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LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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

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

MEMORANDUM

January 20, 1997

SUBJECT: Sectional Summary of SB 42; 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 otherwise acquired for railroad purposes. (SB 42)

TO: Representative Terry Martin
Attn: Chris Knight

FROM: George Utermohle *GU*
Legislative Counsel

You have requested a sectional summary of SB 42; 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 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

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 20, 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
97-021.jdr

Senator Randy Phillips
Chairman
Rep. Terry Martin
Vice-Chairman
Sen. Al Adams
Sen. Dave Donley
Sen. Rick Halford
Sen. Drue Pearce
Sen. John Torgerson
Rep. Con Bunde
Rep. Eric Croft
Rep. Mark Hanley
Rep. Jeanette James
Rep. Gene Therriault

State of Alaska



Legislative Budget and Audit Committee

Session
Rm 103
State Capitol
Juneau, AK 99801
(907) 465-4949

Interim
P.O. Box 142
Eagle River, AK 99577
(907) 694-4949

Sponsor Statement

SB 42

"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 an 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).

Senate Bill 42 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 Senate Bill 42.

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 SB 42 will strengthen the financial integrity of the Alaska Railroad Corporation by securing sound procurement practices, strong 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 SB 42, 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.

SB 42 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, SB 42 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. SB 42 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.

ALASKA RAILROAD CORPORATION

P.O. Box 107500, Anchorage, Alaska, 99510

FACSIMILE COVER SHEETRECEIVED
MAR 25 1997
Ans'd 1:50pm

TO: The Honorable Lyda Green
Alaska State Legislature

FROM: Bill Sheffield
Chairman, ARRC Board of Directors

Executive Offices

DATE: March 25, 1997

No. of Pages (including cover sheet) 23

If you have any questions or problems with transmittal, please call (907)265-2414.

Our FAX number is (907) 258-1456

MESSAGE:**Confidentiality Notice**

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Our phone number is (907) 265-2403. Our fax number is (907) 258-1456.

Major provisions of the sale

- \$22.3 million cash
- \$10.9 in working capital replaced
- 38,000 acres to State of Alaska
- If sold within 10 years, U.S. gets share
- Revenues must be held by Railroad for Railroad purposes

These are some of the major points about the sale and transfer:

The last two points don't usually get a lot of attention. The U.S. government didn't just sell the asset and forget about it. Maintaining the line and maintaining its value -- not just economically, but as a usable transportation corridor -- were considered important enough to write them into the agreement with the state.

Major objectives of State

- Profitable and self-sustaining
- Run by professionals, like a business
- Spur development
- Continue public transportation needs
- Expansion that makes good business sense
- Alaska controlled

Spur to development

We're helping other businesses grow in Alaska.

The next slides show some of the work we're doing today --

-- partnerships with MAPCO, with Usibelli coal. Also our gravel operations and barge service from the Lower 48. And our passenger ridership just keeps growing with Alaska tourism.

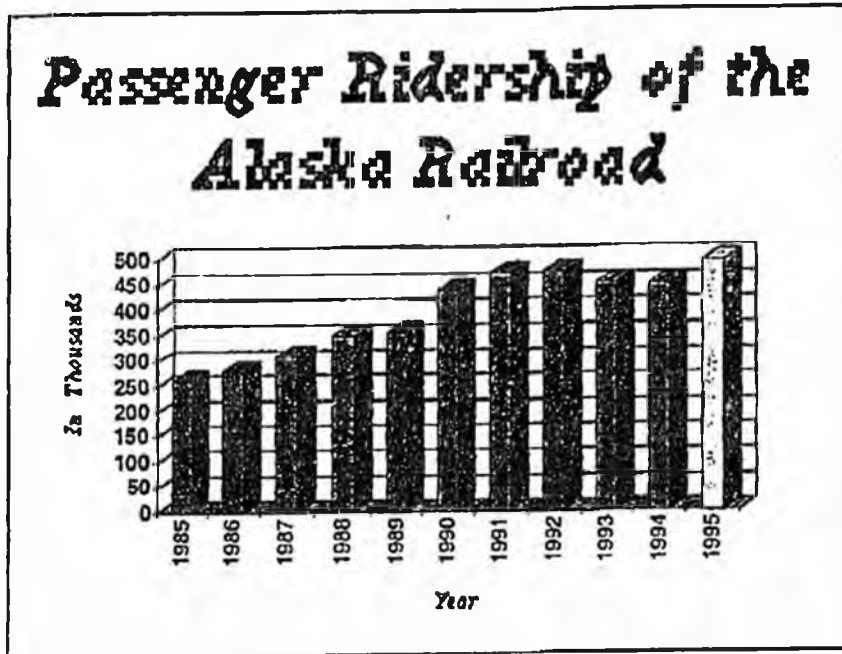
Performance: 1985 to 1996

- More than \$8 million profit in 1996
- Record profits last two years
- Continued projected growth
- Profitable 9 of 12 years
- Fully audited by KPMG Peat Marwick
- No state operating or maintenance subsidies
- No federal subsidies to bottom line

This is a real success story. No funny numbers like they use in the state budget either. These are audited numbers from one of the Big Eight firms.

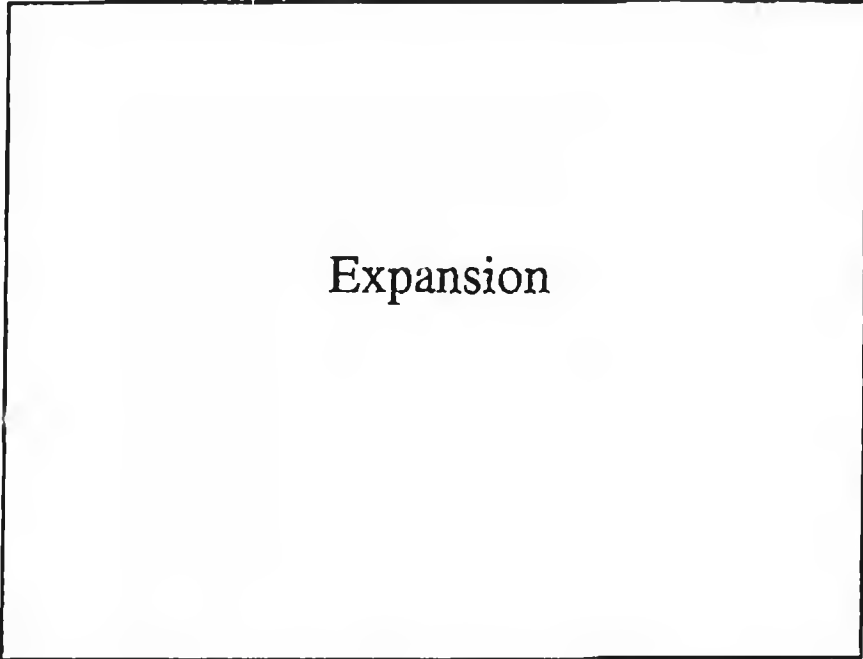
Two notes on the last couple of points:

- A few years ago the Legislature gave the Railroad ~~8~~⁹ million dollars to be used to buy coal cars for the Wishbone Hill project if it develops. We haven't used that money and haven't added it to our revenue figures. It's invested and earning money.
- Also, we were able to qualify for a federal grant available to passenger railroads around the country. We got \$10 million dollars in 1996. But it does not appear on the balance sheet as revenue. If it did, we would have earned \$18 million, not \$8 million.



Rising passenger numbers, mostly from tourism growth.

People ask us about local property taxes and such. We're exempt from those taxes for a number of reasons, mostly due to our role and status as a public transportation corridor. But keep in mind that we also plow our own snow, fix our own roadbed, our own bridges. We carry the entire cost of maintaining that asset.



Expansion

Expansion has been a hot issue for some people. Let's talk about it.

Future Projects

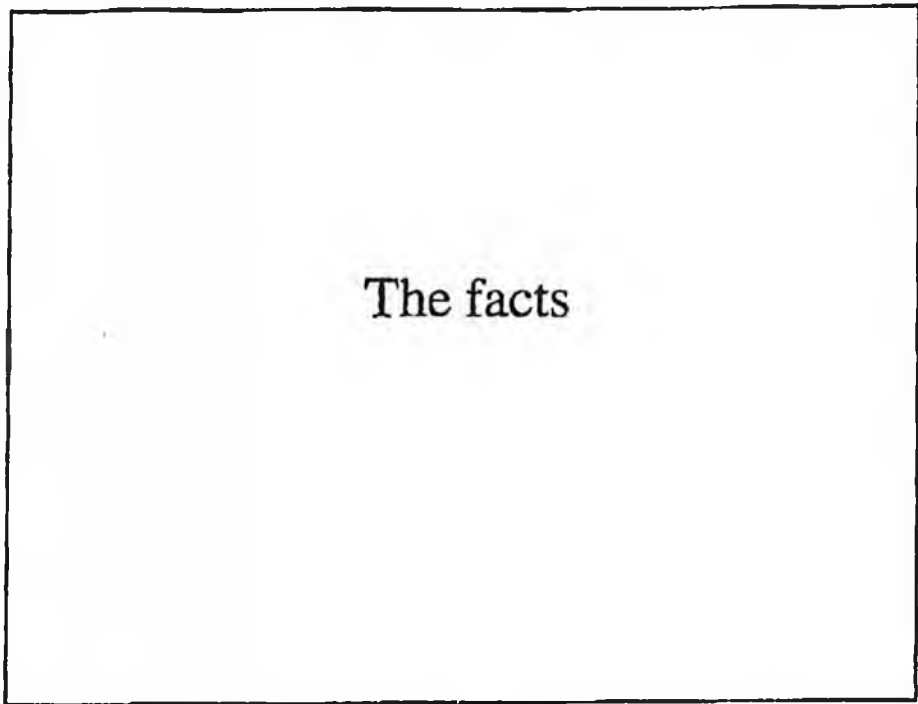
- *Girdwood Spur—steam engine and new platform*
- *Whittier development*
 - *increase size of small boat harbor*
 - *rehabilitate shipping dock*
 - *planning for vehicular traffic through tunnels*
 - *coordination with sightseeing companies*
- *Major renovation of Seward docking facilities*
- *The Anchorage International Airport Spur*
- *Chena River development*

Take a look at the kinds of things we're doing.

Business development. This is development that has a reason, and a revenue source. It's how you run your own business.

A lot of people talk about running a railroad to the Yukon or to Canada.

It's a great idea, but you have to have something to do -- something to pay for it -- once you get there. And remember it would cost you about \$2 million a mile to expand the Railroad. Two million a mile. Pencil it out and you'll see that water transportation from Seattle is still cheaper than paying off the line to Canada.



The facts

Now that you have a sense of how the Railroad is conducting its business, let's look at the changes some people are recommending.

Results under state control

- Consistent profit
- No state subsidies
- Professionally run
- Private sector-style management
- No state system employees
- Solid business partner

Take a look at the situation right now.

HB55: Executive Budget Act

- Add new layer of budget requirements
- Break up natural business year
- Legislative approval for business decisions
- Restrict ability to respond to customers
- Limit ability to make long-term contracts
- Expose competitive private business information

But here's what one of the bills would do. This is the bill being sold as good government.

Objectives vs. HB55

- Profit
- Self-sustaining
- Professionally run
- Spur development
- Adds costs
- Threatens profitability
- Adds politics
- Limits it

Now let's stack it up against what the original objectives were.

There are several bad fits.

SB42-- Real estate to DNR

- Takes land out of business environment, and puts into state land bureaucracy
- Puts land status in limbo for three months at least
- Adds costs for state budget at DNR
- Cuts off major contributor to Railroad's bottom line

Here's the other bill. This would take away state Railroad land and put it under the state Department of Natural Resources.

The bill is very unclear about what land would go where, and who would hold title for 90 days after passage.

Objectives vs. SB⁴²

- Profitable
- Self-sustaining
- Spur to development
- Professionally run
- Cripples bottom line
- Cuts off revenue
- More bureaucracy
- Bureaucrats, not business people
- Devalues the asset

And like the other bill, this one seems to conflict with fundamental objectives for owning the Railroad.

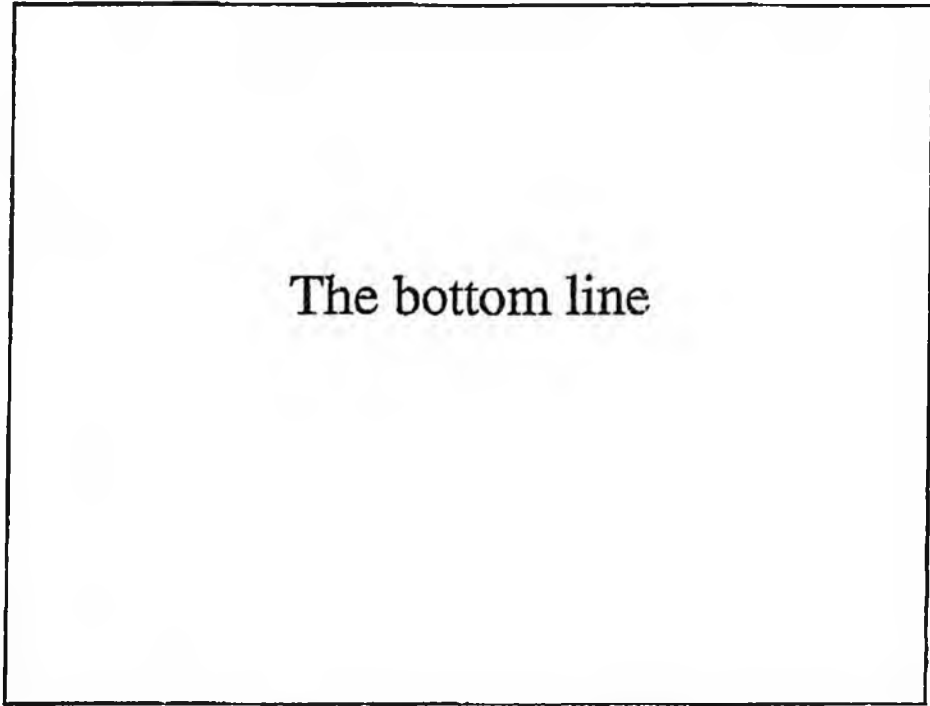
More bureaucracy, not less. A government outlook, not a business outlook. Cuts off revenue the Railroad needs to be self-sustaining.

And if you're planning to sell the Railroad, it just devalues the asset. No one is going to pay market value for a Railroad that can't generate real profits.

Objectives vs. sale

- Alaska control
- Spur to development
- Public purposes
- No
- Only selectively
- No
- Possible federal intervention

And as long as we're talking about selling the Railroad, take a look at how that would stack up against our objectives in the state.



Don't fix what isn't broken

- The Railroad makes money
- The Railroad takes no state subsidies
- The Railroad is professionally run
- The Railroad is a good business partner
- The Railroad serves vital public purposes
- The Railroad has access to capital
- The Railroad is Alaskan

These are the messages I want to leave with you:

The future of the Railroad is bright. We should be held up as an example of how government can run like a business, not a target for misguided political meddling.

Let's continue that success, and help the Railroad continue to help Alaska grow -- just as it has for more than 80 years.

	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)	(\$1,304)	(\$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", written over the "FROM" line of the memorandum.

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. Itcs.).....	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 612 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 1036(c) and 1036(d)(1)(B) of the Intermodal Surface Transportation Efficiency Act of 1991, including planning and environmental analyses, \$2,855,000, 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 : or the Federal Railroad Act 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 NATION.

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 shall be for capital improvement before July 1, 1997: Provided appropriated shall be used vehicles or for the hire employee, other than the the lease of passenger motor while in official travel status

FEDERAL TRUST

ADMINISTRATION

For necessary administrative Administration's program: United States Code, \$41,460,000

F

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 49 U.S.C. 5336(d): Providing assistance provided areas of less than 200,000 five percent of the amount eligible to receive under

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 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 F& with Amtrak relating to the Davisville and Central Fall freight operations.

NATIONAL MAGNETIC LEVITATION PROTOTYPE DEVELOPMENT

(LIMITATION ON OBLIGATIONS)

(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.

GRANTS TO THE NATIONAL

INCLUDE

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.

To enable the Secretary the National Railroad P U.S.C. 24104, \$635,000,00 of which \$305,000,000 shu 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 fur 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 :

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 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.

FEDERAL T

ADMI

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

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.

For necessary expens 5311, and 5336, to rema *Provided*, That no more shall be available for t the funds provided und than \$400,000,000 may

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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.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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

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

MEMORANDUM

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 99501
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:

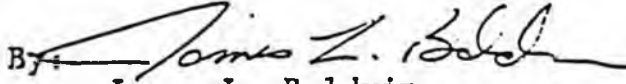
ALASKA HOUSING FINANCE CORPORATION. The Alaska Housing Finance Corporation is a public corporation and government instrumentality within the Department of Revenue, but having a legal existence independent of and separate from the state. The corporation may not be terminated as long as it has bonds, notes 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/pjg

MEMORANDUM

State of Alaska

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

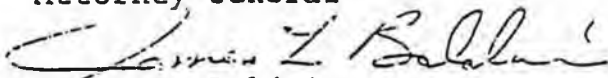
DATE: May 26, 1984

FILE NO: 366-575-84

TELEPHONE NO: 465-3600

FROM: Norman C. Gersuch
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.

JLB/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.

**Municipality
of
Anchorage**



P.O. Box 100650
Anchorage, Alaska 99510-0650
Telephone: (907) 343-4311
Home & Fax: (907) 274-2271
Voicemail: (907) 343-4112
E-Mail: 70650.3426@compuserve.com

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, 1966 - HB 56

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 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 42.40.010)

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 employer.. 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.

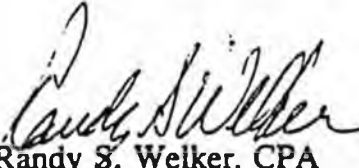
We have also reviewed ARRC's position that the use of a lobbyist does not violate the ban on political activities found in Alaska Statute 42.40.705. In light of ARRC's comments, we continue to emphasize the need for clear guidelines as to what constitutes permissible "communication" with the legislature 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</u> <u>Departed</u>	<u>Destination</u>	<u>Date</u> <u>Returned</u>	<u>Purpose</u>	<u>Transportation</u> <u>Costs</u>	<u>Meals/Lodging</u>	<u>Other</u>	<u>Entertainment</u> <u>&/or Business</u> <u>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

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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 CD 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 Hatfield	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 STATE LEGISLATURE

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DIVISION OF LEGISLATIVE AUDIT

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 Vancouver, British Columbia	03/17/94	Speak at "The Alaskans Convention" Meet with Canadian National regarding barge contract	1,356	186	58	-0-	1,600
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	Suneel 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	14,820
							FY 94 Total	\$34,212