

**HB**

**320**

**HFIN**

**FILE**

(11)

# HOUSE COMMITTEE REPORT

Date Referred to Committee: March 29, 2000

FURTHER REFERRALS:

Date of Committee Action: 4/7/00

The FINANCE Committee considered:

HB 320

HOUSE BILL NO. 320

APPROVE AK RAILROAD GETTING WHITTIER DOCK

"An Act approving the application for and acceptance of a grant of certain federal land by the Alaska Railroad Corporation; approving the conveyance of the entire interest in the Whittier DeLong Dock and associated uplands, tidelands, and submerged lands by the Alaska Railroad Corporation; relating to use and disposition of the Whittier DeLong Dock and associated land; and providing for an effective date."

recommends it be replaced with the following committee substitute CS HB 320 (Fin)  the same title  a new title

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

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

ATTACHES NEW FISCAL NOTE(S): (Dept) \_\_\_\_\_

APPROVES PREVIOUS: (Dept/Date) \_\_\_\_\_

fiscal note(s) \_\_\_\_\_

fiscal note(s) \_\_\_\_\_

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

zero fiscal note(s) House Trans/CEJ  
3-29-00

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<u>Tom Throckmold</u> Throckmold	X			
<u>Wm Mulder</u> Mulder	✓			
<u>Von Bunde</u> Bunde	✓			
<u>Wm Gusterman</u> Gusterman	X			
<u>Ben Gussendorf</u> Gussendorf	X			
<u>W.R. Williams</u> Williams	X			
<u>Mark Phillip</u> Phillip	✓			
<u>Fred Davis</u> Davis	X			

CHAIR'S SIGNATURE Tom Throckmold

Tom Throckmold

FISCAL NOTE

NO: 1

Bill Version: CSHB 320 (TRA)

(H) Publish Date: 3/29/00

STATE OF ALASKA  
2000 LEGISLATIVE SESSION

Revision Date: \_\_\_\_\_  
 Title: Approve AK Railroad Getting Whittier Dock  
 Sponsor: Representative Harris  
 Requester: House Transportation

Dept. Affected DCED  
 BRU Alaska Railroad Corporation  
 Component \_\_\_\_\_  
 Component Serial No. \_\_\_\_\_

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 01	FY 02	FY 03	FY 04	FY 05	FY 06
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES [ ]						
------------------------	--	--	--	--	--	--

FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1091 Designated Program Receipts						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY00) cost: \_\_\_\_\_

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Prepared by Kevin Hand

Phone 465-4939

Representative Halcro, Chair - House Transportation



Phone \_\_\_\_\_

Date 3/28/00

Adopted

4/6/00

AMENDMENT

Offered in House Finance

by Rep. Bunde

To: CS HB 320 (TRA)

Page 2, line 20

After "Whittier."

Insert "Neither the corporation nor the city of Whittier may grant any special right, privilege, or preference to a third party to provide management services at the dock. A contract for management of the dock by a third party shall be awarded only under competitive procurement procedures established by both parties in accordance with applicable state law."

(11)

# HOUSE COMMITTEE REPORT

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HB 320

HOUSE BILL NO. 320

APPROVE AK RAILROAD GETTING WHITTIER DOCK

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

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fiscal note(s) \_\_\_\_\_

fiscal note(s) \_\_\_\_\_

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

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

SIGNING WITH RECOMMENDATIONS		DP	DNP	NR	AM
<i>Gene Therriault</i>	Therriault	X			
<i>Eldon Mullen</i>	Mullen	X			
<i>Bob Bunde</i>	Bunde			✓	
<i>Alan Austin</i>	Austin			X	
<i>Al N. Davis</i>	J. Davis	X			
<i>James L. Davis</i>	Quissandint			X	
<i>W.B. Williams</i>	J. Davis	X			
<i>W.B. Williams</i>	Williams	X			
<i>Paul E. Moses</i>	Moses			X	
<i>Paul Phillips</i>	Phillips	X			
<i>Paul Phillips</i>	Phillips	✓			

CHAIR'S SIGNATURE

*Gene Therriault* <sup>(7)</sup> *Eldon Mullen* <sup>(4)</sup>  
Therriault Mullen

17

w/D

AMENDMENT # 1

Offered in House Finance

by Rep. Bunde

To: CS HB 320 (TRA)

Page 2, line 20

After "Whittier."

Insert "Neither the corporation nor the city of Whittier may grant any special right, privilege, or preference to a third party to provide management services at the dock. A contract for management of the dock by a third party shall be awarded by competitive sealed bidding."

4/5/00



ALASKA STATE LEGISLATURE  
REPRESENTATIVE JOHN HARRIS  
STATE CAPITOL 110, JUNEAU, ALASKA 99801-1182 (907) 465-4859

## Sectional analysis

### Proposed CS for HB 320 – Relating to the DeLong Dock in Whittier

Sec. 1 states findings that acquisition of the dock and associated real estate would be in the best interest of the state.

Sec. 2 states the Legislature's approval for the railroad to accept the grant of land from the federal government, as required by AS 42.40.285(5), Ch. 59, SLA 1999 (SB 171 from last session).

Sec. 3 describes the use and disposition of the dock and land:

- a). gives the railroad 3 months after receiving the grant from the federal government to transfer the real estate to the City of Whittier.
- b). directs the city and railroad to enter into reciprocal leases and a management agreement within 6 months; if not, the terms of subsections (c) - (h) apply.
- c). directs the city to subdivide the parcel along the centerline of the dock and grant a lease of the land underlying the northern ½ of the dock to the railroad.
- d). directs the railroad to lease the southern ½ of the dock to the city.
- e). describes terms to be included in the leases, including 20 year term; \$1 rent per year; access by each entity to the dock; neither entity is required to indemnify the other for its actions or those of 3<sup>rd</sup> parties; each entity may assign or sublease its interests; both entities are required to work in good faith to resolve disputes and collaborate on managing the dock as a single entity for economic development; leases may not be terminated for breach of lease; and leases may be amended by mutual agreement.
- f). requires the city and railroad to work in good faith to execute the terms and conditions set out in this section.
- g). requires an interim agreement until the final terms under this section are completed.
- h). requires that during the five years after the property is conveyed by the federal government, it is to be used for economic development of Whittier and PWS.

Sec. 4 provides that if the property transfers to the State of Alaska or an agency of the state other than the Alaska Railroad, it is to be transferred to the City of Whittier.

Sec. 5 states the Legislature's approval for the railroad to transfer the real estate to the City of Whittier.

Sec. 6 provides an immediate effective date.

# 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


State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

## MEMORANDUM

April 5, 2000

**SUBJECT:** CSHB 320(TRA): Right of first refusal in Management Terms for DeLong Dock (Work Order No. 21-LS1165\K)

**TO:** Senator Loren Leman  
Attn: Mike Pauley

**FROM:**  Theresa Bannister  
Legislative Counsel

You have asked whether the right of first refusal in the Management provision of the Management Terms for DeLong Dock is consistent with the Alaska Railroad Corporation's procurement procedures and the state procurement code, especially the provisions in AS 36.30.015(e) and AS 36.30.170(b). It is my understanding that you want this reviewed as it applies to the Alaska Railroad Corporation (ARRC).

1. Consistency with the state procurement code (AS 36.30) generally. Under AS 36.30.015, the Alaska Railroad Corporation is required to adopt procurement procedures that are substantially equivalent to the procedures prescribed in the procurement code (AS 36.30). Therefore, the ARRC is not required to comply with the code itself, except to the extent otherwise required by AS 36.30.015. AS 36.30.015 does include certain other specific requirements that the ARRC must comply with.

2. Consistency with requirement to comply with AS 36.30.170(b). AS 36.30.015(e) requires the ARRC to comply with AS 36.30.170(b). AS 36.30.170(b) requires that certain award criteria be used when a state agency procures a contract by solicited bids, but the language of AS 36.30.170(b) does not require a state agency to procure services by bids. Therefore, this requirement does not appear to require the ARRC to use bidding to procure the management services discussed in the Management provision. So the Management provision does not appear to violate this requirement.

3. Consistency with competitive sealed bidding or proposal requirements in AS 36.30.015(e). AS 36.30.015(e) also contains a requirement that the ARRC use competitive sealed bidding or competitive sealed proposals when procuring services for construction work that the Department of Transportation and Public Facilities authorizes the ARRC to perform. It is my understanding that the management services under inspection in this situation are for operation of the dock, not for construction, so this particular provision does not appear to apply to this situation.

Senator Loren Lemman

April 5, 2000

Page 2

4. Consistency with ARRC procurement procedures. The right of first refusal would be characterized as a sole source procurement by ARRC under an agreement with the City of Whittier. Under the 1998 Revised Procurement Rules for the ARRC ("Rules"), the single source procurement section of the Rules occurs at Rule 1400.1 and appears to be substantially equivalent to AS 36.30.300 (sole source procurements) of the state procurement code and 2 AAC 12.410-415 (the procurement regulations specifically relating to sole source procurements), although the regulations go into more procedural detail.

Rule 1400.1 allows a sole source procurement to be used when the procurement officer determines in writing that (1) it is not practicable to award a contract by competitive sealed bidding under Rule 1200, competitive sealed proposals under Rule 1300, or limited competition under Rule 1400.2; and (2) award of the contract under this section is in ARRC's best interest. The section also requires the ARRC to submit written evidence to support a request for a single source procurement, and the procurement officer may also require the submission of cost or pricing data.

If the ARRC meets these requirements with this particular procurement of management services, it appears that it could use the right of first refusal approach contained in the Management provision. Although the section lists 11 circumstances where single source might be appropriate, these are identified as examples, so the main criteria would still apply. Since the examples span a broad variety of situations, it is not really possible to read a limitation into the main criteria from the examples given. I do not have enough information to determine whether the ARRC can meet this criteria in this situation, but the approach appears to be consistent with what is allowed by Rule 1400.1.

Finally, Rule 2000.1(b) provides that the Rules (except for Rules 1900.1 - 1900.5 relating to intergovernmental relations) do not apply to contracts between ARRC and a political subdivision of the state. Rule 1900.1 provides for the ARRC to purchase services cooperatively with a public procurement unit (here the City of Whittier) in accordance with an agreement entered into between the ARRC and the City of Whittier. Rule 1900.1 appears to be substantially equivalent to AS 36.30.700. Rule 2000.1 appears to prevent the Rules (including, but not limited to, Rules 1200.1-1200.10 relating to competitive sealed bidding and 1400.1 relating to sole source procurement) from applying to the ARRC's agreement with the City of Whittier, but Rule 2000.1 would not prevent the Rules from applying to the procurement of the management services contract from a third party, since Rule 2000.1(b) applies by its terms only to agreements between ARRC and a state agency or political subdivision, or other governments.

If I may be of further assistance, please advise.

TLB:pl  
00-124.plm

**Memorandum of Understanding  
For  
Long Term Use of the DeLong Dock  
Between the Alaska Railroad Corporation  
and the City of Whittier**

**1. General Understanding**

The Alaska Railroad Corporation (ARRC) and the City of Whittier are interested in working together to have the U.S. Government transfer ownership of the DeLong Dock and its surrounding tidelands to the ARRC. When the ARRC receives ownership of the DeLong Dock Facility (dock) and the Tract W Tidelands, ARRC will retain ownership of the DeLong Dock facility and transfer ownership of the Tract W Tidelands to the City of Whittier. In the event the Tract W Tidelands are transferred to the State of Alaska, Department of Natural Resources, the ARRC will support the City of Whittier with the Department of Natural Resources in transferring ownership of the tidelands to the City of Whittier. The described properties are more particularly shown as the U.S. Army DeLong Dock on the map attached to this Memorandum of Understanding (MOU) as Attachment A, Long Term Use, DeLong Dock, Tract W.

Both parties agree to work together and support each other with the State Legislative Officials and Departments as necessary for State approval in transferring ownership of the Tract W Tidelands to the City of Whittier and the DeLong Dock Facility to the ARRC.

The intent of this MOU is to allow the ARRC to be the lead agency for processing the request on behalf of both parties. In the interim, the ARRC will actively pursue a permit from the U.S. Army for temporary use of the properties until such time as the property disposal process is finalized as set forth in the short term MOU between the City of Whittier and the ARRC dated June 8, 1999 and attached to this MOU as Attachment B. There is an immediate need to allow the public use of the dock for fishermen loading their catch or use by day cruise operators for day excursions.

It is further understood that the City of Whittier will subdivide the tidelands within U.S. Army Tract W into Parcel 1 and Parcel 2 and execute a long term lease to the ARRC for parcel 1. The ARRC will retain ownership of the DeLong dock facility and execute a long term lease to the City of Whittier for the use of the south ½ of the dock facility. The described lease properties are more particularly shown as the Long Term Use, DeLong Dock, Tract W on the map attached to this MOU as Attachment A.

Both parties agree to work together to develop the dock facility and adjoining ground for Cruise Ship, Day Cruise, Commercial Fishing and Fish processing operations that require public use of the facilities.

## **2. Collaboration for Long Term Lease Agreements**

Both parties agree to work together to develop Long Term Lease agreements that address contractual and operational issues to allow the City of Whittier use of ½ of the Dock Facility and the ARRC use of parcel 1, Tract W tidelands. The major issues to be resolved in the separate agreement are the lease term and rate, operational control, maintenance of the dock facility, capital maintenance reserve and liability protection during the terms of the lease agreement.

The terms of these issues will be resolved in a separate operational lease agreement and do not become part of this MOU.

## **3. Historical Background**

The Alaska Railroad was constructed and operated by the U.S. Government from its inception in 1914. In the 1940's, a railroad spur to Whittier was constructed in support of military logistics during World War II. Other Federal facilities constructed in Whittier for support of the war effort included the DeLong Dock, petroleum tank farm and other buildings for housing and administration.

Then in March 1964, Alaska suffered a severe earthquake that destroyed the military tank farm facilities. After the earthquake the U.S. Army exccessed the DeLong Dock and dock ownership was then transferred to the Alaska Railroad to be used in conjunction with its freight and barge operation.

In April 1973, the U.S. Army completed construction of a new fuel facility in Whittier. The Alaska Railroad exccessed the DeLong Dock and ownership of the dock facilities was transferred back to the U.S. Army at their request, to support the off loading of fuel for the military bases in Alaska.

Those fuel facilities and the DeLong Dock are no longer needed by the military and are presently in the process of being exccessed once again by the U.S. Army.

In May 2000, the Anton Anderson tunnel into Whittier will be opened to both vehicular traffic and rail traffic. Whittier is the gateway to Prince William Sound and will become a popular water recreational location for sightseeing, boating and both recreational and commercial fishing because of its geographical location to Alaska's largest city, Anchorage.

Consequently, there will be an influx of people traveling to Whittier and demands for more public services such as parking and restroom facilities to support the recreational boating, fishing and day cruise operators. The land underlying the Army fuel facilities and the DeLong Dock can play an important role in addressing these critical needs if they can be made available for such uses. The existing fuel facilities' property can be used by the City of Whittier as a parking area in addition to providing access to other ARRC and additional properties owned by the City of Whittier.

#### 4. Collaboration

The ARRC and the City of Whittier agree to collaborate with each other in pursuit of the General Understanding, as described above. During the term of this Memorandum of Understanding (MOU) each party agrees to work together in good faith with the goal of acquiring the U.S. Army properties being excessed by the U.S. Government in Whittier, Alaska, with ARRC to be the lead agency in pursuing this goal.

Nothing in this MOU shall be deemed to establish a joint venture, partnership or formal business entity of any kind. Neither of the parties shall have any liability or obligation to the other or to any other party except as expressly provided for in this MOU. There must be written agreement of both parties regarding any modification of the intent of this MOU.

This MOA shall terminate upon the earliest of the following: (1) signing of formal documents that transfer title of the U.S. Government properties to the respective parties, or the signing of other documents that conclusively mandate the same result once wholly ministerial actions or functions are complete; (2) both parties agree in writing to terminate this MOU.

#### 5. Cost of Participation

Each party shall be solely responsible for its own costs and expenses in performing their respective obligations and/or performance under this MOU.

##### City of Whittier

By William Coumbe  
William Coumbe, Mayor

Dated 7/26/99

By Carrie L. Williams  
Carrie L. Williams, City Manager

Dated 7/26/99

##### Alaska Railroad Corporation

By Bill Sheffield  
Governor Bill Sheffield  
President & CEO

Dated 7/27/99

**ATTACHMENT B**

**Alaska Railroad Corporation and City of Whittier  
Memorandum of Understanding for Interim Use of U.S. Government Property  
Delong Dock and Tract "W"  
Whittier, Alaska**

**1) General Understanding**

There is an immediate need to allow the public use of additional docking and tideland facilities in the summer of 1999 and thereafter.

This memorandum of understanding is to govern interim use of the Delong Dock and surrounding tide lands and uplands commonly known as Tract "W" and more particularly shown on attachment "A" hereto. The purpose of this memorandum of understanding is to allow the ARRC to be the lead agency for processing the interim use permit with the US Government, Department of the Army on behalf of the ARRC and the City of Whittier and to set forth the respective rights of use of each party pending conveyance of ownership of the federally owned property by the US Government, Department of the Army.

The parties agree that during interim use Tract "W" and the Delong Dock shall be informally subdivided into Parcel 1 and Parcel 2, along the longitudinal center line of the dock, as shown on attachment "A" hereto. Upon issuance of the use permit by the Department of the Army, ARRC shall have use of parcel 1 and the City of Whittier shall have the use of Parcel 2. Each party shall be entitled to use their parcel in any lawful manner.

**2) Collaboration**

The ARRC and the City of Whittier agree to collaborate with each other in pursuit of the purposes set forth above. During the term of this Memorandum of Understanding (MOU) each party agrees to work together in good faith toward the goal of the permitted properties for a public purpose.

Nothing in this MOU shall be deemed to establish a joint venture, partnership or formal business entity of any kind. Neither of the parties shall have any liability or obligation to the other or to any other party except as expressly provided for in this MOU. There must be written agreement of both parties regarding any modification of the intent of this MOU.

This MOU shall terminate upon the earliest of the following: (1) signing of a formal document that transfers title of the U.S. Government properties. (2) both parties agree in writing to terminate this MOU.

3) Cost of Participation

Each party shall be solely responsible for its own costs and expenses in performing their respective obligations and/or performance under this MOU.

City of Whittier

Alaska Railroad Corporation

By William Coumbe  
William Coumbe, Mayor

By Bill Sheffield  
Governor Bill Sheffield  
President & CEO

Dated 6-8-79

Dated 6-8-99

By Carrie L. Williams  
Carrie L. Williams, City Manager

Dated 6/8/99

## MANAGEMENT TERMS FOR DELONG DOCK

March 20, 2000

The City of Whittier ("City") and the Alaska Railroad Corporation ("ARRC") agree that the following constitute a basic framework to establish reciprocal property leases and guidelines for developing a management agreement for the joint operation of the DeLong Dock and associated tidelands and uplands (Tract W):

1. **Terms:** The parties will execute reciprocal property leases, each for a term of not less than 20 years and with a rental rate of \$1.00 per year. An interim dock operation agreement will be developed for a term of 2 years or such longer term as may be required for completion of the long term management agreement. This interim agreement is to allow both parties use of the dock facility during the ownership transfer to the ARRC from the US Army and to allow the ARRC to finalize the Whittier Master Development Plan for ARRC properties. A long term agreement for management of the dock facility will be made for a mutually agreed term once the ARRC Master Development Plan, DeLong Dock and Tract W properties are transferred to ARRC and the City of Whittier.
2. **Management:** The dock will be managed as a single facility by a single entity. If the City and ARRC determine to use a third party for management services at the dock, the City and ARRC shall give Chugach Alaska Corporation, or a subsidiary or affiliate, the right of first refusal with respect to providing such services. Any contract for such services shall be subject to public notice and ARRC Board approval. Both the ARRC and the City shall have the right to make commitments for use of the dock, including preferential use commitments. The selected operator shall prepare and submit to each party a proposed plan of operations (either yearly or at other such interval as the parties agree) which plan must be approved by each party before being implemented.
3. **Compensation and Revenue Sharing:** The dock manager will account to the City and ARRC for revenues received from operation of the dock. Total revenues received will be divided between the parties on a prorated basis with the higher portion of the net revenues allocated to the party that initiated the contract. The amount of the proportional split is to be agreed to by both parties in the management agreement.
4. **Repair, Maintenance and Operational Expense:** Costs of maintenance, repairs and operation of the DeLong Dock shall be shared jointly by the parties in a manner to be agreed to by both parties in the management agreement. A reserve for such costs shall be established as soon as possible out of revenues received from operation of the dock. Major capital improvements shall be undertaken only as agreed to by the parties in the management agreement.
5. **Access:** The parties shall execute appropriate documentation granting or assuring adequate track access and public road access to the dock and lands beyond the dock by road.
6. **Commercial Terms:** Standard commercial provisions of the leases such as indemnification, insurance requirements, assignment, and default shall be on equal reciprocal terms.
7. **Dispute Resolution:** Both parties shall diligently work together in a good faith effort to resolve disputes. Both parties shall collaborate with each other in developing the management agreement with the goal of operating the DeLong Dock facility as a single entity for economic development purposes.

CITY OF WHITTIER

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

ALASKA RAILROAD CORPORATION

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_



Mar-29-00 10:27A REP. HARRIS  
Sent by: ARHC CORPORATE OFFICE;

907 265 2312;

907 465 3799  
Mar-28-00 2:04PM;

P.01  
Page 1/2

Page 1 of 2  
encl

**MANAGEMENT TERMS FOR DELONG DOCK  
March 20, 2000**

The City of Whittier ("City") and the Alaska Railroad Corporation ("ARRC") agree that the following constitute a basic framework to establish reciprocal property leases and guidelines for developing a management agreement for the joint operation of the DeLong Dock and associated tidelands and uplands (Tract W):

1. **Terms:** The parties will execute reciprocal property leases, each for a term of not less than 20 years and with a rental rate of \$1.00 per year. An interim dock operation agreement will be developed for a term of 2 years or such longer term as may be required for completion of the long term management agreement. This interim agreement is to allow both parties use of the dock facility during the ownership transfer to the ARRC from the US Army and to allow the ARRC to finalize the Whittier Master Development Plan for ARRC properties. A long term agreement for management of the dock facility will be made for a mutually agreed term once the ARRC Master Development Plan, DeLong Dock and Tract W properties are transferred to ARRC and the City of Whittier.

2. **Management:** The dock will be managed as a single facility by a single entity. If the City and ARRC determine to use a third party for management services at the dock, the City and ARRC shall give Chugach Alaska Corporation, or a subsidiary or affiliate, the right of first refusal with respect to providing such services. Any contract for such services shall be subject to public notice and ARRC Board approval. Both the ARRC and the City shall have the right to make commitments for use of the dock, including preferential use commitments. The selected operator shall prepare and submit to each party a proposed plan of operations (either yearly or at other such interval as the parties agree) which plan must be approved by each party before being implemented.

3. **Compensation and Revenue Sharing:** The dock manager will account to the City and ARRC for revenues received from operation of the dock. Total revenues received will be divided between the parties on a pro rata basis with the higher portion of the net revenues allocated to the party that initiated the contract. The amount of the proportional split is to be agreed to by both parties in the management agreement.

4. **Repair, Maintenance and Operational Expense:** Costs of maintenance, repairs and operation of the DeLong Dock shall be shared jointly by the parties in a manner to be agreed to by both parties in the management agreement. A reserve for such costs shall be established as soon as possible out of revenues received from operation of the dock. Major capital improvements shall be undertaken only as agreed to by the parties in the management agreement.

5. **Access:** The parties shall execute appropriate documentation granting or assuring adequate track access and public road access to the dock and lands beyond the dock by road.

6. **Commercial Terms:** Standard commercial provisions of the leases such as indemnification, insurance requirements, assignment, and default shall be on equal reciprocal terms.

7. **Dispute Resolution:** Both parties shall diligently work together in a good faith effort to resolve disputes. Both parties shall collaborate with each other in developing the management agreement with the goal of operating the DeLong Dock facility as a single entity for economic development purposes.

Post-It® Fax Note	7671	Date	3/29/00	# of pages	▶
To	Red HARRIS	From	Wendy		
Co./Dept.		Co.	ARRC		
Phone #		Phone #	265-2498		
Fax #	465-3799	Fax #			

Mar-29-00 10:27A REP: HARRIS  
SENT BY: AHRC CORPORATE OFFICE;

907 265 2312;

907 465 3799  
MAR-28-00 2:05PM;

P.02  
Page 2/2

*AMC* Management Terms For Redang Dock  
3/20/2000

*pg 2 of 2*

CITY OF WHITTIER

ALASKA RAILROAD CORPORATION

By: *Chris L. Williams*  
Its: *City Manager*  
Date: *3/29/00*

By: *Walter J. Sheffield*  
Its: *Paul C. ...*  
Date: *3/29/00*



ALASKA STATE LEGISLATURE  
REPRESENTATIVE JOHN HARRIS  
STATE CAPITOL 110, JUNEAU, ALASKA 99801-1182 (907) 465-4859

## Sponsor Statement

### HB 320 – Relating to the DeLong Dock in Whittier

The DeLong dock is a US Army fuel transfer facility nearly 700 feet long located in Whittier. Last year, the Army determined it would surplus the dock and both the Alaska Railroad and the City of Whittier expressed interest in obtaining it, with expectation that it could be valuable in helping to meet the growing demand for public services after the new Whittier tunnel opens this summer.

The US Congress approved the transfer of ownership to the Alaska Railroad last summer. During the 1999 session, in anticipation of Congressional approval, the Legislature included a provision in SB 171 that requires legislative approval of land grants to the railroad.

The purpose of HB 320 is to give approval for the railroad to receive the DeLong dock and the associated submerged lands, uplands and tidelands, which the railroad is to then transfer to the City of Whittier. HB 320 also ratifies a memorandum of understanding between the railroad and the City of Whittier, which transfers ownership of the underlying real estate to the City and which requires the two entities to enter into mutually beneficial leases of portions of the dock and real estate. That is, the City will lease land under the north half of the dock to the railroad, and the railroad will lease the south half of the dock to the City.

HB 320 also directs and authorizes the two entities to enter into a management agreement for the use of the dock.

The Alaska Railroad and the City of Whittier have been working out the details of the transfer, the memorandum of understanding and the operating agreement for nearly a year, with the results reflected in the proposed committee substitute.