as defined in subsections 1036(c) and 1036(d)(1)(B) of the Intermodal Surface Transportation Efficiency Act of 1991, including planning and environmental analyses, \$7,118,000, to be derived from the Highway Trust Fund and to remain available until expended: *Provided*, That none of the funds in this Act shall be available for the implementation or execution of programs the obligations for which are in excess of \$5,000,000.

For necessary admin Administration's program United States Code, §42,C

For necessary expenses 5311, and 5336, to remain *Provided*, That no more shall be available for the funds provided under than \$400,000,000 may

ALASKA RAILROAD REHABILITATION

To enable the Secretary of Transportation to make grants to the Alaska Railroad, \$10,000,000 shall be for capital rehabilitation and improvements benefiting its passenger operations.

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Memorandum

To: Chris Knight
From: Margaret McDaniel
Land Law Examiner
Subject: Alaska Railroad

Per our telephone conversation today, I am sending the information you requested.

On January 5, 1985, lands were transferred to the Alaska Railroad. Three types of documents were issued; a Patent, an Interim Conveyance, and an Exclusive License. In the lands that were patented, and interimly conveyed, title was transferred, and the lands are owned by the Alaska Railroad. Lands that were in the Exclusive License category needed further adjudication to resolve other claims that were on the lands.

Acreage of the lands transferred to the Alaska Railroad on January 5, 1985 by patent or interim conveyance is:

Parcels:	8,965.00 acres
Right-of-way:	8,557.00 acres

Parcels are for the station grounds, or material sites, etc. The right-of-way is the main line right-of-way, 100' each side of the center line of the track.

Adjudication of the lands in the exclusive license category is completed, except in areas where there is litigation, or other problems, mainly in the Anchorage and Fairbanks areas. The Bureau of Land Management has written adjudicative decisions, and prepared the conveyance documents for the Secretary of Transportation in Washington, D.C., to sign, as is provided for in the Transfer Act. No documents have been signed as yet, and I don't know when they will be.

Acreage of the lands in this category is:

Parcels:	13,971.00 acres
Right-of-way:	7,631.50 acres

I forgot to mention that there are approximately 4,250 acres in the license category where an adjudicative decision has not as yet been done. This is because of the problems mentioned above. These acres are not included in the figures shown above.

Total 43,374.5

Alaska Railroad Reserves

The Alaska Railroad Corporation holds 36,000 + acres of land, of which 22,000 acres are affected by rail operations. 'Mainline' Right of Ways from Seward to Eielson, and including the Whittier to Portage line total 12,400+ acres. The balance of operating land is contained in rail yards at Seward, Whittier, Anchorage, and Fairbanks.

The Corporation may lease non-operating lands for up to 35 years. Lease rates are established by independent appraisal. ARRC currently has approximately three hundred active leases. The Corporation utilizes a permit system for short-term uses and for use of operating lands. Many permits are non revenue, contributing only an administrative fee. A number of permits are issued for public access such as roads, railroad crossings, and utilities. There are currently over 500 permits.

Below is a table which shows the number of acres of ARRC land within each borough or city.

City/Borough	Total Area	Federal	State	ARRC
Kenai	6,238,025	3,461,340	1,569,639	380
Whittier	(City) 600	n/a	4,325	291
Municipality of Anchorage	1,251,620	927	494,976	2,629
Matanuska-Susitna	16,056,576	1008	64182	9,775
Denali	8,192,000	unavailable	unavailable	8,716
Nenana	5,440	n/a	n/a	264
Fairbanks North Star	4,711,040	1,681,607	1,498,522	454
Valdez	172,800	n/a	n/a	86

On the following pages, we have listed and described each ARRC reserve by borc

KENAI PENINSULA BOROUGH

City/Borough	Total Area	Federal	State	ARRC
Kenai	6,238,025.78	3,461,340.90	1,569,639.05	380

Seward

The ARRC reserve in Seward is largely industrial property behind the coal dock and railroad general purpose dock.

A substantial portion of the reserve is developed to support the export of coal. In addition export logs and pipe imports are handled through this facility. Currently, virtually all cruise ship traffic to South Central Alaska crosses the ARRC general purpose dock. This dock facility also supports the Marine Highway system.

The Railroad and the City of Seward have co-developed a port master plan for additional facilities to meet the increase in the cruise ship industry, while providing improved facilities for the Marine Highway System. The ARRC is actively promoting Seward as a passenger destination and uses a portion of the reserve for a passenger track and depot facility.

Crown Point

Crown Point is an operating reserve used extensively as a transfer point for logs, construction material and rail/truck commodities i.e. liquefied petroleum gas for railroad use and customers. Freight destined for the Kenai Peninsula transloaded at Crown Point.

Moose Pass

Moose Pass is an operating reserve with sidings for staging railroad material including environmental response handling material.

WHITTIER AND VALDEZ

City/Borough	Total Area	Federal	State	ARRC
Whittier	(City) 600	n/a	4325	291
Valdez	172,800	n/a	n/a	86

Whittier

The Whittier reserve was created by the military to provide a second ice-free port for South Central Alaska during World War II. It is the location of the South Central Alaska rail-barge connection to Prince Rupert and Seattle. Whittier also serves as a regional port for the Alaska Marine Highway System and the fishing industry.

The DOD petroleum importation facility is currently being closed; however, the City of Whittier is working with the ARRC and the natural gas industry to support a compressed natural gas (CNG) facility and transshipment facility to other coastal Alaska communities. The proposed CNG plant would occupy the available reserve lands at the head of Passage Canal. Additionally, the City is working with the Corps of Engineers and the ARRC to expand the small boat harbor to support tourism and small fishing industry.

Valdez

The Valdez reserve was acquired by the then federal railroad to support construction for the pipeline. It is located in the old Valdez town site area which is zoned industrial today, and support petroleum and construction businesses.

**MUNICIPALITY OF ANCHORAGE
(MOA)**

City/Borough	Total Area	Federal	State	ARRC
Municipality of Anchorage	1,251,620	927	494,976	2629

Portage

The bulk of the Portage reserve is now wetlands as a result of the subsidence following the 1964 earthquake. The existing filled lands are an operating reserve supporting access to Whittier which is ARRC's rail-barge terminus.

ARRC has initiated a wetlands banking program to meet mitigation requirements under federal regulations. As an example, ARRC provided wetlands for DOT to mitigate for wetlands used in the widening of the highway through the Palmer flats and mitigation wetlands for Lynden Inc. in the Anchorage port area. Portage represents a large portion of ARRC's wetlands bank.

Anchorage

Anchorage is, of course, the original construction headquarters for the Railroad. Today it continues to house the ARRC's primary offices, shops, yard, and passenger depot. In the port area, to the north of the yard, are the petroleum storage tank facilities owned by ARRC's customers and served by the Port of Anchorage. The ARRC port area is 100 percent occupied with additional rail users--barge traffic, stevedoring and most recently the proposed "North Star" modular fabrication site. To the south and east of the yard, are industrial properties that have been developed by ARRC. The Port of Anchorage and ARRC's freight facility handle 80% of the goods shipped to Alaska.

South of the yard is the Ship Creek redevelopment area which will provide new tourism and business opportunities for downtown Anchorage--by providing additional facilities such as an IMAX theater, restaurants, and other creek front development. Little of the Anchorage reserve remains undeveloped. The redevelopment and port areas are in the process of being improved or enhanced by projects such as the coastal trail which has completed a design study to be located along Ship Creek connecting downtown, Government Hill, and Mountain View.

Eagle River

This property is approximately one third the size of the ARRC's original dispute settlement with the Eklutna Native Corporation at the time of the transfer of the Railroad to the State reduced this reserve in size. ARRC's property divides Eklutna's parcels. ARRC recently agreed in concept with Eklutna Native Corporation to consider exchanging land in this area for Eklutna property in the vicinity of the Birchwood Reserve.

Birchwood

ARRC property at Birchwood is an operating reserve serving customers adjacent to the Birchwood airport. Referring to the Eklutna Inc. exchange of property, the additional area in Birchwood would permit relocation of ARRC's main line leaving property better configured to support expansion of the Birchwood airport and related activity.

MATANUSKA SUSITNA BOROUGH

City/Borough	Total Area	Federal	State	ARRC
Matanuska-Susitna	16,056,576	1,008.27	64,182.26	9775

Talkeetna

A significant portion of the Talkeetna reserve lies in the flood plain or riverbed of the Talkeetna and Susitna rivers. ARRC has worked with Talkeetna Chamber of Commerce to provide sufficient access to address their parking and traffic problems in the original Talkeetna townsite. Other recent activity includes leases with the City and State for improving the boat launch and improvements to the passenger depot to accommodate increased tourism.

Local entrepreneurs are developing RV facilities and other tourism related businesses. Talkeetna, traditionally served by the railbelt, is increasingly a focal point for the expanding tourist industry especially with its proximity to Denali Park as evidenced by the new Princess hotel to the north. Tour groups currently use the railroad to transport travelers to various destinations along the railbelt connecting with local businesses and vendors.

Curry

The Curry reserve is the historical mid-point of travel on the Railroad from Seward to Fairbanks. In its hey day, Curry supported a hotel, ski slope, golf course, air strip, and access across the river to Curry ridge. Although the original facilities are no longer there, the Railroad has been contacted by tourism industry to redevelop some of those facilities as part of the railbelt tourism network. The balance of this property could then be subdivided to provide rural recreational sites.

Hurricane

Hurricane remains one of the best opportunities for continuing to support tourism growth near Denali with property that is both rail and highway served. ARRC has received inquiries from one of the larger tour companies in this area. As mentioned above, once sufficient land has been designated to support a primary tourism facility, the balance could be subdivided to provide rural recreation sites.

DENALI BOROUGH

City/Borough	Total Area	Federal	State	ARRC
Denali	8,192,000	unavailable	unavailable	8716

Healy

The Healy reserve had its origins in providing coal for the railroad as well as communities along the railbelt and remains active in this role today. Substantial portions of this reserve are leased directly to Usibelli Coal Mine as part of their active mining operation. Usibelli also leases a portion of this reserve as a residential subdivision which provides housing sites for its employees. Healy also has a rail yard that supports the local and export coal hauls.

Clear

The Clear reserve is originally a construction reserve and remains active today as a source of ballast for maintenance of the north end of the railroad. ARRC has a small soil remediation facility on this property for hydro-carbon contaminated soils.

In 1993, ARRC evaluated this site as a potential site for a regional landfill in response to problems Fairbanks, Denali Borough, and smaller railbelt communities had in meeting EPA regulations. There was considerable negative response from local residents. The landfill problem remains unresolved today.

NENANA

City/Borough	Total Area	Federal	State	ARRC
Nenana	5440	n/a	n/a	264

Nenana

The Nenana reserve remains today an operational reserve related to logging and transfer of materials for transportation by barge up and down the river. Much of this reserve is leased to the City of Nenana.

FAIRBANKS NORTH STAR BOROUGH

City/Borough	Total Area	Federal	State	ARRC
Fairbanks North Star	4,711,040	1,681,607	1,498,522	454

Fairbanks

The Fairbanks reserve contains ARRC's northern yard and shop facility. ARRC's three largest car fleets (petroleum, coal, and passenger) are serviced here. Freight from the Seward, Whittier and Anchorage ports is destined here for transloading to the Fairbanks area and the North Slope.

Fairbanks is a primary passenger origin/destination point. Property south of the yard on the Chena River is the location of the new passenger depot and a hotel, RV park and other related tourism development.

ALASKA STATE CHAMBER OF COMMERCE**Position 97-2****Privatization of the Alaska Railroad**

WHEREAS, the Alaska Railroad Corporation is a non-profit corporation owned by the State of Alaska; and

WHEREAS, the Alaska Railroad Corporation has been important in the development of Alaska since it was completed in 1923; and

WHEREAS, the Alaska Railroad Corporation is currently a critical part of Alaska's transportation infrastructure; and

WHEREAS, the Alaska Railroad Corporation must continue to expand and improve in order for Alaska to pursue its economic development; and

WHEREAS, the Alaska Railroad Corporation requires large amounts of capital funding in order to properly maintain its present system; and

WHEREAS, the Alaska Railroad will need even more capital funding in order to expand aggressively its system into areas of natural resource/economic development; and

WHEREAS, the State of Alaska continues to face declining revenues and will be unable to sustain an aggressive development agenda for the Alaska Railroad Corporation; and

WHEREAS, every plan dealing with Alaska's budget gap recommends the privatization of appropriate state agencies; and

WHEREAS, privatization has historically been a primary objective of the Alaska State Chamber of Commerce; and

WHEREAS, the Alaska State Chamber of Commerce sincerely believes that there are numerous advantages to privatization including:

1. Better management performance with profit responsibility and motivation
2. Better capitalization on entrepreneurial opportunities
3. Better responsiveness to customer requirements
4. Increased tax revenues to state and local governments

THEREFORE, BE IT RESOLVED that the Alaska State Chamber of Commerce strongly urges the Administration of Governor Knowles and the Alaska State Legislature to begin immediately the process of investigating the potential privatization of the Alaska

CITY OF WHITTIER, ALASKA
RESOLUTION 477-96
ALASKA RAILROAD LAND

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WHITTIER, ALASKA, A MUNICIPAL CORPORATION, REQUESTING THE ALASKA STATE LEGISLATURE TO REMOVE NONOPERATIONAL LAND FROM THE ALASKA RAILROAD CORPORATION (ARRC) AND CONVEY AT FAIR MARKET VALUE TO THE CITY OF WHITTIER.

WHEREAS, the Alaska Railroad Corporation has ownership of fifty-two (52) percent of the City's business core area, and over seventy-four (74) percent of the Harbor's water area.

WHEREAS, the City of Whittier has for over three years made proposals to work in partnership with the Alaska Railroad Corporation to establish commercial, industrial and tourism and tourism amenities for the expansion of the existing Whittier Small Boat Harbor.

WHEREAS, the planned expansion of the Whittier Small Boat Harbor will provide four hundred (400) new boat slips for recreational, fisheries and industrial uses, and to provide protected waters to the existing day tour vessel operations.

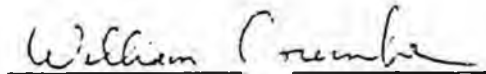
WHEREAS, the current economic efforts of the City of Whittier feature the expansion of the existing Whittier Small Boat Harbor that is now in final design and planning stages under the direction of the U.S. Army Corps of Engineers.

WHEREAS, the uplands land agreement and waterfront land title resolution must be completed within the next (90) days to obtain private financing to complete this project.

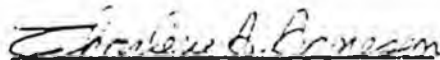
NOW THEREFORE BE IT RESOLVED that the Whittier City Council calls upon Alaska State Legislature to convey all nonoperational land owned by the Alaska Railroad Corporation in the business and waterfront core areas to the City of Whittier at fair market value.

BE IT FURTHER RESOLVED that copies of this resolution be sent to Governor Tony Knowles, all members of the Alaska State Legislature and the Board of Directors of the Alaska Railroad Corporation.

PASSED AND APPROVED by a duly constituted quorum of the Whittier City Council on this 02th day of December, 1996


William Coumbe
Mayor, City of Whittier

ATTEST: AYES 6
NOES 0
ABSENT 1
ABSTAIN: 0


Charlene Arneson
Acting City Clerk



THE CITY OF WHITTIER

Gateway to the Western Prince William Sound

P.O. Box 608 • Whittier, Alaska 99695 • (907) 472-2527 • Fax (907) 472-2404

December 15, 1996

Governor William Sheffield
Board of Directors Chairman
Alaska Railroad Corporation
PO Box 107500
Anchorage, AK 99510-7500

Dear Governor Sheffield:

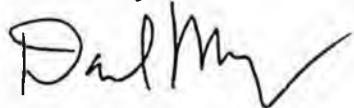
We have provided the overhead photo and overlay to better illustrate the acquisition request that the City of Whittier has presented. The red outline is land currently owned by the Alaska Railroad Corporation. The blue outline depicts property owned by the City within the business and harbor core areas. The green outline represents the land needed for the expansion of the harbor basin. The black line shows the property needed for uplands to support the basin expansion.

Throughout the railbelt communities, the A.R.R.C. owns small percentages of developable property within the commercial and industrial areas. The degree of A.R.R.C. land ownership does not preclude these communities from developing the economic base they need in order to prosper. In Whittier, it does. As you can see from the photo and overlay, the City of Whittier is restricted from promoting the growth of what should be a main source of revenue.

The A.R.R.C., in cooperation with the City of Whittier, can resolve this situation in a manner that will benefit both parties. By selling this property to the City of Whittier, the A.R.R.C. could yield income that would help defray the cost of the planned development of the Whittier freight off-loading facility. This sale would also serve to place A.R.R.C. land ownership more in keeping with other railbelt communities.

The City of Whittier is asking the Alaska Railroad Corporation Board of Directors for their support of this request. We are looking forward to presenting this proposal to the Alaska State Legislature as an example of cooperation and understanding between the A.R.R.C. and the City of Whittier.

Sincerely,

A handwritten signature in black ink, appearing to read "David Morgan", with a checkmark at the end.

David Morgan
Acting City Manager

cc: Governor Tony Knowles
Mayor William Coumbe
Whittier City Council
Alaska Railroad Corporation Board of Directors
The Alaska State Legislature

Alaska Railroad Q's & A's

 Q. What do HB 55 and SB 42 propose to do?

A. As introduced, the bills do only two things—bring the railroad under the Executive Budget Act, so the governor and legislature have greater oversight. Second, the bill directs that the 36,000 acres of land that are to be transferred with the railroad from the federal government will be transferred to the department of natural resources rather than to the ARRC. The bills assume the railroad will be operated as a state corporation and not privatized.

 Q. Why put the ARRC under the Executive Budget Act?

A. As a state corporation controlling hundreds of millions of dollars worth of state assets, the ARRC should have the oversight of the governor and legislature, as required under the state constitution, Article IX, Sections 3, 5, 7, 8, 13, and 14. Currently, the ARRC is the only state corporation not under the EBA. It was not the intent of the 1983-84 legislature to allow the temporary corporation to be excluded from oversight for 14 or more years. We are now on very weak footing, to allow the neglect of our constitutional responsibilities to continue. When we have tried to exercise our oversight, such as when the legislative auditor last summer investigated the ARRC's contracting procedures for gravel, he was met with monumental stonewalling.

 Q. How will being under the Executive Budget Act affect the railroad?

A. Currently, the ARRC draws up and approves its own budget each year, determining without state oversight how it's revenues and expenditures will be used. Under the EBA, railroad management would be required to submit its proposed budget to the governor's office of management and budget each year, which would then submit it to the legislature for appropriation. This open, public process allows for ample debate and opportunity for affected third parties to give their views on programs and actions the ARRC proposes for the coming year. This is the process used for every other state agency, whether it's a line agency like DNR or a state corporation like the Alaska Housing Finance Corporation, the Alaska Permanent Fund Corporation, or the Alaska Industrial Development Corporation.

 Q. Why would the legislature want to transfer the land to DNR?

A. We have completed our obligations under the agreement with the federal government to keep the railroad running for 10 years, and so should put the land to its highest and best uses. The authority for DNR's land management programs is found in the state constitution, at Article VIII, sec. 10, which requires that state land cannot be disposed of or leased without proper public notice and other safeguards of the public interest. The state's interest in mineral rights is spelled out in Article VIII, sec. 11. Under DNR's purview, the public's interest in the land and the mineral rights would be

better protected.

Of the approximately 36,000 acres of land to be transferred from the federal government, industry experts estimate the railroad needs only between 18,000 and 22,000 acres for rail operations and maintenance. As a quasi-public corporation, the ARRC would not need to hold title to the land, but would be charged with managing and controlling the 18,000 - 20,000 acres it needs. **The remainder could be made available for selection by the municipalities, or by the university, or could even be sold to some leaseholders.** Perhaps a land management authority patterned after that of the university lands could be established.



Q. Why is this an issue at this particular time?

A. Under the federal transfer act of 1982, the state was required to operate the railroad for a minimum of 10 years before the lands could be transferred to a third party. And under the 1984 state law putting the transfer into effect, the ARRC was to report to the legislature every five years on its efforts to sell the line, including documentation of at least three offers to sell initiated by the ARRC. Also in the transfer act was a requirement that the governor contract for a report to the legislature in 1987 on steps taken toward privatization. Instead of taking steps to initiate a sale of the line, the railroad in 1988 persuaded the legislature to pass a statute repealing its responsibility to seek privatization. ARRC President and CEO at the time, Robert Hatfield, strongly supported this change in law.

Again, we have fulfilled our obligation to the federal government and are ready to receive the remainder of the 36,000 acres. In fact, the state is losing millions of dollars each year that goes by that the land continues in federal ownership. Another reason the issue has come to the fore at this time is because senior management at the railroad has been highly uncooperative with state officials whose duty it is to audit, inspect and report on the financial and contractual transactions of public entities such as the ARRC.



Q. Why can't the ARRC continue as it is?

A. The ARRC is a unique, and probably unconstitutional, quasi-public corporation that sometimes fancies itself a state agency providing a valuable service to the public, and other times a private corporation with proprietary information to protect. We can't have it both ways. **The legislature made a mistake in 1984 when it passed the law establishing the ARRC by not clearly defining what kind of agency it was, and by giving away state oversight.** Now is the time to take corrective action.




Q. Couldn't the ARRC be run like a private corporation?

A. At the time of the purchase of the railroad, it was the intent of the legislature and the people of Alaska that the railroad eventually be owned and/or operated by private industry. In setting up the current ARRC scheme, the legislature attempted to make the ARRC as nearly like a private railroad corporation as possible, even to the extent of deliberately keeping an arms-length, distant role for itself. The reason for this may have

been to make an easier transition to private operation; however, it has not worked for long-term management as a quasi-public corporation. In fact, there are significant questions to be answered regarding the constitutionality of managing state assets in a way the assets have been managed by ARRC over the last 12 years.

 Q. What about railroad employees? Won't they be hurt by privatization?

A. If the state opts to privatize the railroad or its operations, we can put conditions on the new owner, just as the federal government put conditions on the state 12 years ago. These included a continuity of employment for the union workers, protection of their pension funds, and a requirement that the state had to operate the line for 10 years before the land would be transferred, among others. **Railroad employees and their families should not fear privatization.**

 Q. Isn't the railroad prohibited from competing with private business in non-railroad related ventures?

A. In 1984, the Senate finance committee adopted a letter of intent that said, in pertinent part: "...although the railroad may use public resources or the benefits of its public status to extend its lines or to provide passenger service, it should not use direct subsidies to compete unfairly with privately-owned carriers."

Perhaps this legislative directive should have said it should not compete unfairly with privately-owned carriers *and other non-railroad related businesses*. Despite the legislature's wishes and growing criticism from other businesses, the ARRC has entered into competition with private enterprise ventures, most notably by owning 40 percent of a hotel at Ship Creek, wholly-owning and operating an RV park in Anchorage, leasing land for another RV park in Fairbanks, and is now embarked on a joint venture to operate barge service between Anchorage and the Puget Sound. The railroad is even putting a restaurant in the ARRC headquarters building, further eroding any incentive for rail passengers to visit downtown businesses.

0-LS0059AH
Utermohle
2/12/97

CS FOR HOUSE BILL NO. 55(TRA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY THE HOUSE TRANSPORTATION COMMITTEE

Offered:
Referred:

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE LEGISLATIVE BUDGET AND
AUDIT COMMITTEE

A BILL

FOR AN ACT ENTITLED

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

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

4 * Section 1. Section 1(b), ch. 153, SLA 1984, is amended to read:

5 (b) It is the purpose of this Act to

6 (1) create a viable economic entity with the powers and duties
7 necessary to operate and manage the Alaska Railroad pending eventual transfer of the
8 railroad to the private sector for its ownership or operation or both consistent with
9 45 U.S.C. 1201 - 1214 (Alaska Railroad Transfer Act of 1982);

10 (2) provide for the level of transportation service that best satisfies the
11 needs of the people of the state consistent with the other findings and policies of this
12 section;

13 (3) create a public corporation with the powers, duties, and functions
14 needed to operate the Alaska Railroad and manage its rail, industrial, port, and other

1 properties in the best interest of the people of the state by ensuring that the corporation
2 will

3 (A) be [EXCLUSIVELY] responsible for the management of
4 the financial and legal obligations of the Alaska Railroad;

5 (B) operate the railroad as a common carrier subject to the
6 jurisdiction of the United States Interstate Commerce Commission consistent
7 with 45 U.S.C. 1207;

8 (C) have the ability to raise capital by issuing bonds upon
9 approval of the legislature exempt from federal and state taxation and applying
10 for federal money to which the state may be entitled or that may be available;

11 (D) carry out its responsibilities on a self-sustaining basis;

12 (E) provide the best possible combination of types and levels
13 of safe, efficient, and economical transportation to meet the overall needs of
14 the state, supported when necessary by state investment;

15 (F) provide for the prudent operation of the railroad according
16 to sound business management practices; [AND]

17 (G) preserve the integrity of the railroad utility corridor for
18 transportation, communication, and transmission purposes; and

19 (H) be subject to AS 37.07 (Executive Budget Act) and be
20 responsible for the operating, capital, and debt service expenditures of the
21 corporation in accordance with appropriations made by the legislature;

22 (4) ensure that borrowing by the corporation does not directly or
23 indirectly endanger the state's own borrowing capacity.

24 * Sec. 2. AS 37.07.120(1) is amended to read:

25 (1) "agency" means a department, officer, institution, board,
26 commission, bureau, division, or other administrative unit forming the state
27 government and includes the Alaska Railroad Corporation, Alaska Pioneers' Home,
28 and the University of Alaska, but does not include the legislature or the judiciary;

29 * Sec. 3. AS 42.40.100 is amended to read:

30 Sec. 42.40.100. Management by the board. The board is responsible for the
31 management of the corporation but shall delegate certain powers and duties to the chief

1 executive officer in accordance with AS 42.40.120. In managing the corporation, the
2 board shall

3 (1) be responsible for the management of the financial and legal
4 obligations of the Alaska Railroad;

5 (2) operate the Alaska Railroad as a common carrier subject to the
6 jurisdiction of the United States Interstate Commerce Commission consistent with 45
7 U.S.C. 1207;

8 (3) generally manage the corporation on a self-sustaining basis;

9 (4) in accordance with AS 37.07, apply to the legislature for an
10 appropriation with the concurrence of the governor to be used to

11 (A) fund the operating, capital, and debt service
12 expenditures of the corporation; and

13 (B) when necessary, provide a particular service that is not
14 otherwise self-sustaining if a subsidy is required to maintain that service;

15 (5) provide for safe, efficient, and economical transportation to meet
16 the overall needs of the state;

17 (6) raise needed capital by issuing bonds of the corporation upon
18 approval by the legislature while ensuring that borrowing by the corporation does not
19 directly or indirectly endanger the state's own borrowing capacity;

20 (7) review all state and other land disposal proposals to aid in planning
21 for future development or expansion of transportation services;

22 (8) ensure that the procurement procedures of the corporation meet
23 accepted railroad industry standards;

24 (9) ensure that the accounting procedures of the corporation meet
25 generally accepted accounting principles consistent with industry standards for
26 comparable railroads.

27 * Sec. 4. AS 42.40.540 is amended to read:

28 Sec. 42.40.540. Appropriations. The corporation shall [MAY] request, in
29 accordance with AS 37.07, appropriations [THE CONCURRENCE OF THE
30 GOVERNOR, A DIRECT APPROPRIATION OR GRANT] from the legislature to
31 carry [ASSIST IN CARRYING] out the provisions of this chapter.

1 * Sec. 5. AS 42.40.920(b) is amended to read:

2 (b) Unless specifically provided otherwise in this chapter, the following laws
3 do not apply to the operations of the corporation:

4 (1) AS 19;

5 (2) AS 30.15;

6 (3) AS 35;

7 (4) AS 36.30, except as specifically provided in that chapter;

8 (5) AS 37.05;

9 (6) [AS 37.07;

10 (7)] AS 37.10.010 - 37.10.060;

11 (7) [(8)] AS 37.10.085;

12 (8) [(9)] AS 37.20;

13 (9) [(10)] AS 37.25;

14 (11)] AS 38;

15 (10) [(12)] AS 44.62.010 - 44.62.320.

16 * Sec. 6. PREPARATION OF FIRST ANNUAL BUDGET UNDER AS 37.07. The
17 Alaska Railroad Corporation shall prepare its first agency program and financial plan under
18 AS 37.07 for consideration by the governor in the development of the governor's
19 recommended operating and capital improvements programs and financial plans that are
20 submitted to the legislature at the next regular session of the legislature that convenes
21 following the effective date of this Act.

22 * Sec. 7. This Act takes effect immediately under AS 01.10.070(c).

The Alaska Railroad and the Executive Budget Act

Many representatives of the Alaska Railroad have spoken against HB 55. Joseph Perkins, Commissioner of Transportation and a Member of the Alaska Railroad Board said in our last Transportation meeting, "If it ain't broke, don't fix it."

Former-Governor Sheffield asserted the Executive Budget Act would hinder the ability of the Alaska Railroad to earn a profit. In 1993 and 1994 the railroad lost nearly \$6 million. Then in 1995 the railroad supposedly made \$7.8 million and another \$8 million for 1996. However, at the end of each of those profit years, the railroad received \$10 million in federal subsidies. In other words, there is already a question whether the railroad can earn a profit; placing the ARRC under the Executive Budget Act won't change that concern or its ability to earn a profit.

Governor Sheffield and Commissioner Perkins mentioned that the Executive Budget Act would hurt the railroad's ability to be flexible, to meet new market demands, to react to changing situations, to make new capital investments and to run a good railroad.

If freedom to operate is the railroad's concern then why did the railroad force Anchorage Sand and Gravel to lease their own railroad cars. The ARRC did not have enough cars for that company to move their product, thus Anchorage Sand & Gravel was forced to ship 40 cars up to Alaska and lease those same cars.

Being flexible and meeting market demands requires foresight. Currently, the railroad uses 4-axle locomotives while every other railroad in the United States uses 6-axle locomotives. The main difference is that a 4-axle locomotive has the ability to haul about 40 cars while a 6-axle locomotive can haul about 80 cars. If the railroad is concerned about making a profit, why hasn't the railroad upgraded to 6-axle locomotives for efficiency and proficiency? Also, the railroad has never in its 12 years of state-owned operation, placed on paper a plan for expansion of service operations. The railroad has always been comfortable with just getting by.

According to former-Governor Sheffield, this freedom to operate is being jeopardized by this bill which would place the railroad under Executive Budget Act. Past legislative Audits and concerns from local governments have expressed that the Alaska Railroad Corporation is:

- Giving away valuable state assets such as land and gravel

- Competing directly with private enterprise in the areas of hotels, excavation and gravel sales, land disposal, and private tours.
- Unwilling to include the public in projects that effect the community, often contrary to open public process requirements
- Unwilling to negotiate with local municipalities and governments
- Unwilling to follow local municipal zoning laws.

Another legislative audit pointed out ARRC's lack of corporate oversight in expending corporation receipts. Former Governor Sheffield mentioned that the railroad is owned by the residents of Alaska. If the residents of Alaska read through the audit concerning Governmental Corporations' Board of Directors and Executive Director Travel Expenses they would have been appalled. The audit clearly shows the lack of concern by the CEO and the ARRC board to use railroad money properly. For example, a four-day trip to Florida by the CEO and his wife cost ARRC and the State of Alaska \$6,721 in airfare, meals and lodging.

Former Governor Sheffield shouldn't be blamed for the railroad's inadequacies or lack of plans or purposes. Most of the concerns and problems effecting the railroad were inherited not created by former Gov. Sheffield. His strong defense and zeal concerning the ARRC are admirable. But placing the railroad under the Executive Budget Act will not hurt the railroad.

Under the Executive Budget Act the railroad can still operate as a corporation and decisions affecting the future are still made by the board and the CEO. Under the Executive Budget Act, the railroad would submit a budget to the Governor and Legislature like every other state agency and corporation. Under the Executive Budget Act, there would be no concern that it is unconstitutional for the railroad to be appropriating its own money.

Under the Executive Budget Act, concerns and audits effecting the railroad could be brought forth to the legislature during the annual budget process and the railroad could provide insight and seek appropriation for expansion of services and rail lines. ARRC's concern that appropriations could only be sought during session is ridiculous. Again, every other state agency and state corporation continually and periodically refines and re-appropriates money during the interim through the Legislative Budget & Audit Committee.

Why can't the legislature have oversight of its resources and facilities? Simply, under the Executive Budget Act, the railroad will have to communicate with the state about its plans for operations, its plans for deferred maintenance and its plans to run the railroad, without the need of the Legislature, the Legislative Budget & Audit Committee nor the Governor's office to pull teeth for information.

The Executive Budget Act doesn't force the Railroad to detail every expenditure through nickel and diming, but the Executive Budget Act allows for an open communication process between the Alaska Railroad Corporation and its owners--the people of Alaska through their Governor and their Legislature--which currently does not exist.

Department of Public Safety (cont.)

For HB 55

	Allocations	Appropriation		Other Funds
		Items	General Fund	
2				
3				
4	Judicial Services-Anchorage	1,987,300		
5	Prisoner Transportation	1,226,700		
6	Search and Rescue	283,100		
7	Rural Trooper Housing	418,200		
8	Narcotics Task Force	3,036,200		
9	Commercial Vehicle Enforcement	504,200		
10	Village Public Safety Officer		7,280,300	7,280,300
11	Program			
12	Contracts	5,265,500		
13	Support	1,736,500		
14	Administration	278,300		
15	Alaska Police Standards Council		748,900	748,900
16	Violent Crimes Compensation Board		380,100	772,400
17	Domestic Violence and Sexual		4,932,100	3,245,600
18	Assault			
19	Statewide Support		10,472,200	8,374,200
20	Commissioner's Office	700,500		
21	Training Academy	1,320,400		
22	Administrative Services	1,858,000		
23	Civil Air Patrol	503,100		
24	Laboratory Services	2,089,200		
25	Alaska Public Safety	1,949,700		
26	Information Network			
27	Alaska Criminal Records and	2,051,300		
28	Identification			
29	*****			
30	***** Department of Revenue *****			
31	*****			
32	Child Support Enforcement		16,440,100	2,069,200
33	Alcoholic Beverage Control Board		653,500	653,500
34	Municipal Bond Bank Authority		563,900	563,900
35	Permanent Fund Corporation		29,902,200	29,902,200
36	Alaska Housing Finance		32,080,400	32,080,400
37	Corporation			
38	Operations	12,208,100		

HB 75-OPERATING Budget

ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit



P. O. Box 113300
Juneau, AK 99811-3300
(907) 465-3830
FAX (907) 465-2347

November 16, 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.

GOVERNMENTAL CORPORATIONS' BOARD OF DIRECTORS AND EXECUTIVE DIRECTOR TRAVEL EXPENSES

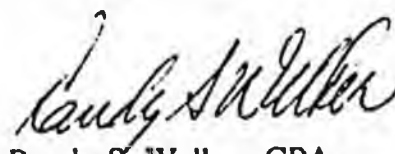
November 16, 1994

Audit Control Number

04-4503-95

The objective of this audit was to determine whether travel expenses incurred by governmental corporations' executive level directors and board members were reasonable and necessary. Our review included the ten governmental corporations which incurred travel expenses during FY 93 and FY 94 and whose governing board was active during this period. This report contains a conclusion and the related findings and recommendations for each governmental corporation. We have also included a listing of the names and home residences for each board member and executive director along with a schedule of travel expenses for FY 93 and FY 94.

The audit was conducted in accordance with generally accepted government auditing standards. Fieldwork procedures utilized in the course of developing the findings and conclusions presented in this report are discussed in the Objectives, Scope, and Methodology section of this report.


Randy S. Welker, CPA
Legislative Auditor

Alaska Railroad Corporation (AS 42.40.0i0)

The Alaska Railroad Corporation is a public corporation and is an instrumentality of the State within the Department of Commerce and Economic Development. The corporation has a legal existence independent of and separate from the State. The continued operation of the Alaska Railroad by the corporation is considered an essential government function of the State.

Purpose: The board is responsible for the management of the corporation to provide safe, efficient, and economical transportation to meet the overall needs of the State.

Board Meetings: The board meets at least once every three months. The chairman or a majority of the members of the board may call other meetings of the board as necessary.

Board Membership: The board consists of the commissioner of the Department of Commerce and Economic Development, the commissioner of the Department of Transportation and Public Facilities, and five members appointed by the governor. The five appointed members must be registered voters except as provided. Except for the commissioners and the member appointed under (5) below, a member may not be a state officer or employee. Appointed members shall have the following qualifications:

- (1) one member of the board shall be a person who has at least 10 years of experience in railroad management; a person who is not a resident of the State may be appointed under this paragraph;
- (2) one member of the board shall be or have been an executive official of a United States railroad and shall be selected in accordance with any requirements under 49 U.S.C. (Interstate Commerce Act); a person who is not a resident of the State can be appointed under this paragraph;
- (3) at least one member shall be from each judicial district directly served by the Alaska Railroad;
- (4) one member shall have at least five years experience as an owner or manager of a business in the State; and
- (5) one member shall be an employee who is a member of a bargaining unit representing employees of the corporation.

Alaska Railroad Corporation

Enabling statutes entitle the Alaska Railroad Corporation's (ARRC) governing board to per diem and travel allowances as authorized by law for members of state boards and commissions as established by the AAM. The applicability of these travel policies and procedures to ARRC's executive director, who has also been appointed as a board member, is not as clear.

The confusion arises because while board members are required to adhere to the AAM, ARRC has been given statutory authority to establish its own internal travel policies and procedures. ARRC's executive director is both an ARRC employee and a member of its governing board.

Compliance with internal policies and procedures

ARRC has developed a comprehensive set of travel policies and procedures. A review of individual travel expense reports has shown that except for two specific areas, ARRC has complied with their corporate travel policies and procedures. The two specific areas we noted were the purchase of full fare coach tickets without supporting explanation and reimbursement of laundry expenses in excess of that allowed by ARRC policy. Specifically, ARRC procedures require all full fare tickets, except those between Anchorage and Fairbanks, have an explanation of why it was necessary to purchase the full fare instead of a reduced fare ticket. Additionally, ARRC procedures allow the reimbursement of laundry expenses only when they are incurred on trips of more than three nights.

Compliance with the State's Alaska Administrative Manual

ARRC has not complied with statute requiring its board members follow the AAM's travel policies and procedures. Management was unaware that statute required board member travel comply with AAM's travel provisions. At the time of our review, ARRC did not possess a copy of these policies. Accordingly, our review concluded that important controls over the management of travel mandated by the AAM were lacking. See Recommendation No. 3 in the Findings and Recommendations section of this report. Specifically, we noted three areas of departure from the AAM.

- Pre-approval: Travel by the board, specifically the purpose and estimated costs, did not receive prior approval. ARRC did not obtain from the Department of Administration pre-approval of lodging costs greater than \$200 a night. Additionally, no pre-approval was obtained from the Office of the Governor for foreign travel. The AAM provides for several levels of pre-approval depending on the destination, associated costs, and the types of travel expenses requested for reimbursement. Pre-approval of travel is a control to ensure that the purpose of travel and estimated cost is reasonable and necessary.
- Cost limitations: Standard ARRC procedure is to reimburse meals and lodging based on actual costs incurred. The AAM requires travellers be paid a standard meal

allowance in place of reimbursing for actual meal expenses unless travel is to a foreign country. Further, AAM permits the reimbursement of actual lodging cost only when it can be demonstrated that estimated lodging costs combined with the meal allowance exceed the standard daily per diem allowance. Hotel surveys are required to demonstrate that actual lodging expenses represent the most economical accommodations available.

Additionally, a review of travel expense reports showed that it is common practice for ARRC's to pay the full coach rate for airfare. The AAM requires travel be accomplished by the most direct and efficient means possible. Travellers are directed to procure discounted airfare whenever possible.

- Documentation: Incidental expenses were poorly supported. The AAM requires receipts for all expenses in excess of \$15 and limits the reimbursement of unreceipted expenses to \$30 per trip. A review of travel vouchers showed several instances where board members were reimbursed for unreceipted expenses in excess of \$15.

Reimbursement for costs associated with questionable travel

We question whether certain travel costs incurred by ARRC were for a demonstrable public purpose. While some questions relate to the underlying necessity of an entire trip, others are limited to specific travel costs allowed by ARRC. See Recommendation No. 4 in the Findings and Recommendation section of this report.

Examples of specific travel costs allowed by ARRC include: membership fees to airport lounges, fees for personal credit cards, and costs for babysitting services while on travel status. The Alaska Constitution requires that public funds be used only for a public purpose; the items above are generally more personal in nature and should not be allowed.

ARRC's policy allows for the corporation to pay for travel or entertainment expenses of a spouse only for an approved business purpose and with advance written approval of the executive director. In March 1991, the executive director, in a memorandum to the board chairman, requested approval for his wife to accompany him to the National Freight Transportation Association (NFTA) conferences. The approval was requested subject to the railroad's economic condition.

The public purpose served by spousal travel expenses is not readily apparent. Unless the public purpose can be clearly demonstrated, ARRC should not spend corporate funds for such travel costs. Additionally, the federal tax consequences should be thoroughly reviewed by the corporation to ensure that spousal expenses are reported correctly.

Further, the cost/benefit nature of some travel by ARRC is unclear. Specifically, we question the attendance by the executive director, another corporate executive, and their spouses to the semi-annual NFTA conferences. These conferences are intended to be primarily social in nature (see sidebar on the next page).

Also, ARRC's executive director travels to Seattle and Fairbanks several times a year to attend employee group birthday lunches. These events are catered and paid for by the corporation. The luncheons are intended to promote open communication between senior management and line employees. ARRC should re-evaluate benefits derived from employee group birthday lunches to confirm that these benefits exceed their related costs.

ARRC corporate policies require tokens of recognition, appreciation, and sympathy be considered personal expenses and are not reimbursed without proper approvals. However, ARRC paid for the executive director and another corporate executive to travel to Phoenix, Arizona to attend a funeral. We agree with ARRC's basic policy that attending a funeral is inherently personal in nature and the cost in this case should not have been borne by ARRC.

Corporate entertainment policies

ARRC has established policies and procedures permitting entertainment expenses.

Entertainment costs such as meals and refreshments may be submitted for reimbursement only when business directly related to, or associated with, essential ARRC business is conducted during the meal or event. To be reimbursable:

- A. *There must be actual conduct of business from which the ARRC expects to derive more than a goodwill business benefit OR*
- B. *The entertainment must be in the nature of compensation for services or a prize to non-employees.*

The business entertaining must occur in a place or in surroundings conducive to a business discussion and must involve a substantial and bona fide business meeting. Expenses must not be lavish or extravagant. Report details of all business entertainment expenses on the back of the expense form. The

NATIONAL FREIGHT TRANSPORTATION ASSOCIATION

The National Freight Transportation Association (NFTA) is a group of about 300 transportation executives and their principal customers. The purpose of the organization and its conferences is to provide opportunities for railroad executives to make contacts. ARRC believes that these contacts increase the level of exposure of the Alaska Railroad to the transportation community of the Continental United States.

The NFTA conferences, unlike traditional business conferences whose agendas commonly include events such as panel discussions, speakers, and training workshops, consist primarily of social events such as tennis and golf. ARRC paid for the executive director and his wife to attend the NFTA conferences. According to the executive director, spouses play an important role in establishing contacts with other individuals.

During fiscal years 1993 and 1994, ARRC paid over \$16,700 for its executive director and spouse to attend the NFTA conferences. We found lodging costs associated with the NFTA conferences to be exceedingly high. Nightly lodging costs ranged from a low of approximately \$370 to a high of over \$600.

"Business Purpose" must include a description of the business topic(s) of discussion.

Entertainment expenses incurred by an employee which do not meet the above criteria are considered personal expenses of the employee and are not reimbursable.

Additionally, upon pre-approval by the executive director, ARRC policies permit an employee to entertain at his/her home residence. Entertainment and business meal expenses were commonly incurred in conjunction with the executive director and board member travel. ARRC's board of directors and executive director incurred over \$3,100 in business meals and over \$4,400 in entertainment costs in conjunction with travel. Examples of entertainment related expenses include, in part: golf fees, meals including alcohol, and hosting involving foreign travel.

Use of legislative lobbyist by ARRC

While reviewing details related to entertainment costs incurred by ARRC we observed that some costs were related to business meals for ARRC corporate executives, legislators, and a lobbyist hired by ARRC.

Alaska Statute 42.40.705 prohibits the use of ARRC money, assets, or property of the corporation to be used for political activities. However, the statute does allow board members and employees to communicate with and appear before committees of Congress, the legislature, and municipal governing bodies in connection with matters directly affecting the corporation.

The use of corporate assets for business meals attended by ARRC employees, legislators, and a lobbyist appears to be in conflict with AS 42.40.705. ARRC should establish clearer guidelines for what costs can be incurred when "communicating" with the legislature. Additionally, while the statute provides for board members and employees to communicate with and appear before the legislature, it does not provide for corporate assets to pay for non-employees. As a result, it appears the use of corporate funds to pay for the services of a registered lobbyist is in violation of AS 42.40.705.

Alaska Railroad Corporation

Recommendation No. 3

ARRC board should comply with AAM travel policies and procedures.

Alaska Statute 42.40.050 entitles ARRC's board to per diem and travel allowances authorized by law for members of state boards and commissions. Alaska Statute 39.20.180 requires that members of state boards and commissions adhere to travel policies and procedures adopted by the commissioner of the Department of Administration as established by the AAM.

Currently, ARRC's governing board is following the corporation's internal travel policies and procedures. A comparison of ARRC's internal policies and procedures to those in the AAM identified several material differences. A discussion of the significant differences follows:

- Pre-approval: The AAM provides for several levels of pre-approval depending on the destination, associated costs, and the types of travel expenses requested for reimbursement. ARRC procedures do not require any formal approval for board travel.
- Cost limitations: The AAM requires travellers be paid a standard meal allowance in place of reimbursing for actual meal expenses unless travel is to a foreign country. Further, AAM permits the reimbursement of actual lodging cost only when it can be demonstrated that estimated lodging costs and meal allowance exceed the standard daily per diem allowance. Hotel surveys are required to demonstrate that actual lodging expenses represent the most economical accommodations available. Standard ARRC procedure is to reimburse meals and lodging based on actual costs incurred.

A review of travel expense reports showed that it is ARRC's common practice to pay the full coach rate for airfare. The AAM requires travel be accomplished by the most direct and efficient means possible. Travellers are directed to procure discounted airfare whenever possible.

- Documentation: The AAM requires receipts for all individual expenses in excess of \$15 and limits the reimbursement of unreceipted expenses to \$30 per trip. ARRC requires receipts for only those expenses whose total exceeds \$25 per day.

ARRC's corporate policies are generally less restrictive than those in the AAM. While the board has historically followed the less restrictive corporate policies, statute requires that the board adhere to the more restrictive AAM travel policies and procedures.

Therefore, we recommend ARRC establish the procedures necessary for processing board travel expense reports in compliance with the State's AAM.

Recommendation No. 4

ARRC should limit travel expenses to only those necessary to conduct official ARRC business.

A review of travel expense reports identified specific expenses which we believe are unnecessary, unreasonable, or both. Unnecessary travel-related expenses included: membership fees to airport lounges, fees for personal credit cards, cost for babysitting services, and travel expenses to attend a funeral out of the State. Unreasonable costs include nightly lodging costs associated with the NFTA conferences that ranged from approximately \$370 to over \$600. Costs incurred as a result of spouses attending NFTA conferences are both unnecessary and unreasonable.

The Alaska Constitution provides that public funds be used only for a public purpose. ARRC management, as custodians of the public's funds, is responsible for administering this constitutional provision. ARRC's governing board and executive director have a pivotal role in setting the standard for permissible travel expenses allowed by the corporation. These standards contribute to the overall control environment of the corporation.

Many factors should be considered prior to the approval of travel and its related costs. These factors should include determining: if the purpose of the trip is consistent with the corporation's mission, if the purpose and related cost are consistent with constitutional and statutory restrictions, and if the financial condition of the corporation allows for the travel-related costs. Once travel has been determined to be consistent with the corporation's mission and is in compliance with constitutional and statutory provisions, the cost of travel should be weighed against the benefits expected to be obtained.

ARRC management believes the travel costs identified above were necessary and reasonable and, therefore, represent valid corporate expenses. We believe that this conclusion by ARRC management does not give sufficient weight to limiting the use of corporate funds for expenses that are clearly for a public purpose. As a result, corporate funds are being used for costs that are unnecessary and/or unreasonable.

Therefore, we recommend ARRC limit the use of corporate funds for business-related travel expenses that are both necessary and reasonable. Further, ARRC should amend travel procedures to eliminate the provisions that allow corporate funds to be used for inappropriate travel costs.

ALASKA RAILROAD CORPORATION



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

VIA FACSIMILE AND EXPRESS MAIL

December 28, 1994

EXECUTIVE OFFICES

Telephone (907) 265-2414

Facsimile (907) 258-1456

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

RECEIVED
DEC 29 1994

LEGISLATIVE AUDIT

Dear Mr. Welker:

Thank you for the opportunity to respond to the preliminary report on Governmental Corporations' Travel Expenses. We are pleased by your findings that we are in compliance with Alaska Railroad Corporation's ("ARRC's") comprehensive internal travel policies and procedures.

While several of the report's comments, especially regarding the need to travel as economically as possible, are well taken, we are concerned with the report's basic premise of treating ARRC as if it were a State line agency. As you are aware, ARRC was established by the 1984 Alaska State Legislature as an independent corporation managed by a seven member board of directors. According to the legislative findings that form the preamble to the Alaska Railroad Corporation Act ("ARCA"), our directors are exclusively responsible for the management of the financial and legal obligations of the corporation. To that end, ARCA exempts ARRC from various budgetary statutes (for example, wholesale provisions of Title 37 of the Alaska Statutes, "Public Finance"), as well as other statutes that would unduly restrict its ability to operate competitively as a quasi-public, quasi-private transportation company.

As you are also aware, the ARRC does not operate on appropriations from the State treasury; instead, it is mandated to fulfill its mission on a self-sustaining basis, operating as an interstate common rail carrier. To date, we have complied with this legislative mandate. ARRC has and will continue to comply with all provisions of State statutes that are expressly applicable to it as an independent corporation.

We will respond to specific issues raised by your report in the order in which they were presented.

receipts for such expenses are produced. We believe those procedures provide appropriate control, and the process saves the corporation money. Unnecessary and unwarranted expenses are never reimbursed. Moreover, the cost of administering wholly separate systems of accounting controls for reimbursing directors and employees would surely be inconsistent with the corporate mandate of prudent and sound business management practices.

Recommendation No. 4

We agree that ARRC funds should be administered to insure that the use of corporate funds for business-related travel expenses are both necessary and reasonable. This is mandated by the legislative direction to follow sound business practices as well as a general sense of frugality in the current business climate. We have made every attempt to achieve these goals and agree that some change in our internal procedures is warranted. However, it is important to recognize that railroad industry customs and the highly competitive transportation arena in which we operate influence many of the choices we make, which may not be customary in government practice. Your report strongly criticizes ARRC's attendance at the National Freight Transportation Association ("NFTA") conferences. NFTA has been in continuous existence since 1905. Since then, senior executives of every major rail, water and truck carrier in North America have been attending these meetings along with their principal freight transportation users. It is also customary and expected that spouses attend and play a significant role in the networking process that occurs throughout the meeting.

It is doubtful that this practice would have continued for 90 years if no value came from these meetings. In addition, the cost to ARRC in both money and time for the same two executive officers to attend separate meetings with key industry leaders and our principal customers (in other words, to derive the same value) would be enormous. While it is true that the meetings include an array of social activities, the contacts that ARRC has been able to make at these meetings have proven to be valuable to the corporation. We are convinced that our attendance at NFTA is vital to our business health. However, we will continually reappraise all such outside activities to ensure the corporation receives a benefit at least equal to the cost of the activity.

Use of Legislative Lobbyist

Lastly, your report states that ARRC's employment of a registered lobbyist to communicate with the legislature on ARRC's behalf on matters affecting the corporation "appears" to violate the ban on political activities found in AS 42.40.705. We believe this statement is incorrect for two reasons.

First, it is our understanding that the phrase "political activities" refers only to those

Letter to Mr. Welker
December 28, 1994
Page 4

activities related to a partisan election campaign. Our research indicates that the purpose of laws prohibiting the expenditure of public funds on political activities is to prevent the holders of government authority from perpetuating themselves or their allies in office. Legal authorities which have discussed this issue draw a distinction between the impermissible use of public funds to support a particular candidate or ballot initiative and the generally accepted practice of expending public funds by government agencies for legislative "lobbying" efforts. The reason for this distinction is that while the use of public funds to support a particular candidate undermines or distorts the political process, the legislative process in fact contemplates that all interested parties, including public agencies, will attend legislative hearings to explain the potential benefits or detriments of proposed legislation. See, e.g., Alaska Attorney General's Opinion J-66-690-81.

Second, AS 42.40.705 specifically grants ARRC the authority to engage in "lobbying" types of activities. Since ARRC has the express authority to communicate with the Alaska Legislature on matters affecting the corporation, we believe that it is irrelevant whether such activity is performed by an employee, a board member or a person temporarily employed to provide this service. Since ARRC has no employees based in Juneau, it is much more cost efficient for ARRC to hire a Juneau resident to act as our legislative representative than to send one of our employees to Juneau for four months. In short, contracting for such services with an individual who resides in Juneau and has considerable experience with the Alaska Railroad makes good business sense.

Thank you again for the opportunity to comment on the draft report. We hope the information contained in this letter assists your staff in understanding the unique position of ARRC under its governing statutes.

Sincerely,



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

cc: ARRC Directors

ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit



P. O. Box 113300
Juneau, AK 99811-3300
(907) 465-3830
FAX (907) 465-2347

January 5, 1995

Members of the Legislative Budget
and Audit Committee:

We have reviewed the responses to our preliminary report from all corporations and have the following comments and clarification on the following.

Alaska Aerospace Development Corporation (AADC)

AADC stated that its internal audit of travel-related transactions occurred prior to notification of our audit. Per our review of AADC's internal audit, documents were revised beginning approximately July 6, 1994. While our on-site review of AADC board member and executive director travel did not occur until August 8, 1994, an engagement letter announcing the purpose of our audit was mailed to AADC July 1, 1994. Since AADC's internal audit of travel commenced in July and an engagement letter was mailed to AADC July 1, 1994, we concluded that AADC's internal audit of travel expenses was concurrent with our review.

Alaska Railroad Corporation (ARRC)

Before responding to specific points raised in ARRC's response to our preliminary report, we will first comment on ARRC's existence as a governmental corporation. ARRC argues that the audit treated ARRC as it would a typical state line agency and specifically states that "ARRC does not operate on appropriations from the State treasury." ARRC also opines that exclusive authority over ARRC finances, including travel expenses of its board, rests with ARRC's board of directors and again sites the lack of legislative appropriations to the corporation.

We recognize that the originating statutes exempt ARRC from a number of statutes and regulations which effectively gives the corporation much more administrative independence than permitted to more traditional state agencies. However, it should be noted that all assets of the corporation are owned solely by the State. Therefore the residents of Alaska and certainly the legislature, which represents the residents of Alaska, have the vested right to be informed on the financial soundness of the corporation's management practices and the

economic stability of the corporation as a whole. It is under this basic premise that our audit reviews the travel expenses of ARRC's board members and executive director, just as it does the other nine governmental corporation within our scope.

In general, ARRC takes exception to the application of the State's Administrative Manual travel guidelines to the travel expenses of ARRC's board members. ARRC bases this on two specific points. First, ARRC argues that Alaska Statute 42.40.710 intended to exempt the corporation from Title 39 which includes the state travel regulations. Alaska Statute 42.40.710 reads, in part, "*the provisions of AS 39 do not apply to employees of the corporation.*" (emphasis added)

We recognize that this passage exempts the *employees* of the corporation from the State's general travel guidelines. However, ARRC's board members, with the exception of Robert Hatfield Jr., who also serves as CEO, are not employees of the corporation and do not fall under this exemption. Further, the board of directors is explicitly tied to state travel guidelines by Alaska Statute 42.40.050(b) which reads: "*In addition to compensation under (a) of this section, an appointed member of the board is entitled to per diem and travel expenses authorized by law for state boards and commissions.*"

As established in the Background Information section of the audit, members of state boards are entitled to reimbursement of travel related expenses to the same extent and under the same conditions, as provided for state employees and officials. Travel regulations are addressed as policies and procedures in the State's Administrative Manual. Therefore, we continue to conclude that the travel provisions of the State's Administrative Manual apply to ARRC's board of directors.

Secondly, ARRC argues that the word "entitled" in the above statute merely establishes a minimum level of reimbursement for travel related expenses and does not prohibit ARRC for paying more than the travel provisions of the State's Administrative Manual permit. We disagree with the interpretation that the word entitle sets a minimum level of reimbursement.

The Blacks Law Dictionary sixth edition defines the word entitle as "*to qualify for; to furnish with proper grounds for seeking or claiming.*"

We therefore interpret "entitle" in the above statute as meaning a member of the board of directors has proper grounds for claiming travel expenses as would a member of a state board or commission. Hence, no proper ground exists by which ARRC board members may seek payment of travel expenses prohibited by the State's Administrative Manual.

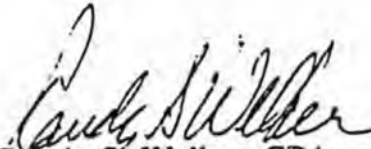
We have also reviewed ARRC's position that the use of a lobbyist does not violate the ban on political activities found in Alaska Statute 42.40.705. In light of ARRC's comments, we continue to emphasize the need for clear guidelines as to what constitutes permissible "communication" with the legislature and what constitutes the unlawful use of ARRC assets for political activities. Further, we continue to be unable to reconcile the expenditure of

ARRC funds to hire a registered lobbyist with the statutory prohibition against the use of funds for political activities found in Alaska Statute 42.40.705.

Alaska Science and Technology Foundation (ASTF)

ASTF notes that the audit identifies the incorrect board member as chairman. In response to this new information, we have updated the report to recognize the appropriate ASTF board member as chairman.

The administrative authority for the Alaska Science and Technology Foundation was transferred from the Department of Revenue to the Department of Commerce and Economic Development effective July 1, 1994. We acknowledge that the recent transfer of administrative authority has led to the strengthening of controls over most of the issues identified in the report.


Randy S. Welker, CPA
Legislative Auditor

**Alaska Railroad Corporation
Composition of Governing Board and Executive Officer
as of June 30, 1994**

<u>Name</u>	<u>Board Position</u>	<u>Home Residence</u>
Loren H. Lounsbury	Chairman	Anchorage
Frank X. Chapados	Vice Chairman	Fairbanks
Michael Olson	Board Member	Anchorage
Dale Lindsey	Board Member	Seward
Paul Fuhs, Commissioner Department of Commerce and Economic Development	Board Member	Juneau
Bruce Campbell, Commissioner Department of Transportation and Public Facilities	Board Member	Juneau
Robert S. Hatfield, Jr. ARRC President and CEO	Board Member	Anchorage
Former Board Members FY 93 or FY 94		
Frank Turpin, Commissioner Department of Transportation and Public Facilities	Board Member	Juneau

ALASKA RAILROAD CORPORATION
TRAVEL RELATED EXPENSES
FISCAL YEAR 1993

<u>Date Departed</u>	<u>Destination</u>	<u>Date Returned</u>	<u>Purpose</u>	<u>Transportation Costs</u>	<u>Meals/Lodging</u>	<u>Other</u>	<u>Entertainment &/or Business Meals</u>	<u>Total</u>
Robert S. Hatfield, Jr., President and CEO								
07/02/92	Fairbanks, Alaska	08/04/92	Employee birthday lunch and Denali Carto inspection trip	125	-0-	14	104	243
09/02/92	Fairbanks, Alaska	09/02/92	Employee birthday lunch	250	-0-	7	-0-	257
09/04/92	Phoenix, Arizona	09/05/92	Attend funeral	1,092	-0-	65	-0-	1,157
09/11/92	Fairbanks, Alaska	09/11/92	Board meeting	173	-0-	-0-	-0-	173
09/18/92	White Sulphur Springs, West Virginia	09/23/92	Attend National Freight Transportation Association Conference	1,322	3,172	642	240	5,376
10/01/92	Seattle, Washington	10/02/92	Meet with Brent Steinecker at Crowley Marine	298	131	32	70	531
10/15/92	Seoul, Korea	10/30/92	Work on Suneel Contract; Promote Alaska Tourism; Promote Real Estate Development and raise funds	2,714	2,932	457	627	6,730
11/19/92	Seattle, Washington	11/20/92	Meet with Crowley Marine	895	18	7	-0-	920
11/23/92	Seattle, Washington	11/24/92	Meet with Princess Tours and Holland America	895	131	2	-0-	1,028
12/02/92	Fairbanks, Alaska	12/02/92	Employee birthday lunch	346	-0-	-0-	-0-	346
12/05/92	Fairbanks, Alaska	12/05/92	Employee Christmas party	194	-0-	-0-	-0-	194
12/06/92	Seattle, Washington	12/08/92	Meet with Hydrotrain, Westours, and Princess Tours	895	374	55	-0-	1,324
12/10/92	Fairbanks, Alaska	12/10/92	Customer Appreciation reception	346	-0-	-0-	153	499
01/11/93	Edmonton, British Columbia	01/12/93	Meet with CN Rail	1,351	132	78	40	1,601
01/27/93	Fairbanks, Alaska	01/27/93	Meet with hotel and motel association	368	-0-	7	21	396

ALASKA RAILROAD CORPORATION
TRAVEL RELATED EXPENSES
FISCAL YEAR 1993

<u>Date Departed</u>	<u>Destination</u>	<u>Date Returned</u>	<u>Purpose</u>	<u>Transportation Costs</u>	<u>Meals/Lodging</u>	<u>Other</u>	<u>Entertainment &/or Business Meals</u>	<u>Total</u>
Robert S. Hatfield, Jr. (continued)								
02/03/93	Juneau, Alaska	02/04/93	Meet with Senate Transp. Committee regarding SB 38 (Sale of ARRC)	444	-0-	6	-0-	450
02/08/93	Juneau, Alaska	02/10/93	Meet with various legislators	444	183	5	186	818
02/20/93	Anchorage, Alaska	N/A	Legislative issues	-0-	-0-	-0-	27	27
02/24/93	Fairbanks, Alaska	02/24/93	Employee birthday lunch	368	-0-	45	-0-	413
03/08/93	Juneau, Alaska	03/11/93	Meet with various legislators regarding SB 38 (Sale of ARRC)	444	287	21	250	1,002
03/15/93	Juneau, Alaska	03/18/93	State chamber meeting and meet with various legislators	444	265	26	81	816
03/23/93	Juneau, Alaska	03/23/93	Meet with various legislators including House and Senate Transportation Committee	444	-0-	7	-0-	451
03/25/93	Phoenix, Arizona	03/30/93	National Freight Transportation Association Conference	635	1858	194	10	2,697
04/05/93	Juneau, Alaska	04/07/93	Meet with various legislators	444	195	30	201	871
04/23/93	Fairbanks, Alaska	04/23/93	Employee birthday lunch	368	-0-	7	-0-	375
04/27/93	Tulsa, Oklahoma	04/27/93	Mapco negotiation	1,695	45	37	-0-	1,777
04/29/93	Seattle, Washington	04/30/93	Attend Marketing Customer Appreciation reception	895	277	41	120	1,333
05/22/93	Fairbanks, Alaska	05/22/93	RR week Open House	368	-0-	45	-0-	413
06/15/93	Fairbanks, Alaska	06/15/93	Rail inspection trip	184	-0-	-0-	-0-	184
Susan Hatfield, President's spouse								
09/18/92	West Virginia	09/23/92	National Freight Transportation Association Conference	1,322	-0-	-0-	-0-	1,322

ALASKA STATE LEGISLATURE

-93-

DIVISION OF LEGISLATIVE AUDIT

ALASKA RAILROAD CORPORATION
TRAVEL RELATED EXPENSES
FISCAL YEAR 1993

<u>Date Departed</u>	<u>Destination</u>	<u>Date Returned</u>	<u>Purpose</u>	<u>Transportation Costs</u>	<u>Meals/Lodging</u>	<u>Other</u>	<u>Entertainment &/or Business Meals</u>	<u>Total</u>
Susan Hatfield (continued)								
03/25/93	Phoenix, Arizona	03/30/93	National Freight Transportation Association Conference	635	-0-	-0-	-0-	<u>635</u>
Robert and Susan Hatfield							Subtotal	\$34,358
Loren H. Lounsbury, Chairman								
10/04/92	Juneau, Alaska	10/07/92	Attend State Chamber meeting	444	318	50	20	832
10/17/92	Seoul, Korea	10/29/92	Meet with Suneel regarding export coal contract	2,747	2,552	495	1,317	7,111
	Osaka, Japan		Meetings regarding sponsorship of Ship Creek tourist amenities					
	Hong Kong		Promote Ship Creek financing					
02/08/93	Juneau, Alaska	02/10/93	AK Visitor Association meeting and meet with Senate Transp. Committee regarding SB 38 (Sale of ARRC)	444	164	18	136	762
03/15/93	Juneau, Alaska	03/18/93	Meet with legislators regarding SB 38 and HB 23 (Sale of ARRC); attend State Chamber meeting	444	307	27	342	1,120
04/29/93	Seattle, Washington	05/02/93	Rail-barge inspection	433	237	30	25	725
Frank X. Chapados, Vice Chairman								
07/22/92	Anchorage, Alaska	07/22/92	Attend ARRC Board Meeting	250	-0-	18	-0-	268
09/09/92	Anchorage, Alaska	09/11/92	Attend ARRC Board Meeting	125	-0-	21	-0-	146
11/16/92	Anchorage, Alaska	11/18/92	Attend ARRC Board Meeting	346	140	25	-0-	511

ALASKA RAILROAD CORPORATION
TRAVEL RELATED EXPENSES
FISCAL YEAR 1993

<u>Date Departed</u>	<u>Destination</u>	<u>Date Returned</u>	<u>Purpose</u>	<u>Transportation Costs</u>	<u>Meals/Lodging</u>	<u>Other</u>	<u>Entertainment &/or Business Meals</u>	<u>Total</u>
Michael Olson, Board Member								
09/24/92	Seattle, Washington	N/A	Meet with Mapco as board member	-0-	75	-0-	-0-	75
02/28/93	Seattle, Washington	03/14/93	Report on Crowley Seattle Operations for Robert Flatfield	895	-0-	194	64	1,153
04/29/93	Seattle, Washington	05/01/93	Customer appreciation dinner and observe barge operation	433	237	24	-0-	694
Paul Fuhs, Board Member								
07/21/92	Anchorage, Alaska	07/21/92	Attend ARRC Board meeting	444	-0-	-0-	-0-	444
09/10/92	Anchorage, Alaska	09/11/92	Attend ARRC Board meeting	222	136	-0-	-0-	358
11/17/92	Anchorage, Alaska	11/19/92	Attend ARRC Board meeting	444	198	53	-0-	695
06/01/93	Anchorage, Alaska	06/06/93	Attend ARRC Board meeting	444	213	-0-	-0-	657
Frank G. Turpin, Board Member								
08/03/92	Anchorage, Alaska	08/03/92	Attend ARRC Board meeting	454	36	5	-0-	495
Board Members								
							Subtotal	16,046
							FY 93 Total	\$50,404

ALASKA RAILROAD CORPORATION
TRAVEL RELATED EXPENSES
FISCAL YEAR 1994

<u>Date Departed</u>	<u>Destination</u>	<u>Date Returned</u>	<u>Purpose</u>	<u>Transportation Costs</u>	<u>Meals/Lodging</u>	<u>Other</u>	<u>Entertainment &/or Business Meals</u>	<u>Total</u>
Robert S. Hatfield, Jr., President and CEO								
07/01/93	Fairbanks, Alaska	07/02/93	Employee birthday lunch	184	138	45	-0-	367
07/13/93	Clear Airforce Base, Alaska	07/13/93	Meet with Clear AFB commander regarding coal and other matters	371	-0-	-0-	-0-	371
08/05/93	Fairbanks, Alaska	08/05/93	Accompany ARRC customers on train	79	-0-	-0-	-0-	79
08/10/93	Fairbanks, Alaska	08/11/93	Hy-rail track inspection	193	113	-0-	-0-	306
09/14/93	Fairbanks, Alaska	09/14/93	Attend ARRC board meeting	59	-0-	-0-	-0-	59
09/18/93	Seoul, Korea	09/22/93	Meetings with Suneel Coal regarding contract renewal	2,333	673	88	221	3,315
10/12/93	Seattle, Washington	10/15/93	Meet with representatives of Canadian National and Seattle office operations regarding Canadian National barge contract	318	559	38	110	1,025
10/18/93	Fairbanks, Alaska	10/18/93	Hy-rail track inspection	116	-0-	97	34	247
10/26/93	Fairbanks, Alaska	10/26/93	Employee birthday lunch	116	-0-	7	-0-	123
12/18/93	Fairbanks, Alaska	12/18/93	Attend Fairbanks Employee Christmas party	116	-0-	-0-	-0-	116
01/10/94	Salt Lake City, Utah Edmonton, British Columbia	01/14/94	Meet with Mapco and Canadian National regarding contracts	1,339	443	71	116	1,969
01/20/94	Fairbanks, Alaska	01/20/94	Attend birthday lunch and Marketing Customer Appreciation reception	376	-0-	7	74	457
01/22/94	Houston, Texas Seattle, Washington	01/27/94	Enstar board meeting Meet with TOTE Seattle office	-0-	204	352	100	656
02/01/94	Fairbanks to Anchorage, Alaska	one way	Hy-rail inspection trip	94	-0-	-0-	-0-	94

ALASKA RAILROAD CORPORATION
TRAVEL RELATED EXPENSES
FISCAL YEAR 1994

<u>Date Departed</u>	<u>Destination</u>	<u>Date Returned</u>	<u>Purpose</u>	<u>Transportation Costs</u>	<u>Meals/Lodging</u>	<u>Other</u>	<u>Entertainment &/or Business Meals</u>	<u>Total</u>
Robert S. Hatfield, Jr. (continued)								
02/03/94	Fairbanks, Alaska	02/04/94	Attend employee TQM meeting	188	93	99	-0-	380
02/28/94	Ketchikan, Alaska	03/01/94	Speak at Ketchikan Rotary Club	588	112	129	-0-	829
03/14/94	Las Vegas, Nevada	03/17/94	Speak at "The Alaskans Convention"	1,356	186	5 ^P	-0-	1,600
	Vancouver, British Columbia		Meet with Canadian National regarding barge contract					
04/14/94	Palm Beach, Florida	04/18/94	Attend National Freight Transportation Association Conference	1,784	2,768	317	84	4,953
05/02/94	Seattle, Washington	05/03/94	Meeting with the Canadian National and Crowley regarding barge contract	513	150	2	-0-	665
Susan Hatfield, President's spouse								
04/14/94	Palm Beach, Florida	04/18/94	Attend National Freight Transportation Association Conference	1,781	-0-	-0-	-0-	<u>1,781</u>
Robert and Susan Hatfield							Subtotal	19,392
Loren H. Lounsbury, Chairman								
09/17/93	Seoul, Korea	09/22/93	Suncel coal contract negotiation	2,333	599	103	2,158	5,193
12/02/93	Seoul, Korea	12/08/93	International trade meeting regarding Alaska resource exports	2,333	684	283	698	3,998
04/17/94	Atlanta, Georgia	04/21/94	Intermodal Transportation Expo	1,692	933	2	-0-	2,627

ALASKA RAILROAD CORPORATION
TRAVEL RELATED EXPENSES
FISCAL YEAR 1994

<u>Date Departed</u>	<u>Destination</u>	<u>Date Returned</u>	<u>Purpose</u>	<u>Transportation Costs</u>	<u>Meals/Lodging</u>	<u>Other</u>	<u>Entertainment &/or Business Meals</u>	<u>Total</u>
Frank X. Chapados, Vice Chairman								
10/22/93	Anchorage, Alaska	10/22/93	Attend ARRC board meeting	116	-0-	6	-0-	122
11/22/93	Anchorage, Alaska	11/23/93	Attend ARRC board meeting	116	78	10	-0-	204
01/19/94	Anchorage, Alaska	01/19/94	Attend ARRC board meeting	188	-0-	-0-	-0-	188
01/28/94	Anchorage, Alaska	01/28/94	Attend special board meeting	168	-0-	55	-0-	223
Paul Fuhs, Board Member								
07/13/93	Anchorage, Alaska	07/16/93	Attend ARRC board meeting	444	134	20	-0-	598
11/23/93	Anchorage, Alaska	11/23/93	Attend ARRC board meeting	444	36	5	-0-	485
05/18/94	Anchorage, Alaska	05/19/94	Attend ARRC board meeting	444	115	-0-	-0-	559
Bruce A. Campbell, Board Member								
11/22/93	Anchorage, Alaska	11/24/93	Attend ARRC board meeting	399	209	15	-0-	623
Board Members							Subtotal	14,620
							FY 94 Total	\$34,212

COMMENTS ON SB 42 / HB 55

Submitted by the Alaska Railroad Corporation
to the House Transportation Committee

A. Fiscal Operations Aspect of the Bills

- **Changes in railroad business require the ability to respond quickly with capital investment.**

The railroad industry in America is engaged in a capital intensive business which has experienced significant changes in customers' requirements, therefore significant changes in its infrastructure, equipment and technology. The Alaska Railroad Corporation has recently responded to changes like these by acquiring new high capacity hopper cars to make its coal customers more competitive. We have also purchased new passenger equipment to support the tourism segment of our business; and we have negotiated a long-term contract with our largest customer to assure that our tank car fleet is one of the most modern in the business. We are currently evaluating upgrade of our locomotive fleet. While initially capital intensive, this upgrade represents a significant opportunity for long term savings.

Responding to customer needs often requires quick action. For example, the decision to acquire the new hopper cars was made during negotiations regarding export coal, in order to make that service competitive for the customer, as well as improve service to other customers. Inasmuch as this occurred during the middle of a fiscal year, it would have been difficult if not impossible to respond had it been necessary to seek administrative and legislative approval.

Subjecting ARRC to the Executive Budget Act ("EBA"), AS 37.07, will adversely affect this ability to respond quickly, and chill other financial and contractual relationships of the corporation. Moreover, it may well subject the State to direct liability for ARRC actions.

- **By assuming substantial actual control over the financial and legal obligations of ARRC and removing a substantial portion of ARRC's asset base, the state may inadvertently be subjecting itself to full liability for ARRC's operations, despite language to the contrary in AS 42.40.500.**

ARRC has been a defendant in numerous lawsuits since its creation, and the State of Alaska has never been made a party as a result of ARRC's actions, nor called upon to answer in damages in any of these cases. ARRC conducts its own separate risk management program to address the risks created by its operations, which include a mix of preventative actions, insurance and ready cash availability through lines of credit. Obviously, the language of AS 42.40.500 and the arm's length nature of the

corporation past relationship with the State have had the intended effect and spared

the State these liabilities. We fear the same will not be true once the State injects itself so substantially into the railroad's business decision-making process, and once it renders the corporation significantly less able to satisfy judgments by removing its profitable real estate base. A "state entity" version of "piercing the corporate veil" will very likely occur.

- **The proposed bill will adversely affect the corporation's ability to maintain favorable premiums and retentions in its insurance package. These increases may be so great that ARRC is unable to procure its own insurance, forcing the State to add ARRC insurance costs to its risk management program.**

Removal of real estate assets from the corporation and the resulting decrease in revenues will adversely affect the corporation's insurance costs. Assets and revenues are among a number of factors considered by the insurance underwriters every year when ARRC is placing its coverages. ARRC currently enjoys relatively low premiums for the coverage it obtains, with high self-insured retentions. It is likely that stripping ARRC of its real estate will cause premiums to increase, or the self-insured retentions to decrease, or both. Either or both of these effects may cause the corporation to be unable to place insurance on its own behalf without paying an exorbitant cost. Coupled with the increased likelihood of State liability for ARRC obligations, this could force the State to add ARRC into its own risk management program.

1. Chilling Effect on Borrowing.

- **Will essentially end conventional borrowing, driving ARRC capital needs into state capital budget process. For example, ARRC is considering buying 20 new locomotives, which will cost approximately \$40MM.**

The bill leaves intact several provisions regarding borrowing by ARRC, yet by placing the corporation under the EBA, the borrowing ability of the corporation is called into question. The provision of this bill that subjects ARRC to the EBA and requires ARRC to request appropriations for its operating, capital and debt service expenditures may have serious consequences on ARRC's existing and future contracts/loan agreements. The corporation has several long term contracts to provide various services to customers and several long term loan agreements that require ARRC to make periodic interest and principal payments. To our knowledge, none of these agreements contains language conditioning ARRC's duty to perform on its receipt of sufficient appropriations from the legislature, as is the case in a typical state contract. Even if ARRC retains all its revenues, if it cannot expend them except in strict accordance with a legislatively approved annual budget, our existing customers/lenders may have valid

concerns about our continuing ability to perform as the contract requires. If our performance is hampered by legislative or administrative revision of a proposed budget, those customers/lenders may an argument that their contract rights have been impaired in violation of Article I, Section 15 of the Alaska Constitution.

With regard to future loans, it will be much more difficult and expensive to borrow money for operating capital or to purchase equipment, for example, on credit if this bill becomes law. It may be difficult for ARRC to assure its creditors that the legislature will appropriate sufficient money, or approve line entries in its budget, to pay the debt service on their loans. While ARRC has never mortgaged its real estate, lenders do scrutinize the corporation's revenue flow and financial statements before deciding to lend money to the corporation. Removing the contribution attributable to real estate from this bottom line will most certainly affect a lender's willingness to do business with ARRC. These same problems exist for future long term contracts with freight and real estate customers. In short, if we cannot assure our customers that we will have the funds and the authority to spend them to perform the services they require, they will go elsewhere.

2. Violation of Alaska Railroad Transfer Act ("ARTA").

- **The Transfer Act specifically provided that ARRC would retain control of funds and budget, because the federal railroad had experience with having to budget and seek appropriations, and had learned the hard way that you cannot anticipate all your business opportunities, and cannot respond quickly enough to capitalize on them when they arise if forced to follow this process.**
- **The federal government may well raise this violation of ARTA as a breach in its contract with the State of Alaska transferring the railroad.**

Section 1207 of ARTA mandates that the revenues generated by ARRC be "retained and managed by the State-owned railroad for railroad and related purposes". This bill will infringe on that "management" right in several respects. For example, inclusion of ARRC under the EBA will have the effect of prohibiting the corporation from increasing the salaries of its employees, hiring additional employees or expending any money or incurring other obligations unless all of the same were included in an operations plan approved by OMB, which must in turn comport with a budget approved by the legislature. See AS 37.07.080(d). If ARRC receives excess funds from its operations (beyond what is expected and accounted for in its approved budget), it must convince the administration to propose a revision to the Legislative Budget & Audit Committee and wait 45 days before expending the money. See AS 37.07.080(h). One can foresee a multitude of business opportunities or potential employees that will not wait the time required to obtain such approvals, and accordingly be lost to the corporation.

As noted in Section A.5. below, there does not appear to be any requirement that all of the money generated by ARRC be paid into the state treasury. However, in light of the "appropriation" language found in the bill, the bill's intent is not entirely clear. If the design is for ARRC revenues to be "state funds" which are then appropriated back to the corporation or, even if held by the corporation but only expended pursuant to an approved budget, then the corporation no longer has the "management" rights required by Section 1207 of ARTA. Moreover, if all of ARRC's revenues are not either appropriated back to the corporation or approved to be used in the corporation's budget, part of ARRC's revenue could be used to fund a program or project that is totally unrelated to the railroad. This too would violate the mandate of ARTA Section 1207.

3. Process Adds Time and Cost Without Adding Value.

- ARRC's customer base will not significantly change. Participating in the budgeting process as proposed will substantially increase the costs of doing business. It is unreasonable to expect the customers to bear this additional cost.

Numerous provisions throughout the EBA impose procedures with considerably different focus and detail than ARRC currently develops, such as the "agency program," "financial plan" and "operations plan." In addition, involvement of additional layers of governmental agencies (OMB, LB&A, etc.) to business sector decision making will delay the process and therefore result in less flexibility to react to business climate changes. All of these add cost to the procedure without adding value. The cost will ultimately be paid by the customer, or worse still, by the corporation in the form of lost opportunity.

4. Effect of State Fiscal Year.

- ARRC's business is highly seasonal, and moving to state fiscal year would split the business season.

Subjecting ARRC to the EBA will require it to change from its current calendar year as fiscal year, to the state fiscal year that ends on June 30. While there does not appear to be a specific mandate to this effect, the requirement to participate in the governor's budgeting process and seek legislative approvals will necessitate such a change. Prudent businesses close their fiscal year at the end of business cycle, not during its busiest time. The railroad's "busy season" ends around November 1, and the calendar year is therefore the most appropriate fiscal year for ARRC. Not only would the state fiscal year artificially bifurcate the business year, but it would require the corporation to spend considerable time participating in the budgeting process at the same time it is gearing up to expand operations in May. This is not an efficient use of resources.

5. Inconsistency of Approach.

- The inconsistencies found in the bill illustrate the difficulty in separating the financial management of the corporation from the operational management left to ARRC.

The bill expressly subjects ARRC revenues to legislative control by making the corporation subject to the EBA. Yet, it does not change the primary directive found in the Alaska Railroad Corporation Act ("ARCA") for the corporation to be managed on a self-sustaining basis. For example, the directors are required to, "in accordance with AS 37.07, apply to the legislature for an appropriation . . . to be used to fund the operating, capital, and debt service expenditures of the corporation; and . . . when necessary, provide a non-self sustaining service. This implies that an annual appropriation is required for all expenditures of the corporation, with all the accompanying budget, operations plan and other documents that are generated in the governor's budgeting process. However, the EBA itself does not require ARRC revenues to be paid into the general governmental treasury,¹ and it is unclear whether the bill contemplates this result. If ARRC is to retain its receipts, it is inconsistent to require the corporation to seek appropriations for operating and other expenditures.

6. Lack of Definition.

- The bill directs decisions to be made without providing any guidance on how to make them.

The ARRC directors are directed to apply for appropriations to be used to, "when necessary" provide a non-self sustaining service, without any guidance as to what factors go into a determination of such necessity or who is to make the determination. A similar lack of guidance is found throughout the real estate provisions of the bill, as will be discussed in Section B below.

B. Land Related Aspects of the Bill

- The 1996 financial statements indicate that real estate provided \$4.4MM of ARRC's \$8MM income for that year. In past years, the percentage has been even higher.

¹ Another section of the Public Finance title, AS 37.05.146, provides that ARRC receipts are not general fund receipts. Without any other section of that title being made applicable to ARRC, there is apparently no requirement that corporation funds be paid over to the state treasury.

The general effect of the bill is to remove a considerable amount of ARRC's real estate holdings from the corporation's control. The wisdom of this approach is questionable, in view of the fact that real estate income accounts for the majority of ARRC's net income in any given year. Real estate revenues are relatively predictable and stable, unlike freight revenues which are subject to many vagaries outside ARRC's control. Railroads have traditionally relied upon their real estate asset base to support the operational side of the business, and the ARRC is no exception to this rule.

- **Most of the valuable leasable lands are already leased, which will complicate the effectiveness of any transfer to municipalities or DNR.**

The bill also envisions transferring excess rail lands to municipalities, but in fact, most of the valuable non-operational property is already leased to third parties and will not be available for conveyance. The bill recognizes that it must accept those existing third party rights, but its authors may not understand how much of the desirable rail land is so encumbered. In addition, it has been our experience in the past that lessees are not comfortable with a change in landlord, even if the lease terms remain the same. They realize that there is much more to the relationship than the words in the lease document. In fact, some have complained when a change to a municipal landlord was proposed. Thus, there is a significant risk of negative "customer relations" resulting from a transfer of leased rail land to a municipality.

- **The corporation currently enjoys the benefit of an agreement with the FRA that clarifies responsibility for pre-transfer contamination. This agreement may be jeopardized by the transfer of the land to other parties who could find themselves facing significant environmental liability without clear cut redress with the federal government.**

Another consideration is the environmental aspects of a transfer of rail land to the Department of Natural Resources ("DNR"). There is certain known contamination of rail land, both right-of-way ("ROW") and parcels and, no doubt, some amount of currently unknown contamination as well. ARTA provided that the United States retained all liabilities that accrued prior to transfer, without specific reference to environmental liabilities. ARRC entered into an agreement with the Federal Railroad Administration ("FRA") in 1990 that addresses respective responsibilities for contamination, an agreement which is not specifically stated to be assignable. The FRA is currently somewhat unhappy with the agreement, and may take advantage of any opportunity, however flimsy, to repudiate it. Moreover, transfer of ARRC land to DNR will create two separate entities to deal with pre-transfer contamination--ARRC for the ROW and any retained rail land, and DNR for the other rail lands. DNR has no experience dealing with FRA, and FRA will resist having to deal with two different state "agencies" on the same underlying liability, rightly fearing it could be subject to different

approaches. Lastly, given the inherent difficulties in dealing with contaminated

properties and DNR's lack of experience in this area, it will present that agency with a new and onerous burden that is unnecessary and undeserved.

Thus, it is apparent that there are several philosophical objections to removing "non-operational" real estate from ARRC's control. In addition, the bill contains numerous errors and inconsistencies, and fails to provide sufficient guidance for the difficult decisions it requires to be made. A number of examples are discussed below.

1. Land Title in Limbo for Considerable Period.

- Mechanism of the proposed transfer to DNR will create title questions for an extended period, which will affect third parties' willingness to do business on railroad land.

Effective immediately upon the bill becoming law, title to all land acquired by ARRC is transferred to DNR. The commissioner is directed to record title to the land in the name of the state within an unspecified period of time. Given that the existing conveyance documents for lands transferred by the United States to ARRC consist of over 450 pages of patents, interim conveyances and exclusive licenses recorded in nine different recording districts, and include numerous pages of metes and bounds legal descriptions that will have to be retyped or scanned into DNR databases, this process will take a significant time. During that time, the title to the rail lands will be regarded as flawed by any title company that has occasion to address the subject. Title companies often assess the strength of ARRC's title when dealing with long term tenants who are financing or refinancing improvements on the properties.

2. Necessity for U.S. Involvement.

- As current owner of record for most of the rail lands, the United States will probably have to be a signatory to this transfer process.

The exclusive licenses received from the United States at transfer in 1985, which constitute the bulk of the current title documents of record, are not specifically assignable. The United States may have to be a signatory to a recordable document to establish the chain of title between ARRC and DNR for these lands.

3. Separation of ROW by Survey Required.

- Additional costs will be incurred to survey and plat the right-of-way, with no added benefit other than to document the transfer to DNR.

The statutory rubric appears to intend that, despite the immediate transfer of title of all railroad lands to DNR, the 200-foot ROW (still called the "utility corridor") will be "reserved" for ARRC use. Presumably this reservation is effective immediately, but query how, where and when the commissioner of DNR makes this reservation a part of the public land records. In areas where the ROW passes through railroad reserves (the larger parcels of railroad land at Anchorage, Fairbanks, and various other railbelt locations), there is no separately surveyed 200-foot ROW. In order to "reserve" and separate this portion of the ROW from surrounding rail lands, the DNR commissioner will have to undertake extensive surveys and platting under local land use rules.

4. Retention of Non-ROW if "Necessary" Without Guidelines.

- There are no guidelines provided for determining what lands are "necessary" to railroad operation and therefore retained by ARRC.

Non-ROW lands are called "rail land" under the existing statute and the bill. As to such lands, the bill provides that "rail land necessary for the use, maintenance or operation of the railroad shall be reserved for use by the railroad." There is no indication that this reservation is delayed, so presumably it too is effective immediately. However, there is no indication of who is to make the "necessity" determination, the standards to be applied, or how it is to be expressed. This again will cause valid concern in the real estate community as ARRC tenants, permittees, and those seeking to become such, can find no certainty in the state of title.

5. Process to Be Employed by DNR In Determining Necessity.

- Again, without guidelines, it is unclear how DNR will determine what are "necessary" rail lands in the future, and will at best add another layer of process and time to ARRC's ability to respond to a business opportunity to the benefit of a freight or real estate customer.

For lands that are not subject to the immediate "reservation", the ARRC board is authorized to "request" the DNR commissioner to make available other lands "necessary or useful for present or future railroad purposes". No guidance is given as to what standards the DNR commissioner must apply in making this determination, although he is given 90 days to make the decision. What is the meaning of "necessary", "useful", or, for that matter, "railroad purposes"? Query whether different standards should be applied depending on whether additional ROW is being requested, as opposed to additional "rail land". Query what "appeal" rights ARRC would have as the aggrieved party if the commissioner refuses the request.

6. Unnecessary Administrative Burden Imposed on DNR.

- **Transferring over 250 leases to DNR's administration will add a significant burden to that agency, requiring additional expertise and funding.**
- **There can be no real change in the use and administration of these properties, because terms of existing leases cannot be changed. Therefore, there is no real benefit to the state from such a transfer.**

The administrative burden imposed on DNR by adding these lands under these conditions to its inventory should be considered. DNR has an efficient mechanism in place to handle leases and other interests in land, which differs somewhat from the mechanism retained under this bill for rail land. For example, a lease of rail land to a party other than the state must be at fair market value "as determined by a qualified appraiser or by competitive bid." The DNR statutes provide a somewhat different approach, so that DNR will have to devise and master another system and apply them both efficiently. In addition, presumably all of ARRC current leases and permits on lands not "reserved" to the corporation under Sections B.2-4 above will be administered by DNR. These contracts are vested rights and may not be divested without payment of compensation. For example, there are a total of 261 current leases, the overwhelming majority of which are on non-"ROW" land.² Therefore, DNR would acquire over 250 new leases to administer, with ARRC or federal railroad standard terms and conditions, and rental reappraisal cycles entirely different from its normal inventory. It will be necessary for DNR staff to administer these "unusual" leases for remaining terms of up to 35 years (or even longer, due to options to extend as well as hold-over federal leases which had longer terms from their inception.) The enormity of this assignment should not be underestimated, and DNR must be prepared to expend sufficient resources to master these documents or the businesses and individuals who have contracted in good faith with the railroad will feel cheated. The potential for negative public relations is significant.

7. Changes Required re "Disposal of Entire Interest in Rail Land".

- **Technical changes are required to make new provisions consistent with remainder of ARCA, and at same time, the legislature should consider why this land should be disposed of in different manner than other DNR lands.**

² There are an unknown number of the 576 active permits granted by the railroad that would also fall under DNR administration, although the vast majority of these are on railroad ROW.

Section 5 of the bill amends AS 42.40.285 to add a new subsection (b), requiring the

"state" to seek legislative approval when disposing of its entire interest in railroad land. First, the existing statute does not have a subsection (a). Presumably the intention is to make the existing language into a subsection (a), but this does not quite fit either because the new language appears to replace the intent in current subsection 285(1), which is indeed repealed by Section 22 of the bill. However, the lettering and structure of the remainder of the section must also be changed to match this bill's additional language. In addition to such technical changes, the intent of the bill should be clarified. Query what remains for which ARRC as the continuing corporation must seek legislative approval. Further, one must ask why DNR, as administrator of rail land removed from ARRC control under other portions of this bill, is required to act differently with respect to disposals of this land? DNR has an enormous inventory of state land to manage and has stringent provisions under the Alaska Constitution and the Alaska Lands Act governing its disposals. Imposing an additional and different procedure on DNR for just these lands creates an unwarranted administrative burden with no identified value added.

8. Ratification of Leases to Third Parties.

- The bill ratifies prior third party leases but does not address the numerous leases and permits from ARRC to municipalities and state entities.

Section 24 of the bill purports to ratify prior land transfers to a party other than the state. ARRC has entered into numerous long term leases with state agencies and political subdivisions of the state, many of them at nominal lease rates. Are these to be voided unless and until acted upon and somehow validated by DNR? What standards might these parties expect to see imposed under DNR's administration? The term "transfer" is not defined—are parties other than the state, who are purportedly protected by this provision, secure in their lease rights without a definition of this language to include leases? They will have valid concerns unless the legislative intent is clarified.

9. Limitation on Future Leases of ROW.

- The bill limits future leases within right-of-way to certain purposes without regard to benefit to rail operations or customer's needs.

Leases or other disposals within the ROW may be authorized by ARRC but must "require that the land be used for transportation, communication and transmission purposes in perpetuity." Other "compatible" purposes are also allowed. One threshold issue is the definition of the word "compatible." Moreover, the reasoning behind the entire concept is unclear. If this provision is an effort to avoid forfeiting the ROW under ARTA's reversionary provisions (45 U.S.C. § 1209(b)), it goes much farther than necessary. That section of ARTA only requires that the ROW not go unused for

transportation, communication and transmission purposes for more than 18 years or it

will revert to the United States. A lease or permit could easily incorporate such a provision, or be limited to less than 18 years in length to accomplish this purpose. A complete disposal of the entire interest in such land requires legislative approval in any event, and the legislature could at that time seek to impose any condition it liked.

10. Inconsistency Created by Terminology.

- A technical amendment is needed to make references to the right-of-way consistent.

Section 6 of the bill, at page 8, lines 6-7, should be amended in a manner that explains the seemingly inconsistent use of the term "right-of-way" here when all other references in ARCA are to "utility corridor". We suggest adding the following: "...within railroad "right-of-way" as defined in 45 U.S.C. §1202(11) and received by the state under 45 U.S.C. 1201 - 1214 shall require that the land be used for transportation..."

1042

Municipality of Anchorage



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ANCHORAGE ASSEMBLY
CHARLES P. WOHLFORTH

February 10, 1997

Rep. Bill Williams
Chair, House Transportation Committee
State Capitol
Juneau, AK 99801-1182
By fax: 907-465-3793

Dear Rep. Williams

I am writing to provide my testimony for your hearing today on Rep. Terry Martin's HB 55, regarding the Alaska Railroad. As the member of the Anchorage Assembly representing the downtown and Government Hill area, my district contains the railroad's most intensive base of operations. Although I lack expertise in the details of Rep. Martin's bill, my aim is to provide you with insight into the experience of our local government and my neighborhoods in dealing with the railroad.

My understanding of the railroad's original mandate was that the legislature sought to combine the best of the public and private sectors, creating a corporation which could be as flexible as a business, yet as responsive as a public entity. Too often in handling its real estate, however, the Alaska Railroad has combined the worst, not the best, of both worlds.

The most egregious example of this was in the railroad's sale in 1995 of a large part of the Government Hill bluff for gravel extraction for far below market value in a secret, sole source deal. As you may have read in the newspaper exposé or the legislative audit that followed, this was a virtual give-away of a state asset. Most disturbing to me, however, was that the gravel sale interfered with the Hollywood Vista apartment redevelopment project that the city was working on -- thinking we had the railroad's cooperation -- on an adjacent, city-owned parcel of land. Either through gross mismanagement, or deliberate sabotage, the railroad's deal ended up costing the city and state considerably more money to redevelop our parcel, created tremendous confusion and conflict, and cost the railroad dearly for selling an asset for far less than what it was worth. Moreover, the partnership which bought the gravel intends to operate its pit at night, within close proximity to hundreds of residences, by technically avoiding

February 10, 1997 - HB 55

the force of an Assembly vote on the zoning of the parcel. No private company or government agency I know of would have made such a deal.

The railroad also has shown a remarkable lack of cooperation in its other real estate ventures at the port and in Ship Creek. The LoPatin land development debacle is one example. The history of this expensive fiasco is too long to explain here, but the outcome is simple enough: after years of effort, contentious rezoning of land, and missed opportunities, none of the planned development has occurred. Apparently, the developer was not serious or was unable to deliver, something community members pointed out in asking for a less ambitious but more realistic plan. Unfortunately, every time the community came into conflict with the developer, the railroad was strongly on the developer's side.

The railroad has taken the same stand when problems have cropped up with bulk fuel storage operators on railroad land at the port. As the former railroad president always told me, the railroad was a business, and it had to act like one, protecting its customers and fighting for them in the government arena against its neighbors.

But when it has been in the railroad's interest to act like a government rather than a private business, it has been willing to switch hats quickly. Just recently I received case files for a number of city zoning complaints against the railroad for junk yards and other serious violations of local code on its property. Instead of cleaning up the problems, the railroad has legally appealed the city's right to enforce our zoning laws because it is a state government entity, and so is exempt from local zoning. I believe this legal argument is false, but it certainly demonstrates the railroad's willingness to use its public-private status to the detriment of the public and its competitors rather than in the positive way the legislature intended.

I am hopeful that new management at the railroad will clean up the problems in its real estate department and bring the railroad into a more cooperative relationship with local government. Over the long term, however, I feel the legislature should look at ways to restructure the railroad's legal status, as Rep. Martin indicates, so the Alaska Railroad really can be as responsive as government and as flexible as business - rather than the other way around.

Sincerely,


Charles P. Wohlforth

Alaska Railroad Corporation 1997 Briefing Paper



The Alaska Railroad

BACKGROUND BRIEFING
JANUARY 30, 1997

EXECUTIVE SUMMARY

The Alaska Railroad is a professionally-run, self-sustaining railroad serving ports and communities from the Gulf of Alaska to Fairbanks. Owned by the State of Alaska since 1985, the Railroad is overseen by a seven-member board of directors appointed by the Governor and confirmed by the Legislature.

Under this management and ownership arrangement created and approved by the Legislature in 1984, the Alaskans maintain control of Southcentral Alaska's principal transportation corridor, retain 38,000 acres of land transferred from the federal government, and have the revenues needed to operate, maintain, and expand the line.

The Railroad is operated by professional railroad managers, requires no subsidies from the state treasury, and has no state employees.



HISTORICAL OVERVIEW

Purpose The Alaska Railroad was built by the United States government between 1914-23 as a way to open up and develop Alaska's westward Interior. It served as the focal point for the development of Anchorage and the Matanuska Valley, the Interior's mining districts' link to ocean transportation, a vital carrier of World War II troops and supplies, and principal freight line from tidewater during the Cold War construction boom and construction of the Trans-Alaska Pipeline.

It remains one of the state's oldest and most important pieces of infrastructure for transportation and economic development.

Alaska control In the early 1980s the United States no longer considered the Alaska Railroad an important federal asset and sought to sell it. The State of Alaska saw an opportunity to gain Alaska control of the line.

The Legislature approved acquisition of the line in 1984 specifically because:

- The Railroad "is an essential part of the state's transportation network that may, unless preserved by state action, cease to be a transportation option in Alaska." (AS 42.40)

The intent was to bring the line under Alaska ownership and direction, keep the profits in-state, assure that the line had the resources to operate safely and efficiently, and make sure the Railroad continued to serve Alaska businesses and communities as an engine of community development and economic growth.

The transfer took place January 5, 1985.

Purchase agreement The State paid the United States \$22.271 million cash for the Railroad's track, rolling stock, and 38,000 acres of land. The United States also retained \$10.978 million in the Railroad's cash-on-hand, in exchange for also accepting significant past liabilities.

As part of the purchase agreement, the Legislature replaced the nearly \$11 million in operating capital, bringing the total cost to just under \$34 million.

Note: The Railroad has *neither requested nor received* any additional state money outside of the agreement and legislation approved by the Legislature in 1984.

Public ownership, private management In bringing the Railroad under state control, the Legislature specifically created a structure that would avoid the liabilities and limitations of traditional public management, while maintaining the accountability of public ownership.

The Alaska Railroad Corporation Act of 1984 created a state corporation that is:

- *Accountable* to the Governor and Legislature through appointment and confirmation of board members;
- *Professionally operated* by railroad managers who have the flexibility to negotiate their own labor contracts with professional railroad workers;
- *Self-sustaining* through retention of all profits generated by the enterprise.

This 12-year-old arrangement is one of the few examples of a situation in which government is, indeed, run like a business. The Alaska Railroad Corporation has the flexibility to meet the needs of its customers (such as refiners, tour companies, and construction operations) and earn a profit, which helps support vital public transportation services that do not pay their way, and would otherwise be dropped by an exclusively private, profit-centered operation.

Note: Since 1984, the line has earned and reinvested nearly \$100 million in maintenance and expansion of Railroad facilities.

The structure also provides that major and minor expansion of Railroad operations — from line extensions to leasing of Railroad land — are viewed not just by how much money they may make for the corporation, but whether the action is consistent with community and state development goals and opportunities. This, in turn, is consistent with the findings of the Legislature expressed in the Alaska Railroad Corporation Act of 1984.

MANAGEMENT

The management structure of the Railroad is designed so that it may respond quickly to service and customer needs, changes in the economy, or business opportunities, while being accountable to the state's elected leadership and the public.

Board of directors As noted above, the Railroad is managed by a seven-member board of directors appointed by the Governor and confirmed by the Legislature.

The board is configured, by law, so that:

- At least one member has substantial railroad management experience;
- One member represents the railroad's employee unions;
- Each judicial district of the state is represented on the board;
- At-large appointees have substantial business management experience in Alaska.

The intent is to have business, railroad business, and public policy interests all on the board. With this mix, it is possible for the board to make wise railroad business decisions, but with the leavening provided by broad Alaska public policy perspectives.

Operations The board has the authority to hire a professional, chief executive officer outside the ranks of the state personnel system and political supporters, or even outside of Alaska itself. Pay and other contract terms are negotiated according to professional standards in the industry. The CEO serves at the pleasure of the board.

All other members of the management team are hired according to the judgment and the needs of the CEO and the board. Performance is measured on merit, not longevity or classification. Railroad managers are paid at industry standards, out of the Railroad's own revenues.

The Railroad has had two CEOs under state ownership: Frank Turpin, who came to the Railroad after extensive upper-level management experience in the oil industry, and Robert Hatfield, a professional railroad executive.

Mr. Hatfield recently accepted a similar position with a railroad Outside. The board is conducting a national search for a replacement.

Labor The labor force at the Alaska Railroad consists of 470 full-time workers (seasonal employees bring the total to around 600 in the summer). Most are represented by one of five labor unions.

In 1996 the Railroad completed negotiations with all five unions and long-term contracts are in place. Over time, the unions have demonstrated a willingness and ability to work cooperatively with management on contract measures that ensure the Railroad's safety, service objectives, and profitability.

The Legislature and the state treasury make no contributions to Railroad payroll, benefit packages, or retirement and pension programs.

Railroaders *are not* part of the public employee personnel system or the state public employee bargaining units.

Railroaders *are not* part of the state retirement and benefits system.

BUSINESS

Profit The Alaska Railroad earned more than \$8 million in 1996, the line's second straight year of record profit. Current projections estimate a 1997 profit of \$7.3 million.

In 12 years under state ownership, the Railroad has earned a profit nine times. The only years in which it lost money were 1986 (primarily due to

a weak economy in the state overall, plus costs incurred after serious Southcentral floods that wiped out bridges and washed out or weakened the roadbed), and 1993-4, during a scheduled management restructuring. The restructuring, which resulted in the elimination of a number of middle management positions, also resulted in one-time costs related to severance pay and other related matters.

Financially healthy In addition to the profits posted the last two years, other indicators further buttress the Railroad's financial good standing:

- Increase in cash balances for the last three years;
- Decrease in current liabilities due to improved cash flow;
- No short-term borrowing in 1996;
- Significant reductions in long-term debt in 1996, with more than half of the long-term debt scheduled to be paid off in 1997;
- Improved equity position through improved earnings;
- Significant increases in fixed assets.

The Railroad's accounting is done in accordance with accepted accounting principles and railroad industry practices. KPMG Peat Marwick audits the Railroad's financial records.

Self-sustaining By law, the Railroad's profits are retained by the line and reinvested in capital improvements, maintenance, and other business needs.

Because the Railroad — like other rail lines — is a capital-intensive business (locomotives, roadbed maintenance and repair, and other asset

maintenance), the Legislature specifically allocated operating profits to the Railroad so that it could be maintained without state subsidy.

The profits generated by money-making aspects of the business (real estate, freight, and contract passenger car pulls) allow the Railroad to pay for operations that are important to Alaskans, but that lose money.

Under current law, the Railroad may request an appropriation from the Legislature to subsidize services that do not pay for themselves. **The Railroad has never asked for or received subsidies, relying instead on its profits to sustain services that don't support themselves.**

Access to capital The Railroad is a public/private hybrid, which gives the corporation a variety of options for both operating and capital loans. In addition to work with lending institutions directly on traditional business financing, the Railroad has options to issue bonds (with Legislative approval) and seek direct appropriations (which it has not chosen to do).

As a public entity, it also has the benefit of access to tax-exempt financial instruments.

Freight The health of the Railroad mirrors the health of the Alaska economy. Fully 75 percent of the Railroad's business is in hauling freight such as gravel, oilfield supplies and chemicals, groceries and consumer goods (linked to the Railroad's barge connections to Seattle).

- A third of the Railroad's freight revenue comes from hauling MAPCO Alaska petroleum products from North Pole to Anchorage under a 20-year contract that expires in 2013;
- The Railroad hauls Usibelli coal from Healy to Fairbanks for heat and

power generation, as well as coal exported from Seward to Korea under a contract that expires in 1998.

Passenger service About 15 percent of the Railroad's income comes from passenger services, primarily tourism-related pull contracts and seasonal service. In addition to the contract pulls for Holland America and Princess Tours, the Railroad operates seasonal general passenger service to Fairbanks and Seward.

The Railroad is adding Anchorage-Whittier service this summer, working in tandem with the day cruise tour boat businesses that operate out of Whittier.

The Railroad also provides year-round service for Whittier, using the shuttle system from Portage, and for roadless areas north of Talkeetna. The Hurricane Turn and Anchorage-Fairbanks Local (winter) are the only flag-stop services in the country, providing access and freight hauling for individuals and families along the line to the Interior.

Real estate While accounting for only 7 percent of total Railroad annual revenues, **on a percentage basis, real estate contributes more to net income — literally, the bottom line — than rail operations do.** The simple explanation is that real estate leases do not carry the same capital-intensive maintenance and repair costs as rail operations do.

Because of its contribution to the bottom line, real estate revenue from the 36,000 acres of land owned by the Railroad is a critical piece of the corporation's overall health. It is difficult to envision any owner — public or private — able to earn a profit and provide the full range of services now provided by the Railroad without real estate revenues.

Fair-market-value leases on Railroad land along the line provide the bulk of the real estate revenue, along with revenue generated by the Whittier and Seward docks, and various permits.

SAFETY, MAINTENANCE, ENVIRONMENT

The Railroad's programs in these areas are a mix of solid, standard industrial practice, and initiatives generated by specific public or community concern.

Safety Safety for employees, customers, and neighbors of the Railroad is the line's principal operating priority. The Railroad's health and safety manager is the only company employee, other than the vice presidents, who reports directly to the Chief Executive Officer.

The Railroad has a wide variety of on-going, high-priority safety, training and education programs for employees.

The Railroad conducts a variety of programs — some of them supported by employees on their own time — to educate people about safety hazards such as walking or snowmachining on the tracks, failing to pay attention at crossings, and other potential hazards.

Well maintained We believe the Railroad's assets and roadbed are in better shape than they were at transfer, largely due to almost \$100 million in maintenance work and capital improvement under state ownership.

The Railroad spends \$11 million a year on maintenance of 660 miles of track, 192 bridges, 75 crossing signals, the roadbed, and other assets. An

additional \$9 million is invested in maintenance of the cars and locomotives. Almost half of the Railroad's full-time workforce is primarily involved in maintenance and repair.

This \$100 million investment has come at no cost to the general fund and has required no state appropriations from the Legislature.

This money has come from the line's operating revenues.

The Railroad is maintained above and beyond Federal Railroad Administration requirements. And because the Railroad carries passengers as well as freight, the entire line is maintained to the higher, passenger-grade safety and operations standards.

Safety and maintenance are directly linked. Yearly improvements include:

- Installation of 40,000 ties;
- Replacement of 20,000 linear feet of mainline rail;
- Place 60,000 cubic yards of ballast (gravel)
- Surface 150-200 miles of mainline track
- Conduct \$1.2 million in repairs and upgrades to bridges.

Cleaner Under state ownership, the Railroad is seeking out and meeting higher standards of environmental protection, compliance, and efficiency.

The Railroad has removed tanks and soil at 60 former underground storage sites, voluntarily limits and controls air emissions in Anchorage, and does not use herbicides to control vegetation — a rarity in the industry. **This is in direct response to public concerns.**

Much of the post-1989 federal and state oil spill response regulation does

not apply to railroads. Nonetheless, the Alaska Railroad has upgraded its spill response capabilities with response vans in Anchorage and Fairbanks, and with 12 caches of equipment and material along the line. Twenty-five key employees are trained in spill response organization and techniques — not just for oil and refined products, but in hazardous materials as well.

The Railroad also has an aggressive set of waste management and reduction policies intended to eliminate certain additions to the waste stream, and to reuse materials whenever possible. For example, used ties are chipped and shipped to utility systems in Fairbanks to generate power.

Outreach and involvement While the Railroad has consistently maintained community partnerships and sponsorships through donations of cash and tickets, Railroad Week activities, and other outreach efforts, we believe that communication and outreach is an area in which the Alaska Railroad can use improvement.

Particularly, the line's managers and board need to make a stronger and more consistent effort to keep the Legislature informed, as well as work with community leaders and local governments.

FIVE-YEAR STRATEGIC OUTLOOK

Another profit for 1997 Current projections suggest that 1997 net income will be \$7.3 million. This is a conservative figure that assumes freight revenue and expenses to be similar to 1996, but that passenger service will increase with the addition of new service to Whittier. Increases in leasing and permitting activities will increase real estate revenues by

approximately \$500,000.

New service to Whittier and Girdwood In response to the growth of the day cruise tour business in Prince William Sound, the Railroad is adding daily roundtrip service to Whittier from Anchorage. While the current Whittier Shuttle is safe and dependable, the new service is targeted more for visitor industry needs and demands, and will complement the existing service.

Passenger depots in Fairbanks, Denali Park, Talkeetna, Anchorage, Girdwood and Seward will be upgraded, replaced, or added.

New locomotive fleet The Railroad will phase out its older locomotives over the next few years, resulting in cleaner, more cost-effective, and more efficient service. Newer, more advanced, more powerful engines will allow us to use less fuel, have fewer locomotives, and reduce locomotive maintenance expenses.

The Railroad will use conventional business financing — not legislative appropriations — to acquire this new technology.

Systematic reduction of the Railroad's long-term debt over the last few years (including 1997), set the stage for the Railroad's ability to make this new investment.

Traffic management and communication upgrades A series of technology-based upgrades to the traffic control and separation system will improve safety, reduce operating costs, and more effectively manage train movement.

This year, the Railroad will also begin working with the State of Alaska to

upgrade the Parks Highway microwave link from analog to digital.

Now barge service The Railroad's current contract for rail-barge service between Alaska and Seattle expires next year. After extensive review of proposals, the Railroad has selected a company that will build new barges, use new technology, move more freight in the same time, with fewer sets of equipment.

Port and dock facilities Both Whittier and Seward are targeted for significant improvements in the dock and port facilities to meet community needs and growth of the visitor industry.

Near-term rail expansion Three opportunities for expansion of the Alaska Railroad are developing:

- Extending a line from downtown to the Anchorage International Airport would eliminate bus transfers of visitors, providing better service for passengers and for major contractors;
- Adding a spur into Girdwood and the Alyeska Prince resort would serve the expanding tourist destination opportunities there;
- Development of coal deposits at Sutton would be enhanced by extension of the line from Palmer to Wishbone Hill.

Long-term rail expansion Three long-term opportunities for expansion are developing:

- Access to Kantishna via rail would cost more up-front than a road, but would likely be a better alternative from the standpoint of the

environment and park management goals;

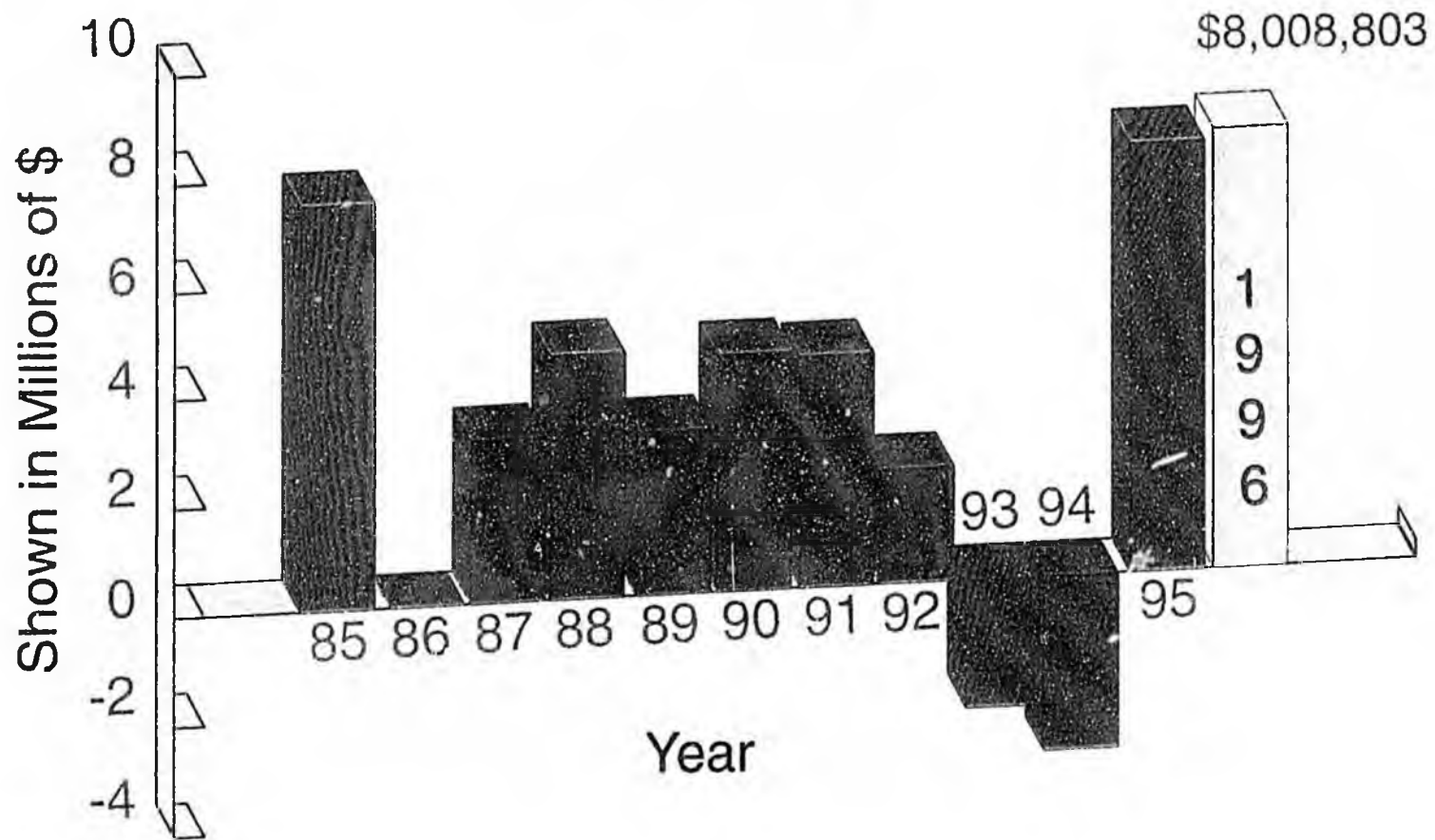
- Partnerships with mining interests could lead to expansion from Nenana to the Northwest Arctic;
- A rail link from Fairbanks to the pipeline corridor during construction and operation of a North Slope natural gas pipeline is an attractive expansion option from the Railroad's standpoint.

In all cases, expansion will occur when market conditions will support it, when communities and other public interests have their concerns met, and when revenue from operations will support the expanded line.

The Alaska Railroad's status positions the line to play a key role in the development agreements with both business and public agencies, gain access to public and private financing, and be responsive to public and legislative concerns.

Alaska Railroad Corporation

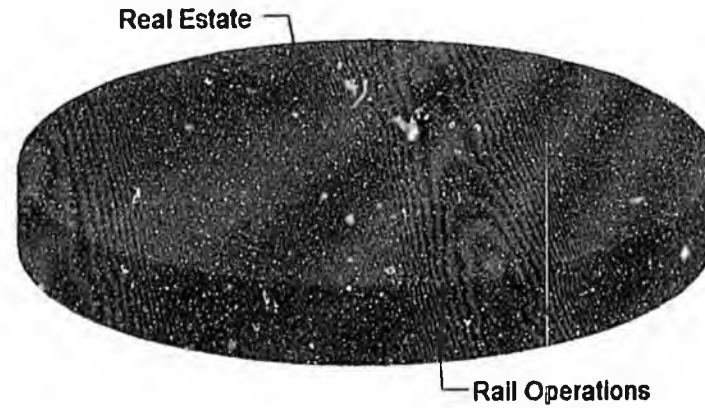
Annual Profit



Un-audited

Rail Operations vs Real Estate

Revenue



Source of Contribution to Net Income

