

ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672

4798 HLAB HB 46 - HB 47

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BROKER AS AGENT

Alaska currently licenses two kinds of insurance producer under AS 21.27, agent and broker. The agent represents an insurance company through appointment and contract. On the other hand, the broker represents the purchaser of insurance. It is typical for an insurance producer to hold both types of license. A purchaser of insurance usually does not know, under which license a producer is acting. Most insurance producers do try to balance the interests of the purchaser of coverage and the provider of coverage, and some do this quite well. Normally this is not an issue of concern, but when a producer becomes insolvent or has misused trust account monies, the issue can be very important.

If an agent collects premium funds for an insurer, the insurer is deemed to have received those funds whether they are sent to the insurer or not. When the insurer sends notice of cancellation for nonpayment of premium, the insured need only show his cancelled check and the coverage will be reinstated.

If a broker misappropriates premium funds, and does not pay them to the insurer or intermediary, and a notice is sent by the company which has not received payment, the coverages are generally not reinstated. The Division has had two major cases of this description and a number of smaller ones, where the public has been hurt. The resolution is to provide that when a broker places coverage which can be evidenced by a binder, issuance of a policy, or some acknowledgement from the insurer or its representative, then the insurer is considered to have received those funds whether it has or not. The broker is considered to be the agent of the company for purposes of premium collection.

An additional issue, is the need to have the producer collecting funds at the initiation of the transaction, clearly state that he is acting as a broker and coverages are not bound until confirmed by an insurer, or to return the funds to the purchaser of coverage.

Section 13. (Page 8, Lines 10-22)

This Section deals with the brokers' bond. One group of persons who could be adversely impacted with "agent as broker", is the wholesale broker or general agent who is in between the producing broker and the insurance company. It is possible that they might bear the financial brunt of this solution. Relief is offered by allowing them to access to the brokers' bond.

Section 15. (Page 8, Lines 27-29; Page 9, Line 1)

This Section makes clear the fact that the broker cannot bind an insurer.

Section 16. (Page 9, Lines 2-14)

This Section establishes the concept of "broker as agent for purposes of premium collection." (d) newly provides that a broker may not knowingly accept payment for coverage until that coverage is authorized by an insurer.

PRODUCER FINANCIAL / FIDUCIARY ACCOUNTS

The Division has been working with the Alaska Association of Independent Insurance Agents and Brokers concerning financial problems with some insurance agents and brokers and their handling of insurance premium monies. To this end, we have aided in developing some clarifications to those sections of the insurance code.

Agents and brokers are required to receive insurance premium monies in a fiduciary capacity. Unfortunately, the first sign that all is not well with an agents' or brokers' fiduciary account is when it is too late. One good indicator of a developing problem would be good accounting records accessible by the Division, which are required with this bill.

The Division has need of tools that can be used to resolve fiduciary and financial difficulties at an earlier point in time. One tool is the ability to review financial summaries or detail, such as trial balance, income statement, journal detail, etc. in a Division of Insurance office for examination when requested. These documents would be confidential.

The clarifications addressed in this issue coupled with the Broker as Agent resolution should maximize protection to insurance purchasers.

Section 19. (Page 9, Lines 27-29; Page 10, Lines 1-9)

This is a new requirement specifically requiring an agent or broker to have accounting and financial records and to maintain them in accordance with generally accepted accounting principles. These records are available for review and are confidential when in the possession of the director.

Section 20. (Page 10, Lines 10-21)

§(b) contains the requirement for a premium fiduciary account. The change clarifies the fact that other funds can not be commingled with

it except as specifically permitted in Section 21.

Section 21. (Page 10, Lines 22-29; Page 11, Lines 1-10)

§(d) permits a limited commingling of nonpremium funds in the fiduciary account for specific premium related purposes. Accounting for nonpremium funds is required.

§(e) makes clear that the premium funds required to be in the fiduciary account can not be used or represented to be asset funds. Funds optionally permitted to be in the fiduciary account, such as reserve funds are an asset of the agent or broker.

§(f) introduces a definition for "fiduciary account."

PRO RATA ON CANCELLATIONS

There are two basic methods of computing return premium on a cancelled policy. In industry parlance, these are referred to as short rate and pro rata. Short rate is used on a cancellation initiated by the insured and has a built-in penalty. Pro rata is used on cancellations initiated by the insurance company and the earned portion of premium is proportionate to the period of coverage. The short rate method of computation is often a cause for complaint and in our view is no longer necessary. It was originally intended to reflect an expense of the insurer that was, for the most part, beyond the insurers' control. The Division has considered the elimination of short rate by regulation, but authority is vague.

Section 39. (Page 22, Lines 3-17)

This Section requires pro rata cancellation and effectively prohibits short rate cancellation.

Section 47. (Page 31, Lines 5-7)

This Section makes clear that this new requirement does not affect in-force contracts, thus sidestepping potential constitutional conflicts.

ALIEN TRUST DEPOSITS

This issue is considered the #1 priority legislative need this session and it relates to the trust fund requirements for alien surplus lines insurers wishing to business in Alaska. An alien insurer is one formed under the laws of a country other than the United States.

At the present time, AS 21.34.040(c) provides that an alien surplus lines insurer must maintain a trust fund for the benefit of policyholders in the United States in an amount not less than \$3.5 million. That \$3.5 million figure is scheduled to increase to \$5 million on June 20, 1987. This portion of the bill would eliminate this scheduled increase and reduce the trust fund requirement to \$1.5 million, the level required before June 20, 1985.

This proposal would avoid the necessity to declare as ineligible, approximately 95% of the alien surplus line companies doing business in the Alaska market. There is a great deal of concern about the reduction of available insurance markets for exposures in this state. If the current language in statute were to be enforced, many insurers who now provide valuable markets would be ineligible for use here. Alaska is out of step with the rest of the country on this issue where the norm is a deposit of \$1.5 million. This proposal does not impact the minimum capital and surplus required of alien insurers.

Section 30. (Page 15, Lines 8-29; Page 16, Lines 1-12)

The language to accomplish the change noted above appears on Page 15, Lines 21-22. Other changes are not substantive.

Section 48. (Page 31, Lines 8-9)

This Section is an immediate effective date for Section 30 only.

NURSE COVERAGE

This proposal will add nurses to the list of health care professionals who can obtain professional liability insurance from the Medical Indemnity Corporation of Alaska which was formed under AS 21.88 in 1976. This is primarily a backup action since nurses have recently been able to put together a national program that appears to resolve their availability difficulties. The Division of Insurance has no objection to this proposal.

Section 42. (Page 24, Lines 24-29; Page 25, Lines 1-29;
Page 26, Lines 1-29; Page 27, Lines 1-16)

"Nurse" is added on Page 24, Line 28; Page 25, Lines 2, 5, 13, 14, and 17; and, Page 27, Line 10.

RELOCATION OF DEFINITIONS

Definitions in the Insurance Code (Title 21) are found in AS 21.90. In addition, chapters contain definitions that in some cases have a more general application. These should be located in the general definition chapter. The changes in this case are not substantive, but merely represent relocation with one exception, the definition of "firm," which has been already discussed on Page 8-9, under Sections 10 and 43.

Section 43. (Page 27, Lines 17-29; Page 28, Lines 1-29;
Page 29, Lines 1-29; Page 30, Lines 1-17)

§(1), "adjuster" on Page 27, Lines 20-26, was formerly AS 21.27.510(a).

§(2), "agent" on Page 27, Lines 27-29 and Page 28, Lines 1-2, was formerly AS 21.27.470.

§(5), "broker" on Page 28, Lines 9-16, was formerly AS 21.27.480.

§(11), "firm" on Page 28, Lines 26-29, is new. See discussion on Page 8.

§(13), "independent adjuster" on Page 29, Lines 4-5, was formerly AS 21.27.510(b).

§(20), "solicitor" on Page 30, Lines 3-6, was formerly AS 21.27.490.

Section 44. (Page 30, Lines 18-29; Page 31, Line 1)

This Section was formerly AS 21.27.520. No substantive change.

Section 45. (Page 31, Lines 2-4)

AS 21.27.470, AS 21.27.480, AS 21.27.490, AS 21.27.510, & AS 21.27.520 are repealed as discussed in Sections 43 and 44 above.

CSHB 46 (L&C)

Offered: 3/30/87

REMOVAL OF OBSOLETE OR DUPLICATIVE PROVISIONS

The present Insurance Code was adopted in 1966. At the time of adoption, there were a number of provisions intended to prevent disruption of, then, current activities. These provisions are no longer since some 20+ years have passed and the sections are obsolete. Included in the repeal is a section that duplicates provisions of the ethics bill adopted by the Fourteenth Legislature.

Section 45. (Page 31, Lines 2-4)

AS 21.03.030, AS 21.03.040, AS 21.03.050 and AS 21.06.040 are repealed.

*condensed
version*

**CSHB 46 (L&C)
Offered: 3/30/87**

**Prepared by: Alaska Division of Insurance
Date: 3/31/87**

OVERVIEW

This committee substitute encompasses about 12 insurance issues in one "omnibus" bill on insurance issues. Most of the items contained in the bill have, at one time or another, been requested by the Division of Insurance. The Division of Insurance supports this legislation.

For a detailed analysis of this proposal, please refer to the section by section commentary dated 3/31/87. The issues in the bill are:

- General Agents / Managers**
- Continuous License**
- Firm / Individual License**
- Commercial Cancellation**
- Broker Bond**
- Broker as Agent**
- Producer Financial / Fiduciary Accounts**
- Pro Rata on Cancellations**
- Alien Trusts Deposits**
- Nurse Coverage**
- Relocation of Definitions**
- Removal of Obsolete or Duplicative Provisions**

GENERAL AGENTS / MANAGERS

This issue eliminates confusion with AS 21.09.280, which currently attempts to distinguish between "general agents" who are required to be licensed and "managers" who are not. It is a distinction that has been difficult to apply. The basic role of both entities is often the same, and the Alaska Insurance Code does not adequately make a

distinction between the two. The bill eliminates references to managers and requires all general agents to be licensed. It then lists those specific entities that will not be considered general agents. These are persons or entities who perform general agent type services for an insurance company when that person or entity is:

- (1) a salaried employee of the insurance company;
- (2) a subsidiary of the insurance company;
- (3) the owner of the insurance company; or
- (4) owned by the holding company that owns the insurance company.

CONTINUOUS LICENSE

This bill introduces a continuous insurance license for agents, brokers, solicitors, adjusters, and general agents, rather than the current system requiring annual renewal. All licensees, however, will still pay an annual fee, and failure to pay will result in revocation or suspension of the license. This change should reduce the paperwork currently handled by the Division.

Some consolidation of fee dates is incorporated in the bill. The one license untouched by this proposal is the surplus lines broker license. This type of licensee is the one that provides entry to the nonadmitted market place and is required to post a \$200,000 bond. Further, producers of business for risk retention groups or risk purchasing groups under the recently passed Federal law must have this type of license. We would prefer to see how things are going to shape up with the new Federal Act before we recommend a change.

FIRM / INDIVIDUAL LICENSE

This portion of the bill creates a new distinction between individual licenses issued to individual persons, and firm licenses issued to associations of individual licensees. Under current law, persons operating under a firm's license do not typically hold an individual license, but are named to act on the firm license. This renders individual accountability difficult. In some cases there is a constant

activity on a firm's license file as individuals are added or deleted.

Also under current law, adjusting firms are not licensed, only individuals. We have experienced situations where firms have ignored Alaska Law to the detriment of the public and individual licensees within the firm. This extends the accountability principle to adjusting firms. It will give the Division of Insurance a better regulatory oversight of the industry by requiring that every person selling or adjusting insurance contracts, whether individual or firm, have the appropriate license. A new definition of "firm" has been introduced on Page 28, Lines 26-29.

COMMERCIAL CANCELLATION

AS 21.36.210 - 310 currently places a limitation on an insurance company's right to cancel in mid-term, personal lines of insurance, such as automobile insurance or homeowners insurance. This whole section of law deals with insurer initiated cancellations. The insurance crisis of the past few years, accented the need that this kind of protection should also be provided for commercial policies.

To accomplish this, it is necessary to substantially rework AS 21.36.210 - 310. A number of sections have been relocated and a distinction made between personal insurance and business or commercial insurance. The personal insurance limitation is unchanged except that notice period has been revised.

The business or commercial insurance notice has a similar period of notice. This statute is similar to those in other states with one major exception. The proposed bill requires that any unearned premium be returned to the insured before the effective date of cancellation.

The normal period for notice of cancellation will be 60 days. Notice for nonpayment will be 20 days. Notice for special reasons such as suspension or reuocation of license, conviction of a crime related to the type of coverage provided, and material misrepresentation will have a 10 day notice. Notice of nonrenewal will remain at 20 days for personal insurance and will be 45 days for commercial nonrenewals.

This bill requires the return of unearned premium prior to the effective date of cancellation. If the cancellation is for nonpayment, return of unearned premium must occur within 45 days after cancellation. Audits on auditable policies cancelled for other than nonpayment must also be made before the effective date of cancellation and unearned premium returned before the expiration of the policy. While this may cause some difficulty for the insurer, it should be remembered that this speaks to an insurer initiated cancellation. Insurers can use tentative or projected numbers for the period following the notice of cancellation. Insurers usually know they are going to cancel, so they can also control the audit process.

The insured with an auditable policy is entitled to the same protection as an insured with a nonauditable policy. The insurer may elect to waive an audit on cancellation, which is their right currently. If the Division finds that the waiver is not in the insureds interest, it can require that an audit be made.

The bill requires that cancellation be made by certified mail with a return receipt requested, and a reason be given in all cases. It also requires that in the event notice is returned undeliverable, that an additional good faith effort to contact the insured be made.

Suggested Amendment

The Division of Insurance is uncomfortable with the provision that an additional "good faith" effort be made to deliver notice. We would prefer to see a more definable action required if an additional effort is required. If an additional effort is required, we believe it should be specifically defined or that specific authority be given the Director of Insurance to define it by regulation. Accordingly we suggest one of the following amendments:

Option 1. Delete sentence starting on Page 20, Line 25 with the word "If" and ending on Page 20, Line 28.

Option 2. Following the word "effort" on Page 20, Line 27, insert ", as defined in regulations adopted by the director,"

BROKER BOND

This section proposes to increase the bond required of a broker from the current \$5,000 to \$10,000. The bond is available for the people of the state. The increased bond will have an increased cost, but the amount is not excessive. This is not a Division of Insurance proposal, but we have no objection to it.

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HOUSE COMMITTEE REPORT

(7)

Date referred: 1/19/87

FURTHER REFERRALS: Transportation

DATE: WEDNESDAY, 2/18/87

The Labor & Commerce Committee has considered HB 47

"An Act relating to the Alaska Railroad Corporation."

RECOMMENDS:

- replace with CSHB 47 (L+C) [] the same title
- [] attached amendment(s) [] a new title
- [] do pass
- [] do not pass
- [] no recommendation
- [] individual recommendations
- [] additional referral to the _____ Committee

ADOPTS: [] _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):

- fiscal impact [] same as previous fiscal note published _____
- [] zero fiscal note [] same as previous zero fiscal note published _____
- [] zero with analysis

SIGNING TO PASS:

[Signature]

Small enclosed 2. AMERICAN HERITAGE - BRIGGS & MARRS PROTECTION

[Signature]

[Signature]

SIGNING OTHER RECOMMENDATIONS:

[Signature] no-rec

Cliff Davidson (no-rec)

[Signature]
Chairman's signature

Original sponsors: Brown, Ellis and Boyer

1 IN THE HOUSE

BY THE LABOR AND
COMMERCE COMMITTEE

2 CS FOR HOUSE BILL NO. 47 (L&C)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the Alaska Railroad Corporation."
7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

8 * Section 1. AS 42.40.100 is amended to read:

9 Sec. 42.40.100. MANAGEMENT BY THE BOARD. The board is respons-
10 ible for the management of the corporation but shall delegate certain
11 powers and duties to the chief executive officer in accordance with
12 AS 42.40.120. In managing the corporation the board shall

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

15 (2) operate the Alaska Railroad as a common carrier subject
16 to the jurisdiction of the United States Interstate Commerce Commis-
17 sion consistent with 45 U.S.C. 1207;

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

20 (4) apply to the legislature for an appropriation with the
21 concurrence of the governor to be used to provide a particular service
22 that is not otherwise self-sustaining if a subsidy is required to
23 maintain that service;

24 (5) provide for safe, efficient, and economical transporta-
25 tion to meet the overall needs of the state;

26 (6) raise needed capital by issuing bonds of the corpo-
27 ration upon approval by the legislature while ensuring that borrowing
28 by the corporation does not directly or indirectly endanger the
29 state's own borrowing capacity;

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

4 (8) ensure that the procurement procedures of the corpo-
5 ration meet accepted railroad industry standards;

6 (9) ensure that the accounting procedures of the corpo-
7 ration meet generally accepted accounting principles consistent with
8 industry standards for comparable railroads;

9 (10) maintain or expand, to the extent practicable within
10 financial resources available, the level of passenger and freight
11 service provided at the time of transfer of the railroad to the state;

12 (11) manage land, interests in land, and natural resources
13 on land held by the corporation in the best interest of the people of
14 the state; in determining the best interest of the people of the state
15 the corporation shall consider land use plans and ordinances of munic-
16 ipalities where railroad land exists, adjacent land uses, the economic
17 development and revenue generating potential of the land and natural
18 resources, and public comment received on proposed land management
19 actions;

20 (12) consult with the Department of Fish and Game to mini-
21 mize adverse effects of railroad operations upon wildlife.

22 * Sec. 2. AS 42.40.120(b) is amended to read:

23 (b) The [WITHIN 60 DAYS AFTER ITS FIRST MEETING, THE] board
24 shall delegate the following activities of the corporation to the
25 chief executive officer or other executive officers designated by the
26 board:

27 (1) leasing [SUBJECT TO AS 42.40.285 AND 42.40.350(b) AND
28 (d)], granting easements in, issuing permits for the use of, or con-
29 veying other interests in railroad land for a total term, including

1 options to renew, of less than one year [PROPERTY THAT DO NOT CONSTITU-
2 TUTE A TRANSFER OF THE CORPORATION'S ENTIRE INTEREST IN LAND];

3 (2) establishing specific rates, tariffs, divisions, and
4 contract rate agreements;

5 (3) making routine changes in service levels;

6 (4) establishing procurement and accounting procedures for
7 the corporation; and

8 (5) performing procurement activities.

9 * Sec. 3. AS 42.40.120(c) is amended to read:

10 (c) Notwithstanding (a) and (b) of this section, specific board
11 approval is required for the following:

12 (1) issuing bonds upon approval by the legislature;

13 (2) mortgaging or pledging corporation assets;

14 (3) donating property or other assets belonging to the
15 corporation;

16 (4) acting as a surety or guarantor;

17 (5) adopting a long-range capital improvement and program
18 plan;

19 (6) adopting annual reports;

20 (7) effecting general, comprehensive increases and de-
21 creases in rates;

22 (8) expanding or reducing services in a major way;

23 (9) expanding the main or branch rail lines including spur,
24 industrial, team, switching or side tracks, other than performing
25 routine track alignment as necessary to maintain existing service
26 levels;

27 (10) selecting independent auditors and accountants;

28 (11) entering into collective bargaining agreements;

29 (12) adopting annual budgets;

1 (13) beginning a capital project with an estimated com-
2 pletion cost of more than \$500,000 or an estimated completion time of
3 more than one year;

4 (14) exchanging, donating, selling, or otherwise conveying
5 its entire interest in land subject to approval by the legislature;

6 (15) leasing, granting easements in or permits for, or
7 authorizing use of railroad land for a total term, including options
8 to renew, of one year or more;

9 (16) exercising the power of eminent domain.

10 * Sec. 4. AS 42.40.170(b) is amended to read:

11 (b) Only the following subjects may be discussed in an execu-
12 tive session:

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

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

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

20 (4) matters pertaining to personnel;

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

22 and

23 (6) [LAND ACQUISITION OR DISPOSAL; AND

24 (7)] proprietary or other information of a type treated as
25 confidential under the standards and practices of the United States
26 Interstate Commerce Commission, including practices that protect
27 information associated with specific shippers, divisions, and contract
28 rate agreements.

29 * Sec. 5. AS 42.40.220(b) is amended to read:

1 (b) The corporation may by rule designate and withhold public
2 disclosure of matters of a privileged or proprietary nature. Those
3 matters are [INCLUDE] personnel records, communications with and work
4 product of legal counsel, and, consistent with the standards and
5 practices of the United States Interstate Commerce Commission for the
6 protection of these matters, other information including proprietary
7 information associated with specific shippers, divisions, and contract
8 rate agreements. The corporation shall provide information withheld
9 from public disclosure under this subsection to the Department of Law
10 upon the request of the attorney general.

11 * Sec. 6. AS 42.40.260 is amended by adding a new subsection to read:

12 (c) The annual report shall inventory land, interests in land,
13 and natural resources on land held by the corporation and shall de-
14 scribe present uses, future development plans, and known resource
15 development potential for the land, interests in land, and natural
16 resources. The annual report shall also provide information on pend-
17 ing proposals for the lease or other disposal of land, interests in
18 land, or natural resources on land held by the corporation during the
19 next year.

20 * Sec. 7. AS 42.40.285 is amended to read:

21 Sec. 42.40.285. LEGISLATIVE APPROVAL REQUIRED. Unless the
22 legislature approves the action by law, the corporation may not

23 (1) exchange, donate, sell, or otherwise convey its entire
24 interest in land;

25 (2) issue bonds;

26 (3) extend railroad lines; this paragraph does not apply to
27 a spur, industrial, team, switching or side track;

28 (4) lease land for a total period, including options to
29 renew, in excess of 35 years [UNLESS THE CORPORATION RESERVES THE

1 RIGHT TO TERMINATE THE LEASE IF THE LAND IS NEEDED FOR RAILROAD PUR-
2 POSES].

3 * Sec. 8. AS 42.40.350(c) is amended to read:

4 (c) When the board determines that the best interest of the
5 people of the state is served, the [THE] corporation may lease, sub-
6 ject to AS 42.40.285 and (d) of this section, grant easements in or
7 permits for, or otherwise authorize use of portions of rail land for a
8 total term, including options to renew, of one year or more. However,
9 the corporation may not convey its entire interest in rail land except
10 as provided in AS 42.40.285, 42.40.370(d), and 42.40.400. A lease,
11 easement, permit, or authorization subject to this subsection is void
12 if the board does not determine that the best interest of the people
13 of the state is served.

14 * Sec. 9. AS 42.40.350(d) is amended to read:

15 (d) A lease or disposal of land [APPROVED BY THE LEGISLATURE
16 UNDER AS 42.40.285] by the corporation to a party other than the state
17 or a municipality shall be made at fair market value as determined by
18 a qualified appraiser or by competitive bid.

19 * Sec. 10. AS 42.40.350 is amended by adding new subsections to read:

20 (e) A disposal of natural resources from land held by the corpo-
21 ration to a party other than the state or a municipality shall be made
22 by competitive bid.

23 (f) At least 60 days before taking final action on an agreement
24 that involves resource development, resource exploration, capital
25 improvements, or other significant change in the use of rail land, the
26 board shall make and publish notice of a written finding of fact and
27 determination that the agreement is in the best interest of the people
28 of the state. At least 30 days before taking final action on an
29 agreement that involves resource development, resource exploration,

1 capital improvements, or other significant change in the use of rail
2 land, the board shall hold at least one public hearing in a municipal-
3 ity affected by a land management action under this subsection. An
4 agreement subject to this subsection is void if the requirements of
5 this subsection are not satisfied.

6 * Sec. 11. AS 42.40.420 is amended by adding a new subsection to read:

7 (b) Upon request of a person the corporation may authorize by
8 permit the temporary, short term, or emergency use of railroad land.

9 * Sec. 12. AS 42.40 is amended by adding a new section to art. 5 to
10 read:

11 Sec. 42.40.460. SALVAGE OF BIG GAME FOR HUMAN CONSUMPTION. The
12 corporation shall salvage for human consumption the meat of big game
13 animals, as defined under AS 16.30.030, killed by the operations of
14 the railroad.

**STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE**

REQUEST: _____

Bill Version: CS HB 47 (L & C)
Publish Date: _____

Revision Date: 2-18-87
Title: An Act relating to the
Alaska Railroad Corporation
Sponsor: Rep. Kay Brown
Requestor: Labor & Commerce Committee

Agency Affected: Alaska Railroad Corporation
BRU: _____
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES		50.0	50.0	50.0	50.0	50.0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANECUS						
TOTAL OPERATING	0	50.0	50.0	50.0	50.0	50.0

CAPITAL	0	0	0	0	0	0
---------	---	---	---	---	---	---

REVENUE	0	0	0	0	0	0
---------	---	---	---	---	---	---

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER		50.0	50.0	50.0	50.0	50.0
TOTAL	0	50.0	50.0	50.0	50.0	50.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

See attached.

Kay Brown

Prepared by: Rep. Kay Brown / House Labor & Commerce Phone: 465-4998
Division: _____ Date: 2-18-87

Approved by Commissioner: _____ Date: _____
Agency: _____

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)
- Senate Secretary

Analysis of fiscal impact of CSHB 47 (L&C)

New administrative requirements for public notice, hearing and written findings prior to significant land use actions could increase the railroad's costs of operation. The bill's requirement to salvage the meat of big game animals for human consumption also could require additional expenditures by the railroad. However, there would be no increase in costs borne by the state or the General Fund. Based on information provided by the railroad, I estimate that the increased costs to the railroad resulting from CSHB47 (L&C) should be no more than about \$50,000 a year.

Submitted by:

Donald Hennessey, Chairman

The Alaska Railroad Initiative Committee

Representing:

Owner-operators

Road Houses

Mechanics

Parts People

and

Allied Industries

I would like to address a few questions on the Alaska Railroad. Our committee wholeheartedly endorses HB 47 to the extent that it covers. In our opinion, it does need a few additions, as shown by the ARR response to the questionnaire.

The moose kill is a definite problem. The independent truckers have lived with this problem all our lives. It is also a financial problem as most truck insurance is \$2500 deductible. A typical moose encounter takes \$500 for a front bumper, \$250 to \$500 to fiberglass the headlight on the side of contact, \$250 for a grill and, most times, radiator and shutters for \$1000. This will total 2-300 dollars either side of the deductible. These expenses are almost entirely out of the truckers pocket. A moose stays in the same general vicinity for several nights. When a trucker sees a moose they tell all other truckers via CB radio. The next driver knows exactly whether the moose is feeding, laying down or traveling. The message is relayed so, in a short time, every driver can reduce their speed for a quarter of a mile and pass the moose safely. This procedure has been so effective, the moose kill on the Parks Highway has been reduced to 3 or 4 a winter. Until recently we accounted for 40 or 50 trips per night compared to one on the railroad. This is done with no more than one hour delay. I point this out because the railroads great jump in moose kills corresponds to the inauguration of the ARCTIC FOX, an intended high-speed TOFC-COFC express. Since the railroad loses \$250,000 dollars a month on freight in the winter months, we would like to suggest a relatively cheap method to reduce the moose kill. They could eliminate the hot TOFC-COFCs. The on-time deliveries would be less critical, which since September supposedly they have been three to four hours late anyway. Run a scooter in front of the train about a $\frac{1}{2}$ mile and radio back the location of the moose. The moose could also be chased off the tracks and kept off until the train arrives. This could be done all along the track and nearly eliminate moose kills. It would cost very little inequipment, one mans wages and could prove or disprove itself in one season.

The railroad had a bad incident at Crown Point. Trucks successfully hauled this product from 1968 to the time the railroad was taken over by the State. A tank trailer was loaded at the factory and was not disturbed until it was delivered to the refinery. The refinery unloaded it in controlled conditions. The railroad chopped the rate to get the business. The railroad then had to heat the product to a pour point to facilitate transfer to a truck. This created the dangerous situation that caused the Moose Pass incident. The railroad continued this dangerous method even though they promised Bruce Erickson of Department of Environmental Control that they would not do it again. In a telephone conversation with Mister Erickson after the December incident, I was informed Mr. Erickson was seeking a court injunction against that operation. This operation saved UNICAL \$150,000 a year has already cost the state over 1 million dollars and may cost another 2 million on the deductible of the insurance. This says nothing of the pain and suffering caused the Crown Point residents. It would certainly seem a sorry judgement on the part of the railroad management and a callous disregard of Alaskan residents.

Questions 52 through 59. The Oregon governors study on railroad's warns that the most critical aspect is road bed maintenance and suggests a complaint be filed at the first sign of maintenance delay. The Sverdrup Engineering Report made for the State of Alaska, prior to purchase, states that 20.2 million is the minimum for any year after the roadbed has been brought to the minimum standard of railroads. The Alaska Railroad proposes to spend \$3,565,000 on roadbed in 1987. This is hardly a token investment. Some day the total will have to be faced.

The railroads projection of 1987 income, we believe, is optimistic. They project a million dollar increase on TOFC-COFCs. They lost Seaway Express, which may reduce their losses by \$500,000 it correspondingly reduces their income.

(3)

We foresee no dramatic increase in freight. Their report of hauling 600,000 tons of export coal for \$6,000,000 dollars means they charged \$10 dollars a ton. We hear the new contract calls for \$7 dollars a ton. This would require 850,000 tons to equal 1986. Either way it is being hauled at a loss. A true costing study would pinpoint this fact. One thing is unclear, all other categories of income nearly equal the rental income. Is this projected State input?

It would appear that chief council consumed 1.8 per cent of gross revenue. While we are not familiar with large corporations legal costs, we wonder if even the MAFIA spends that much.

Lastly, we would like to address the capital budget debt service. The Alaska Railroad Corporation Act permitted borrowing with the consent of the legislature. It did not address lease purchasing, thus leaving a loop hole that management took at its fullest advantage. Their debt service of \$3,718,577 principle and interest to lending institutions, certainly appear to be borrowing. This does not include the proposed \$750,000 per year to be incurred on the new passenger cars. This is a debt the State will be stuck for, if the railroad can not make it. We feel some control must be placed on this type of borrowing.

The States objective of acquiring the land while providing a needful service is an absolute must. A financial feasibility study and a ten year projection would ensure the least expensive route.

calendar year 1986 (a year of light snowfall), approximately 200 man hours were expended, for an estimated \$5,000 in additional labor costs.

38. How many moose were hit by trains in each calendar year from 1980 through 1986?

Response: Rather than using figures for calendar years, the following statistics encompass the winter season of the indicated year, which is when most moose strikes occur. Figures for the years before 1984 were compiled by the ADF&G.

1979-80	-	54
1980-81	-	24
1981-82	-	50
1982-83	-	144
1983-84	-	63
1984-85	-	384
1985-86	-	37
1986-87 (to 2/6/87)	-	91

Corresponds with the inauguration of the Arctic Fox T.O.F.C.'s

39. Describe all other procedures of which the ARRC is aware which would additionally minimize the risk of hitting moose and state why the ARRC has not implemented such procedures.

Response: The ARRC is not aware of any other procedures it could employ which would fulfill the criteria addressed in this question. There have been other suggestions but in our experience they have proven unfeasible. Among the failed experiments are sonic whistles, which did not sound when the trains moved at slow speeds and froze when it was very cold; slowing the train, which raised havoc with schedules, made it impossible to climb certain grades on the icy track, and lead to many more crippled animals; and decking between ties on bridges so that moose can safely cross, which caused federally-required speed sensors on the train wheels to work improperly. Other, even less feasible ideas have been considered and rejected, such as installing a "bumper" on the front of locomotives. Operating the train only in daylight hours is equally impractical, since the problem arises in winter when those hours are too short to allow the shipping business of the railroad to survive. In addition, to meet shippers' arrival time requirements, night operations are essential.

Another suggestion, which does not appear feasible and has thus not been implemented by ADF&G and the ARRC, is a special "hunting season" to thin moose in the area when heavy snowfall occurs. This concept would be difficult to administer and has been soundly criticized by ADF&G personnel. See Dickerson, J.C. & Kramer, R.J., "When Moose and Train Meet: Avoiding

RAIL LINE ABANDONMENT

RAIL DIVISION OREGON PUBLIC UTILITY COMMISSIONER OCTOBER 1986

Deferred Maintenance

Maintenance of way and structures is the third of the three major expenses in railroad operation. It is both a symptom of abandonment and a cause. Initially, deferred maintenance is a result of lower revenues; ultimately, deferred maintenance lowers service levels and discourages shipper use.

The decline of rail traffic system-wide over the last 20 years has encouraged the larger railroads to diversify and disinvest in railway operations. The companies tended to delay the purchase of new track and equipment and to defer maintenance (replacement of track, ties and ballast), where lower maintenance levels would not greatly affect train operations. High use lines usually get plenty of attention, but low-density lines have often been allowed to deteriorate. Normal maintenance on a low-density line runs between \$3,000 and \$7,000 per mile per year. For a long line with one or two shippers, that is a significant cost.

Many branch lines subject to abandonment suffer from deferred maintenance. In some cases the cost of rehabilitating the line, using either public or private money, is unjustifiable given even the most optimistic traffic level. This not only is a disincentive to line improvement for the owning railroad, it is a disincentive to anyone else interested in buying the line.

A good example of how deferred maintenance can contribute to the abandonment of a line is the Wilkins line, located in Linn County. (see Case Studies) Approximately \$3 million was needed to bring the line to minimum standards. Given the very low traffic levels on the line, such an enormous investment would have been unwise.

Construction of the highway system has had a much broader and significant impact on the modal choice, in this case between rail and motor carriage. However, the highway cost structure is not artificial, since highway users pay fees which, in a cumulative sense, are designed to cover the costs of constructing and maintaining the highway system.

6. Railroad Taxation

Railroad taxation, particularly property taxation, is a particularly thorny problem. The task force looked at railroad taxation for ways of providing incentives to railroads to keep branch lines in operation, only to discover that the method of taxation made developing incentives difficult.

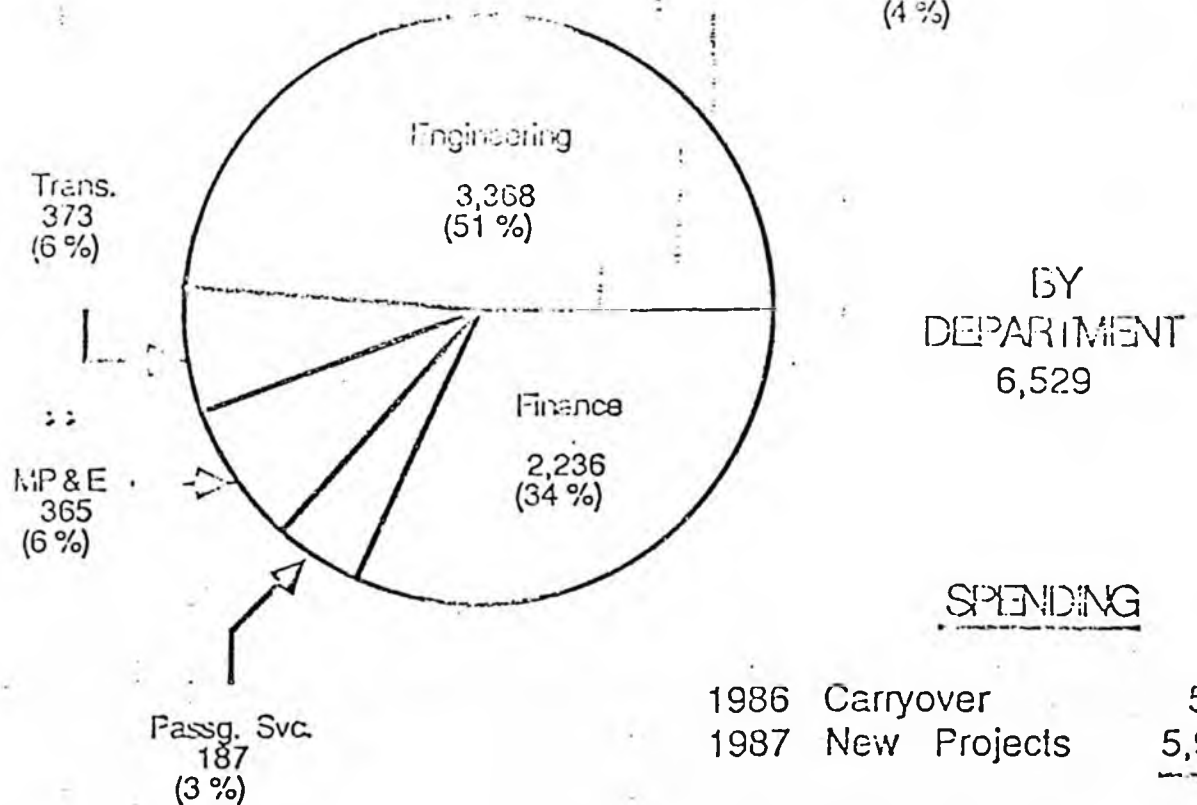
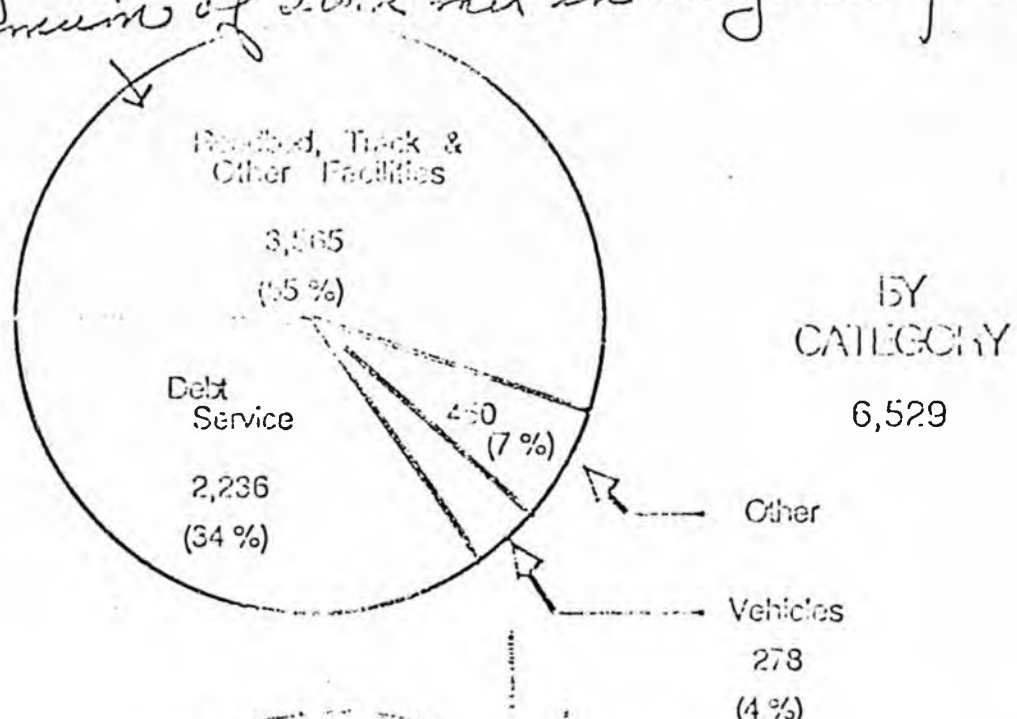
All three of the Class I Carriers and some of the short lines have filed suits against the Oregon Department of Revenue. These suits are costly to all parties and are creating growing animosities between the state and the railroads. Also, as the number of short lines in the state increases, the manner of appraising short lines deserves to be reviewed. The task force did not have the expertise or the authorization to embark on a study of the state tax system, but members of task force felt such a study is needed.

Low density lines (under 1 million gross tons per year per mile of road) should be considered endangered.

ALASKA RAILROAD CORPORATION 1987 CAPITAL PROGRAM

Thousands of Dollars

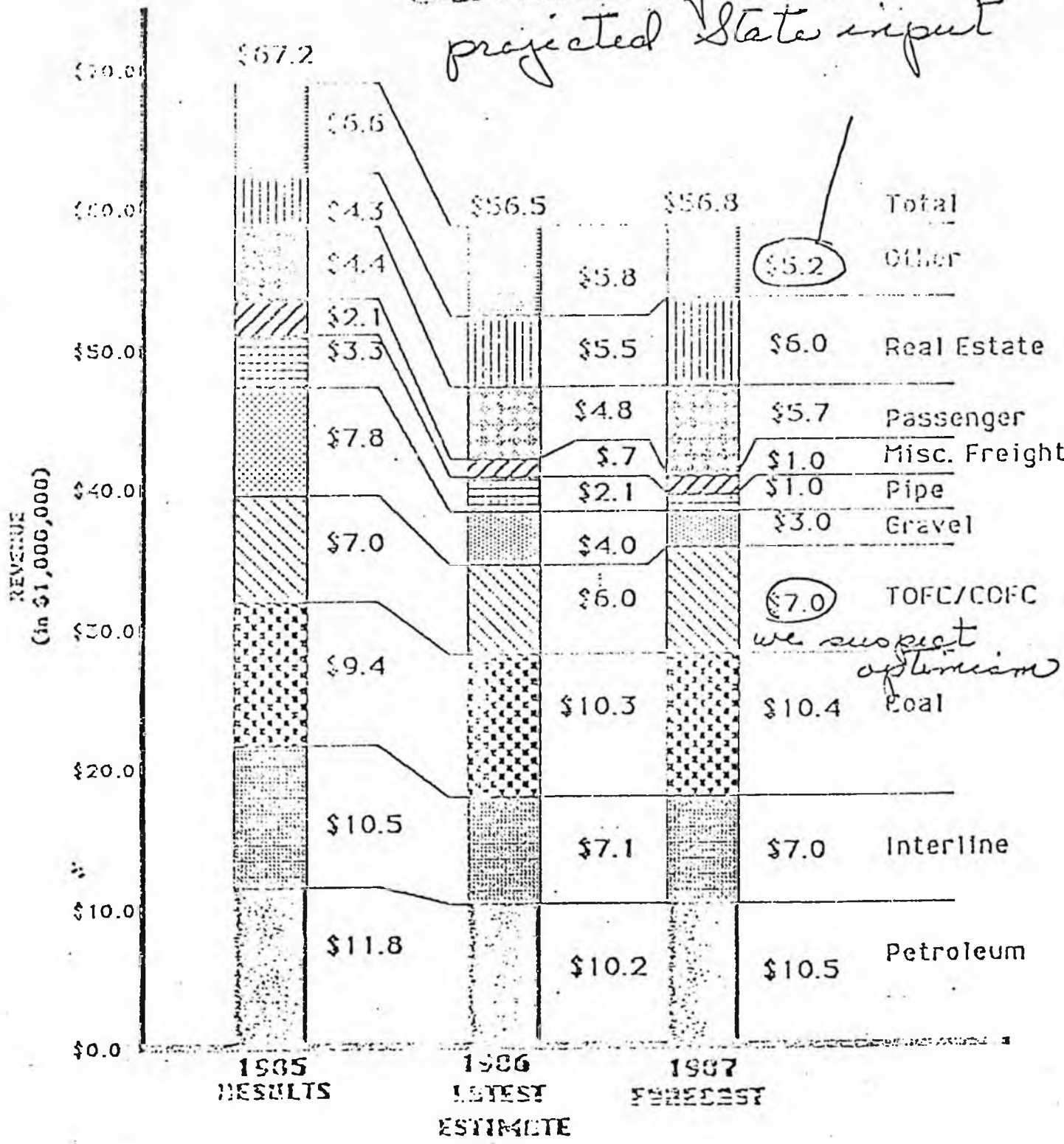
Overdrup report requires a minimum of 20.2 mil in any one year



SPENDING		
1986 Carryover		548
1987 New Projects		<u>5,981</u>
Total 1987 Spending		6,529

STATE OF TEXAS
 DEPARTMENT OF TRANSPORTATION

In most of this a projected State input



DECEMBER 16, 1986

ALASKA RAILROAD CORPORATION
 1986 SPENDING PLAN
 CHIEF COUNSEL
 SUMMARY

		1985	
	<u>1986 BUDGET</u>	<u>LATEST ESTIMATE</u>	<u>VARIANCE</u>
SALARIES, WAGES, AND OTHER PERSONNEL EXPENSES	490	242	248
CONTRACTUAL SERVICES	514	567	(53)
MATERIALS & SUPPLIES	9	26	(17)
RENTALS, UTILITIES	4	2	2
INSURANCE, CASUALTY, TAXES	0	0	0
OTHER	<u>0</u>	<u>0</u>	<u>0</u>
TOTAL	1,017	837	180
DEBT SERVICE	<u>0</u>	<u>0</u>	<u>0</u>
GRAND TOTAL	<u>1,017</u>	<u>837</u>	<u>180</u>

EXPLANATION OF MAJOR VARIANCES:

- PERSONNEL COSTS UP 102% DUE TO INCREASED STAFF TO INCLUDE ADDITIONAL ATTORNEYS FOR FULL YEAR, PARALEGAL ASSISTANCE, AND CLERICAL ASSISTANCE.

Of 56.5 million gross income \$1,017,000 Legal Counsel represents 1.8% of gross revenue

STATE AND LOCAL GOVERNMENT
 CAPITAL BUDGET SUMMARY
 1987

	DEBT SERVICE	INTEREST	TOTAL
DESCRIPTION	PRINCIPLE	INTEREST	TOTAL
Other			
Locomotives, GP-49	182,076.00	359,040.00	9.3
Articulated Flats, 30	235,550.00	192,055.00	10.5
Construction Equipment	119,284.00	123,352.00	7.5
Locomotives, GP-38/3 (6)	279,002.00	229,917.00	8.0
Locomotive Cranes (3)	150,868.00	109,455.00	8.0
ERC, 1986 (3)	53,368.00	45,609.00	8.0
Subtotal	1,500,108.00	1,064,428.00	
CITICORP			
Locomotives, Construction Equip	214,278.00	161,821.00	8.3
Articulated Flats (15)	126,427.00	102,734.00	6.011
Subtotal	340,705.00	264,555.00	
Alaska Pacific Bank			
RDC, 1985 Upgrade	183,182.00	61,008.00	8.15
Subtotal	183,182.00	61,008.00	
Miscellaneous			
EM (small equipment)	98,599.00	11,663.00	
EM (mainframe)	221,727.00	71,937.00	
US Leasing (Wang Equip)	91,550.00	9,115.00	
Subtotal	411,876.00	92,715.00	
TOTAL DEBT SERVICE	2,235,871.00	1,482,706.00	

*Debt service spreads ~~not~~ within maintenance
 by over a million without the consent
 of the legislature to borrow*

December 18, 1986

ALASKA RAILROAD CORPORATION

SALE/TRANSFER OF RAILROAD

Points to Consider

- If sold within five years of transfer (January 5, 1990), proceeds in excess of State's investment will go to the Federal Government.
- If sold within ten years of transfer (January 5, 1995) and any Railroad property is converted to a use preventing railroad operations, that property and improvements revert back to the Federal Government.
- If use of Railroad right-of-way is discontinued, ownership of land will revert to the Federal Government and then to adjoining land owners.
- Sale of ARRC is a very complex and complicated project which will entail a great deal of planning and major expense for such things as:
 - Sale alternatives
 - Asset valuation
 - Identifying buyers/qualifications
 - Profitability
 - Financing decisions
 - Review of prior line sales
 - Evaluation of labor agreements
 - Row and title issues
 - Risk management issues
 - Develop prospectus
- Consultants and investment bankers must be employed to assist in the above issues to lend credibility.

*Required to make 3 offer...
Report from Gov. due February '87*

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 18, 1987

SUBJECT: Section by section analysis of draft
CSHB 47(L&C), An Act relating to the
Alaska Railroad Corporation

TO: Representative Kay Brown

FROM: George Utermohle *GU*
Legislative Counsel

The following is the section-by-section analysis of the draft CSHB 47(L&C) which you requested.

Section 1 amends AS 42.40.100 by expanding the duties of the board of the Alaska Railroad Corporation to include:

(1) maintenance or expansion of passenger and freight operations at or above the level that existed when the railroad was transferred from federal to state ownership, if the funding is available;

(2) management of real property interests and natural resources owned by the corporation in the best interest of the people of the state; among the information which the board must consider in making its determination of what is in the best interests of the people of the state are land use ordinances and plans of cities and boroughs affected by railroad land management decisions, adjacent land uses, the development and revenue potential of the land, and public comment on land management decisions proposed by the board;

(3) consultation with the Alaska Department of Fish and Game on ways that the railroad can reduce the adverse effects of railroad operations on wildlife.

Section 2 amends AS 42.40.120(b) to require the board of the Alaska Railroad Corporation to delegate authority to the executive officers of the railroad to grant leases, easements, permits, or other interests in railroad land for a total term of less than one year. The term of a lease,

easement, permit, or other interest in railroad land subject to this section includes the initial term plus any options to renew. A grant of a lease, easement, permit, or other interest in land for a total term of a year or more must be approved by the board of the corporation under Section 8 of the bill. Current law allows the executive officers of the railroad, through delegated authority, to enter into long term leases (up to 35 years under any conditions and exceeding 35 years if the lease is subject to termination by the railroad).

Section 3 amends AS 42.40.120(c) to require specific approval by the board of the Alaska Railroad Corporation before the corporation can lease, grant easements or permits, or allow use of railroad land for a term, including any options to renew the agreement, of one year or more.

Section 4 amends AS 42.40.170(b) to remove the authority of the board of the Alaska Railroad Corporation to discuss land disposal or acquisition issues in executive session.

Section 5 amends AS 42.40.220(b) by limiting the kinds of information which the Alaska Railroad Corporation may withhold from public disclosure to the following items:

- (a) personnel records
- (b) communications with and work product of legal counsel
- (c) information consistent with the standards and practices of the U.S. Interstate Commerce Commission for the protection of proprietary information associated with specific shippers, divisions, and contract rate agreements.

The Alaska Railroad Corporation shall provide any information kept confidential under these provisions to the Department of Law if the Attorney General requests to see the information.

Section 6 amends AS 42.40.260 by requiring that the annual report prepared by the Alaska Railroad Corporation and provided to the governor and legislature include information on the land and natural resources held by the corporation. Pending proposals for the lease or disposal of land or natural resources must also be disclosed in the annual report.

Section 7 amends AS 42.40.285 by requiring that any lease of land by the Alaska Railroad Corporation for a total period, including any options to renew, exceeding 35 years be approved by the legislature. The former exemption is repealed.

Section 8 amends AS 42.40.350(c) by permitting the Alaska Railroad Corporation to lease, grant easements in or permits for rail land for a total term, including options to renew, of one year or more only if the board of the corporation determines that the transaction is in the best interests of the people of the state. Rail land is that land owned by the corporation that is not included in the railroad utility corridor along the main or branch lines of the railroad. If the board does not make a determination that the lease, easement, permit, or other authorization to use rail land is in the best interests of the people of the state, then the transaction is void.

Section 9 amends AS 42.40.350(d) by requiring that any lease or other disposal of land by the Alaska Railroad Corporation be at fair market value as determined by appraisal or by competitive bid unless the lease or disposal is to the state, a city, or a borough.

Section 10 adds new language to AS 42.40.350. The disposal of natural resources from the land of the Alaska Railroad Corporation must be by competitive bid unless the disposal is to the state, a city, or borough.

At least 60 days before taking final action on any agreement that involves resource exploration or development, capital improvements, or other significant change in the use of rail land the board shall prepare a written finding of fact and a determination that the agreement is in the best interest of the people of the state. The board must publish a notice that it has prepared the finding of fact and the determination. At least 30 days before taking final action on the agreement the board must hold a public hearing in a city or borough affected by the agreement. Any agreement that is subject to these requirements is void if the requirements are not satisfied.

Section 11 adds new language to AS 42.40.420 to allow the Alaska Railroad Corporation to issue permits to individuals for temporary, short term, or emergency use of railroad land.

Representative Brown
February 17, 1987
Page 4

Section 12 adds a new section, AS 42.40.460, requiring the Alaska Railroad Corporation to salvage for human consumption the meat of big game animals killed by operations of the railroad.

GU:mkr
m9/025

Pouch V
Juneau, Alaska 99811

Alaska State Legislature
House of Representatives

Phone:
(907) 465-3892



Labor and Commerce Committee

January 29, 1987

Larry D. Wood, General Counsel
Alaska Railroad Corporation
P.O. Box 7-2111
Anchorage, Alaska 99510-7069

Dear Mr. Wood:

On behalf of the House Labor and Commerce Committee, I'd like to thank you for your January 28 letter and position paper on HB47, an act relating to the Alaska Railroad Corporation.

In order to fully understand the intent and possible impact of HB 47, the House Labor and Commerce Committee members asked that I direct the attached list of questions to your attention.

We realize the list is long and the questions are complex, but we'd appreciate a response as soon as possible in order to have all the facts before us when we hear the bill again, probably the week of February 9. We expect to have a response from you before that date.

Please respond to the questions you can answer immediately and let us know when we can expect answers to the remaining questions. Also, we'd appreciate knowing if there are questions on this list that you will not answer so that we can proceed with HB 47 accordingly (see Introductory Considerations (f)).

Since we are faced with a 120 day constitutional session limit, the Committee would ask that, in any case, you respond in some manner before February 9.

Again, thank you for your cooperation. Please call me or my
Committee aide, Ginger Baim, at 465-3892, should you have any
questions or need additional information.

Sincerely,

A handwritten signature in cursive script that reads "Dave Donley". The signature is written in dark ink and is positioned to the right of the word "Sincerely,".

Representative Dave Donley, Chair
House Labor and Commerce Committee

Questions from the House Labor and Commerce Committee
To the Alaska Railroad Corporation
Re: HB 47, an act relating to the Alaska Railroad Corporation
January 29, 1987

(Please respond before February 9, 1987)

INTRODUCTORY CONSIDERATIONS:

- a. Throughout these questions, the term "documents" or "information" does not include documents or information which may be fairly classified as personnel records or communications with or work product of legal counsel.
- b. The term "rail property" includes all property transferred to the Alaska Railroad Corporation (ARRC) from the federal government.
- c. The term "land" includes all real property, interests therein and resources thereon, transferred to ARRC.
- d. The term "rail land" has the same definition as set forth in A.S. 42.40.350.
- e. The term "railroad utility corridors" has the same definition as set forth in A.S. 42.40.350.
- f. If the ARRC refuses to answer any question or provide any information requested by the Committee, please state the precise statute or ICC provision under which the information is held confidential.
- g. When responding to questions about changes in passenger and freight service, you need not report insignificant changes (i.e. arrival and departure times).

QUESTIONS:

1. How much land was transferred to the ARRC from the federal government?
2. What percentage or what approximate number of acres is railroad utility corridors?
3. What percentage or what approximate number of acres is rail land?
4. What is the approximate number of acres of rail land which is necessary for the operation of the railroad? For example, for railroad terminals, yards, and offices.
5. For each of the following local government entities, state the approximate number of acres of land located within each

entity, give a general description of the land and major improvements, and give the estimated fair market value of the land:

- Anchorage
- Seward
- Fairbanks
- Whittier
- Palmer
- Wasilla
- Other municipalities

6. State the fair market value of (1) all land as described above and of (2) all rail land which is not necessary to the operation of the railroad.

7. If the ARRC is unable to provide the fair market value as requested in the preceding questions, give the railroad's most accurate estimate of the fair market value, describe the basis of the estimate, and describe what steps have been taken, if any, to determine the actual fair market value.

8. Describe each lease affecting rail land, specifically including a general description of the land involved, the term of the lease, and the lease rate.

9. Describe the leasing policy of the railroad for rail lands, including any factors considered and procedures followed to determine whether the lease is for the benefit of the people of the state, is in conflict with the land use plans of local governments, is compatible with adjacent land uses, or to otherwise communicate with local governments and adjacent land owners.

10. Which individual(s) is in charge of implementing the policies or procedures described in the preceding question?

11. Is the ARRC currently considering any leases in addition to those identified or those to which ARRC is currently a party? If so, describe.

12. Is the ARRC considering any development, sale or disposal of rail land or of any resources thereon? If so, describe.

13. What is the current status of the previously contemplated development of the bluff surrounding Government Hill, referred to by the residents as the Government Hill Greenbelt or West Bluff?

14. Describe any negotiations the ARRC is conducting with the Municipality of Anchorage regarding the above described development and any potential resolutions.

15. Is the ARRC currently negotiating or has the ARRC been requested to negotiate with any local governments regarding lease, transfer of interest, sale or other disposition of rail land? If so, please describe the local governments involved and issues raised in such negotiations or requests.
16. Describe the procedures the ARRC follows when a local government requests communication with the ARRC regarding rail land located within local government boundaries.
17. Describe all natural resources, including without limitation, sand, gravel, oil, gas, timber and minerals on rail land, and any existing or planned inventory of those natural resources.
18. Describe all disposals of interest in, development of, or lease of any of the resources identified in response to the above question.
19. Describe all changes in the levels of freight and passenger service which have been implemented since the transfer from the federal government.
20. Describe all currently proposed or planned changes in the levels of freight and passenger service which have been implemented since the transfer from the federal government.
21. Describe the procedures which the ARRC follows and the factors considered when it evaluates the need to change levels of freight or passenger service.
22. Describe all changes in the rates charged by the railroad for hauling freight since the transfer from the federal government.
23. Describe all currently proposed or planned changes in the rates charged for hauling freight since the transfer from the federal government.
24. Has the Board invoked an executive session to discuss the policy aspects (as opposed to the financial details) of acquisition or disposal of any interest in land? If so, please state when, describe the land affected, and the action discussed.
25. Why does the Board believe it is necessary to invoke executive session to discuss the policy aspects of acquisition or disposal of an interest in land?
26. Describe each instance since February 1985 in which the Board has invoked an executive session to discuss the subjects described in A.S.42.40.170 (b)(7).

27. Describe those specific categories of documents which the ARRC does not make public.

28. Describe those specific categories of documents which the ARRC does make public.

29. Describe the specific types of documents which ARRC withholds from the public as being "proprietary information" associated with specific shippers consistent with the standards and practices of the ICC.

30. Describe the specific types of documents which ARRC withholds from the public as being "proprietary information" associated with divisions consistent with the standards and practices of the ICC.

31. Describe the specific types of documents which ARRC withholds from the public as being "proprietary information" associated with contract rate agreements consistent with the standards and practices of the ICC.

32. Other than the specific types of documents described, describe other specific types of documents which the ARRC withholds from the public as "proprietary information" consistent with the standards and practices of the ICC.

33. List each rule pursuant to which the ARRC has designated documents as privileged or proprietary under A.S.42.40.220 or otherwise, and describe the types of documents and information withheld from the public pursuant to each rule.

34. Describe the rationale of the ARRC in refusing to provide the Transportation Committee with documents requested by that committee in 1985 and 1986.

35. Describe the documents and categories of information the ARRC refused to give to the Transportation Committee.

36. Describe all procedures and practices by which the ARRC attempts to minimize the adverse effect of the operation of the railroad on wildlife.

37. Describe all actions taken by the ARRC if a train hits a moose, including names of people to whom the information is reported, reports made, and attempts to salvage meat.

38. How many moose were hit by trains in each calendar year from 1980 through 1986?

39. Describe all other procedures of which the ARRC is aware which would additionally minimize the risk of hitting moose and state why the ARRC has not implemented such procedures.

40. Describe all pesticides used by the ARRC, and the areas in which such pesticides are applied. Describe any complaints the ARRC has received regarding the use of pesticides, and describe the procedures the ARRC has or intends to implement to discuss such complaints in public.

41. Describe any action the ARRC has undertaken to determine alternate methods of vegetation control other than pesticides actions undertaken in the past.

42. Describe the current situation at Moose Pass.

43. How many residents are still not living in their homes as a result of the incident at Moose Pass?

44. How much money has the state of Alaska paid to attempt to rectify the adverse effects at Moose Pass?

45. How much money has the ARRC paid to attempt to rectify the adverse effects at Moose Pass?

46. Describe the procedures the ARRC has implemented to prevent a recurrence of the type of incident that occurred at Moose Pass?

47. What is the policy of the ARRC with regard to hiring Alaskan residents?

48. What is the policy of the ARRC with regard to purchasing Alaskan goods and services?

49. Who is the individual in charge of implementing the policies described above?

50. What percentage of ARRC employees are Alaskan residents?

51. What percentage of the goods and services (other than services rendered by employees) purchased by the ARRC are of Alaskan origin, production or manufacture?

52. Provide a copy of the 1985 budget of the ARRC.

53. Provide a copy of the 1986 budget of the ARRC.

54. Provide a copy of the proposed 1987 budget of the ARRC.

55. To the extent it is not clearly reflected in the above budgets, state the percentage of total budget and dollar amount for each year identified above expended on or allocated to:

- administration of the ARRC
- travel expenses for executive level employees
- salary levels for each executive level employee
- fringe benefits for executive level employees

56. What was the final net profit or loss of the ARRC in 1985, 1986, and projected for 1987?

57. What percentage of the ARRC's income for calendar years 1985 and 1986 was derived from passenger and freight operations, and how much from rail lands?

58. What was the actual dollar effect of the reduction of inventory (as described in the Performance Audit dated July 28, 1986) undertaken by the ARRC in 1985 and in 1986 on the figures identified in response to the above question?

59. What dollar amount, including allocable overhead, was spent during each year of operation by the ARRC on

- management of rail lands
- provision of passenger and freight service
- other operations (describe)

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THE LEGISLATURE

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May, 1988

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

HL+C

1-28-87

4:30 p.m.

Alaska State Legislature
House of Representatives



Labor and Commerce Committee

January 26, 1987

To: Members, House Labor and Commerce Committee
From: Representative Dave Donley, Chair
House Labor and Commerce Committee
Re: Proposed Committee Substitute - HB 47

On the prime sponsor's request, I have instructed my staff to prepare a committee substitute for HB 47, an act relating to the Alaska Railroad Corporation, for your review on Wednesday, January 28, at our 4:30 p.m. meeting.

The CS makes minor technical changes to language on Page 2, line 29, Page 3, line 22, Page 4, line 7, and on Page 6, line 4, to make the language consistent throughout the bill and with existing statute.

Further, the CS changes Page 3, line 22 to reinsert the phrase "in a major way", so that the language is consistent with current law.

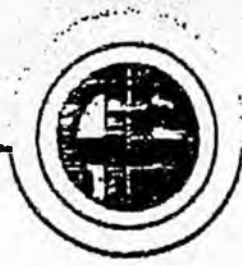
Finally, there are two substantive changes in the CS. The first is Page 2, line 9 where the placement of a comma has been changed, thus changing the meaning of the sentence. The second is on Page 6, line 8, where language has been added to require that a public hearing be held at least 30 days before taking final action.

The bill's prime sponsor, Representative Kay Brown, will be present at the Wednesday meeting to explain both the intent of HB 47, and the changes presented in the CS.

STATS-23-ARRC-ANCH ALASKA

ALASKA RAILROAD CORPORATION

P.O. Box 7-2111 • Anchorage, Alaska 99510-7069



January 28, 1987

Representative Dave Donley, Chairman
Labor & Commerce Committee
House of Representatives
P. O. Box V
Juneau, Alaska 99811

Re: HB 47, An Act Relating to the Alaska Railroad Corporation

Dear Representative Donley:

Thank you for allowing the Alaska Railroad Corporation ("ARRC") this opportunity to comment upon HB 47 which proposes significant changes to ARRC's enabling legislation.

We understand that your committee will conduct a work session on this bill and others today. I hope that our comments will be helpful as you review the legislation. Should questions arise which are not adequately addressed in our position paper, please feel to contact me. My phone number is 265-2461.

I do apologize for the length of our response and our delay in getting it to you. However, the bill recommends sweeping changes to a model of a public corporation created, as you know, by the 1984 legislature to operate the State-owned railroad. That model was intended to insure that the railroad would be a rail carrier generating, retaining, and managing its revenues to better serve Alaska's transportation and development needs. Although State leadership gave ARRC enough independence to conduct its activities as a separate and viable economic entity, a recognition of State ownership and essential governmental functions led to public accountability requirements manifested most clearly by open meetings, governor-appointed board members, financial and management audits, annual and oversight reports, legislative approval of land disposals, and long-range capital improvement and program plans. This blend of substantial financial and operational independence subject to State oversight has resulted in a quasi-public, quasi-private railroad armed with the flexibility it needs to react quickly to changing market, operational, and financial needs.

JAN 28 1987 15:24 ARRC ANCH ALASKA

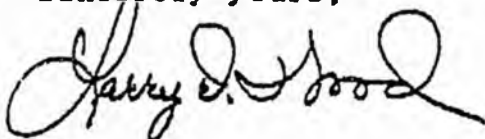
Representative Donley
January 28, 1987
Page 2

The model was created only after months, perhaps years, of research, study, discussion, and debate. If I had to choose one message to leave with you today, it would simply be that HB 47 proposes sweeping detrimental changes to the legislature's earlier vision of a financially independent, but publicly accountable, railroad only two years following transfer. The work reflected in the Alaska Railroad Corporation Act and ARRC's track record to date perhaps deserve the same commitment of time and careful deliberation before the Act's vision is in large part abandoned.

Our feeling is that in a number of ways HB 47 will restrict and curtail ARRC's ability to react meaningfully to changing freight and real estate markets to the detriment of its self-sufficiency and those many Alaskans who depend upon a viable rail transportation option in Alaska. Those who appear most likely to benefit by such changes are the railroad's water carrier, trucking, and real estate competitors.

Thank you very much.

Sincerely yours,



Larry D. Wood
General Counsel

cc: Members of the House Labor & Commerce Committee
F. G. Turpin, President & CEO

3671L

House Bill 47: An Act Relating to
the Alaska Railroad Corporation

I. Introduction. House Bill 47, introduced by Representatives Brown, Ellis and Boyer, proposes numerous and substantial changes to the Alaska Railroad Corporation Act, AS 42.40.010 et seq. ("ARCA"). The issues raised by the bill fall into four categories, each of which has been the subject of at least some recent media attention. All, we believe, are adequately accommodated or protected by existing laws or Alaska Railroad Corporation ("ARRC") board rules. The proposed changes will also harm the economic viability of the railroad.

These are the first major revisions of ARCA which have been proposed since 1984 when the law was enacted. The following discussions explain the sweeping limitations to ARRC's original State charter suggested by this bill. The legislature has previously directed that ARRC operate as a self-sustaining business and has blended substantial financial and operational independence with public accountability requirements. Many of HB 47's abrupt and significant changes threaten to destroy those dynamic characteristics which give ARRC the flexibility it needs to survive economically in today's declining freight markets.

ARRC strongly opposes HB 47 and respectfully recommends that ARCA remain unchanged.

II. Major Provisions of the Bill.

A. Moose Kills. One area of concern addressed by HB 47 is the effect of railroad operations on wildlife, specifically moose. The bill requires that ARRC salvage meat and consult with the State Department of Fish and Game (ADF&G) to minimize adverse effects. We believe that these proposals only duplicate present laws and ignore ARRC/ADF&G cooperation.

As a consequence of railroad, truck, and automobile operations in Alaska, moose are unfortunately killed. We explain below that ARRC has already mitigated these losses by changing some equipment and operational techniques, repeatedly discussing remedial alternatives with State Fish & Game representatives, and insuring that, where possible, meat is salvaged.

B. Confidentiality. The bill restricts those subjects which may be protected as confidential and discussed by ARRC's Board at executive sessions. Freight divisions, contract rate agreements and discussions of land acquisitions

or disposals are targeted. As explained below, public discussion and disclosure of vital railroad market data will actually injure consumers by giving railroad competitors the opportunity to make rail transportation a less competitive option in Alaska.

C. Operations. Several sections of HB 47 require the railroad board to ensure that passenger and freight services are maintained at 1985 levels. Board approval will be required for any expansion or reduction of service. Present law requires involves Board approval only where a change in service levels is "major." Although inadequate financial resources may allow the Board to forego railroad expansions, it may not reduce the 1985 services levels for financial reasons. Presumably, any such reduction may require legislative approval.

Discussion which follows points out that railroad passenger service is a major drain on ARRC revenues: \$1.5 million annually. Although State tourism needs, resident access requirements, and tradition may justify ARRC's commitment to passenger service, economics do not. Save for a few excursion lines, Alaska's is the only unsubsidized rail passenger service in America. Present State law requires ARRC to report significant and permanent service reductions to the legislature. However, despite these losses, ARRC has not reduced services. They have been increased. Innovations in equipment, scheduling, and routes have helped mitigate the \$2 million annual loss which existed before transfer.

For its economic survival, however, ARRC depends upon the flexibility of its management to immediately respond to changing freight market conditions by expanding, modifying, or in some cases, reducing service levels. To the extent this bill will detract from ARRC's marketplace resiliency it will significantly defeat the State's earlier attempts to preserve rail freight service in Alaska.

D. Land Issues. HB 47's provisions also significantly affect ARRC's leasing, easements and permitting practices. The bill proposes that railroad managers may only enter into such land use agreements for one year or less; Board approval would be required for agreements of greater duration. The Board must hold at least one public hearing not less than 60 days before entering such agreements. In addition, it must make a written finding that these contracts are in the best interest of the people of the State, taking into consideration adjacent land uses, municipal land use plans and ordinances, economic development, revenue-generating potential, and public comment received.

The bill retains the current requirement that disposals be made at fair market value, but clarifies an exception for disposals to the State and municipalities. In addition, it

requires that any disposal of natural resources (e.g., gravel, timber) be made by competitive bid.

Finally, HB 47 would require legislative approval of all leases for over 35 years. ARCA presently allows longer leases so long as a right of termination is retained if the property is needed for railroad purposes after 35 years.

To the extent these significant modifications attempt only to underscore the need for public awareness of ARRC leasing decisions, we can applaud such concern. However, a discussion which follows points out that Board policies and rules already protect the public's need to know of railroad leasing activities. The ARRC, we believe, has already struck a careful balance between public involvement in its leasing decisions and its fundamental reliance upon real estate leasing practices which can adequately and quickly respond to market opportunities. Even a brief review of financial statements emphasizes the railroad's traditional and heavy reliance upon growing real estate revenues. HB 47's modifications promise to undermine railroad financial viability by seriously inhibiting marketing opportunities. The changes work to the advantage only of ARRC's competitors and, ironically, to the probable disadvantage of Alaska's public which, we believe, will increasingly depend upon aggressive development of private and public land resources.

III. HB 47's Impact.

A. Moose Kills. Like other Alaskans, ARRC is already subject to the requirements of AS 16.30 regarding salvage of big game. Moreover, the railroad has a history of cooperation with ADF&G, as attested by the attached article from that department's own in-house magazine. Corporation personnel continue to consult with ADF&G representatives and with fish and wildlife enforcement officers of the Department of Public Safety. Procedures are already in place to help insure killed moose are salvaged.

The unfortunate fact is that moose choose to use the cleared railroad track as well as public roads in years of heavy snowfall. For example, the winter of 1985-86 was extremely mild and only 17 moose were killed by railroad operations. In the 1984-85 snowy winter, more moose were killed on southcentral Alaska highways (319) than on the railroad right-of-way (316).

We believe the legislation is unnecessary. ARRC already abides by the State's salvage laws and it will continue to work with ADF&G personnel to mitigate moose losses.

B. Executive Session/Confidentiality. Sections 4 and 5 of HB 47 propose that confidential railroad marketing and

business data, including freight divisions and contract rate agreements, be disclosable to the public. The railroad's water carrier, trucking, real estate, and port competitors would reap the greatest benefit from this relaxation of the law. Using sensitive information related to railroad freight rates, developing markets, and business opportunities to their advantage, railroad competitors may successfully eliminate ARRC's capability to offer competitive freight rates and real estate in Alaska.

The State purchased the railroad in part to preserve a rail transportation option in Alaska. Therefore, it structured a public corporation which would vigorously pursue a market presence to best serve consumer needs and avoid State financial assistance. In ARCA the Alaska legislature recognized ARRC's need to protect its proprietary information from general public scrutiny to preserve that mandate of railroad self-sufficiency. HB 47 promises to largely undo this protection.

Rate divisions and contract rate agreements explain just how much ARRC charges to haul commodities. Divisions split freight revenues for particular shipments between the railroad and its connecting carriers; contract rate agreements establish freight charges between the railroad and its shippers. Armed with information collected from ARRC's files (or Board minutes since HB 47 would also eliminate freight divisions, contract rate agreements, and proposed land acquisitions and disposals as subjects which may be discussed in the Board's executive sessions), competitors may undercut railroad charges and contracts to their financial advantage in what are already highly competitive freight and real estate markets.

Federal law may also protect the freight rate information which railroad competitors seek through passage of this legislation.^{1/} After the transfer of the railroad into

1/ Please see 49 U.S.C. § 11910: "A common carrier . . . that knowingly discloses to another person, except the shipper or consignee, . . . (A) information about the nature, kind, quantity, destination, consignee, or routing of property tendered or delivered to that carrier . . . without the consent of the shipper or consignee, and (B) that information may be used to the detriment of the shipper or consignee or may disclose improperly, to a competitor the business transactions of the shipper or consignee, shall be fined not more than \$1,000." Because divisions and contract rate agreements will contain such information, legal counsel should opine whether HB 47 will inevitably conflict with this federal mandate. Note that the Interstate Commerce Commission requires only that minimal aspects of contract rate agreements be filed with that agency.

State ownership, the Federal Alaska Railroad Transfer Act ("ARTA") specified that the State-owned railroad would be a rail carrier engaged in interstate and foreign commerce subject to the jurisdiction of the ICC and entitled to all of the business opportunities available to comparable railroads, including contract rate agreements. 45 U.S.C. § 1207.

Like federal deregulation in the airline, trucking, and telephone industries, deregulation of certain rail activities in the Staggers Rail Act of 1980 was meant to promote the viability of the rail transportation option in America. The Act was passed as a response to the financial difficulties then plaguing the nation's railroads. Congress felt that much of the problem lay with excessive governmental regulations. Hence, it granted rail carriers the privilege to conduct their operations by contract as other businesses do. Instead of charging uniform tariffs of general applicability, railroads would be able to negotiate individual contracts with their shippers.

For example, no longer bound by difficult and time consuming notice and rate-making regulations in its competition for TOFC ("trailer on flat car") traffic, railroads, including ARRC, may adjust rates quickly to changing market conditions, contract directly with shippers for the movement of their freight, and offer special services and accommodations to customers on a one-to-one basis. Special care is taken to ensure that contract rate agreement information is not disclosed to competitors. The overriding thrust of the Staggers Act is to protect the confidentiality of contract provisions and to ensure to the purchasers of transportation services and to railroads a degree of confidentiality similar to that of other businesses throughout the country.

HB 47 threatens to largely eliminate legislative directions that all business opportunities available to other railroads be afforded to ARRC and that the corporation be operated "according to sound business management practices" on a self-sustaining basis. To be successful, ARRC must continue to offer competitively-priced services in the marketplace. HB 47's demand that the railroad's shipper and carrier agreements be open for inspection by its competitors may also be an indication that ARRC has made its mark as a serious competitor for freight in a diminishing Alaska market.

HB 47 also eliminates confidential Board discussions of the details related to proposed land acquisitions or disposals. The prospect of public discussion of the confidential terms of proposed real estate transactions would have a significant chilling effect on ARRC market opportunities. The bill ignores the reality that most businessmen and women do not announce land acquisitions or

development plans until all options have been quietly researched, examined, and discussed. If ARRC should ever compete with other industrial landowners for this highly competitive trade, it must have the flexibility to honor requests that proposal information be protected. Public involvement at this early stage may even go beyond what is required of State agencies. The public interest is presently and adequately protected by the current law and Board rules that require all sales of land be acted upon and approved by the Board and legislature in public session.

C. Operational Restraints. The legislature's vision that ARRC be self-sustaining will be severely impacted by HB 47's directive that passenger and freight service levels be maintained at 1985 levels. Also, present law already requires a detailed oversight report to be provided to the governor and legislature before ARRC may undertake a significant reduction in services. The report, and public Board action which proceeds it, ensures adequate protection of the public's interest and provides ample opportunity for public involvement as a recent proposed sale of exhausted rail passenger equipment demonstrated.

Although some adjustments are naturally required by changing markets and developing innovations, the corporation's commitment to existing levels of freight and passenger services is evident. In fact, ARRC has dramatically improved passenger services since transfer and is committed to the purchase of new passenger coaches and two newly refurbished self-propelled railcars. Nonetheless, passenger service amounts to a \$1.5 million drain on ARRC's financial resources (down from a \$2 million annual loss at transfer). However, to be economically viable, ARRC must have the ability to adapt to swings in the economic climate, particularly as freight markets change.

An examination of revenues from passenger service for the first 18 days of January 1987 demonstrates the need for flexibility in managing service levels. Total estimated revenues were \$12,504 while the estimated costs were \$59,900, for a loss of \$47,496. Such seasonal variations in market demand are expected and the corporation has not moved to eliminate these services.

Managerial flexibility to match the overall level of services to market demands is essential. HB 47 would eliminate that flexibility, to the marked disadvantage of ARRC's financial self-sufficiency and to the probable advantage of railroad competitors.

D. Land Issues. The corporation is the owner of a substantial amount of land (over 22,000 acres in addition to right-of-way) suitable for commercial leasing. Long-term

leases of that land are subject to the provisions of a Board policy which was developed only after significant public input. The Board's leasing policy is intended to accommodate the continued viability of competitive railroad leasing and adequate public awareness and involvement.

The additional requirements imposed by this bill would adversely affect the corporation's leasing program in many respects. In ARRC's commercial setting, its ability to act decisively is often necessary to capitalize on real estate market trends. HB 47's 60-day notice requirement would significantly destroy ARRC's marketing efforts in a highly competitive economy and seriously impact any opportunity to obtain the highest possible return on rail land.

The delay and intense public scrutiny suggested by this legislation would also discourage many potential lessees who are both eager to finalize a transaction and reluctant to prematurely reveal their financial affairs in public. The present Board policy requires public Board action to approve leases of more than three years and advance public notice of lease approvals. These public Board meetings allow concerned citizens ample opportunity to submit their comments. Proposed lease development of railroad Government Hill is a recent example of this process in action. It appears to provide an adequate balance between aggressive development of ARRC lease opportunities with public awareness and input. HB 47's attempts to significantly complicate railroad leasing procedures promises to undermine the railroad's self-sufficiency without meaningfully improving ARRC's own recognition and implementation of its public accountability obligations.

The bill's restriction of leases to 35 years in duration without legislative approval would also undermine leasing opportunities. Most long-term ground lease terms start at 55 years to allow high-quality improvements to be amortized over the entire lease term. ARRC's present policy was designed to accommodate commercial lessees who envision substantial improvements to railroad property. Financial institutions will not loan money to these lessees to build significant improvements unless a longer lease term is assured. After considerable discussions involving ARRC representatives, prospective and present lessees, and banks, ARCA's present restriction on long-term leases (they may be terminated if needed for railroad purposes after 35 years) has satisfied lending institutions. Lessees are on their way to improving lease parcels. Parenthetically, those improvements will also substantially add to the State's equity; the owner of rail property.

An additional impact of HB 47 is a logistic one. The corporation is presently lessor or permittor in some 1200

agreements. On the average, roughly two dozen such agreements are processed through the corporation's real estate department a month. Some of these transactions involve minor amendments, but a considerable number are substantial changes. Were the Board of Directors required to hold a public hearing before every agreement is made, it would be forced to devote an inordinate amount of attention to commercial, market-dictated decisions more appropriately left to the corporate officers hired to apply their experience and skill in real estate leasing. ARCA's honorariums may not begin to adequately compensate a largely volunteer Board for such new management responsibilities. On the other hand, long-term leases may require Board scrutiny, and provision has been made to present them, following public notice, to the Board for approval at its public meetings.

HB 47 also requires a detailed inventory of land and natural resources in ARRC's annual report to the legislature. This detailing of "present uses, future development plans, and known resource development potential for the land, interests in land, and natural resources" calls for extraordinary research, development and planning efforts which ARRC is presently not funded or staffed to provide. Of course, specific land use planning for large industrial areas must and is being developed to effectively respond to market needs, but the comprehensive land and natural resources planning called for here can only compel the commitment of dwindling personnel and financial resources to less vital activities.

HB 47 amends AS 42.40.350(d) to expressly permit leases to municipalities at less than fair market value. This change is also unnecessary; ARRC has consistently interpreted an existing exception for State leases to include leases to political subdivisions.

Finally, the bill proposes that any sale of railroad natural resources be made by competitive bid. This is also an unnecessary and undesirable limitation. Similar to the marketing of rail leases, ARRC needs the flexibility to establish the fair market value of any natural resources slated for sale by means in addition to competitive bid. This is particularly true when market conditions are greatly fluctuating and values are best established over time. The proposal also ignores the reality that sales of gravel and rock, for example, may not be conducive to the artificial structuring of a competitive sale format because of time constraints, remote locations, and market conditions.

ARCA already calls for the "prudent operation of the railroad according to sound business management practices" and directs ARRC's Board and management to "manage the corporation on a self-sustaining basis." A limitation on the types of

permitted sales of natural resources is at best a redundancy which also calls for prudent decision-making and, at the worst, a limitation which also threatens the railroad's financial vitality.

IV. Conclusion.

The Alaska Railroad Corporation opposes HB 47. The sweeping limitations it proposes upon railroad operations may not only undo the legislature's original vision of a quasi-private, quasi-public railroad armed with the flexibility it needs to survive in competitive freight and real estate markets, but seriously threaten its economic survival.

For all these reasons, we respectfully request that the bill's proposed amendments to the Alaska Railroad Corporation Act be rejected.

3654L

Kay Brown

Alaska State Legislature House of Representatives

MEMORANDUM

TO: Rep. Dave Donley, Chairman
House Labor and Commerce Committee

DATE: January 23, 1987

FROM: Rep. Kay Brown

RE: HB 47

HB 47, An Act relating to the Alaska Railroad Corporation, has been referred to the House Labor and Commerce Committee for consideration.

Thank you for scheduling a work session on the bill at 4:30 p.m., Wednesday, January 28.

The primary purpose of the bill is to ensure that the railroad's publicly-owned lands and resources are managed in the best interest of Alaskans.

HB 47 would limit the railroad's complete discretion to dispose of public lands through long-term leases. While a sale which disposes of the railroad's entire interest in land is subject to legislative approval, the railroad's chief executive officer, acting under delegated authority, can achieve a result similar to absolute title transfer by issuing a long-term lease. From a public interest perspective, issuing a long-term lease should be subject to procedures that ensure an opportunity for public participation before the decision is made.

The attached sectional analysis by George Utermohle, Legislative Counsel, describes the bill in more detail. I have also attached a memo by Utermohle discussing confidentiality standards.

I look forward to discussing HB 47 with your committee.

Attachments

cc: Rep. Ellis
Rep. Boyer

P. O. Box 20-2661
Anchorage, AK 99520-2661
(907) 272-0207

During Session:
P. O. Box V
Juneau, AK 99811
(907) 465-4998

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

January 22, 1987

SUBJECT: Section by section analysis of HB 47, An Act
relating to the Alaska Railroad Corporation

TO: Representative Kay Brown

FROM: George Utermohle *GU*
Legislative Counsel

The following is the section-by-section analysis of HB 47
which you requested.

Section 1 amends AS 42.40.100 by expanding the duties of the
board of the Alaska Railroad Corporation to include:

(1) maintenance of passenger and freight operations of
the railroad at the same level as when the railroad was
transferred from federal to state ownership or, if funding
is available, expansion of passenger and freight operations
beyond the level of service at the time of transfer;

(2) management of real property interests and natural
resources owned by the corporation in the best interest of
the people of the state; among the information which the
board must consider in making its determination of what is
in the best interests of the people of the state are land
use ordinances and plans of cities and boroughs affected by
railroad land management decisions, adjacent land uses, the
development and revenue potential of the land, and public
comment on land management decisions proposed by the board.

(3) consultation with the Alaska Department of Fish and
Game on ways that the railroad can reduce the effects of
railroad operations on wildlife.

Section 2 amends AS 42.40.120(b) to require the board of the
Alaska Railroad Corporation to delegate authority to the
executive officers of the railroad to grant leases,
easements, permits, or other interests in railroad land for
periods not exceeding one year. A grant of a lease,

easement, permit, or other interest in land for a period exceeding one year must be approved by the board of the corporation under Section 8 of the bill. Current law allows the executive officers of the railroad, through delegated authority, to enter into long term leases (up to 35 years under any conditions and exceeding 35 years if the lease is subject to termination by the railroad).

Section 3 amends AS 42.40.120(c) to require specific approval by the board of the Alaska Railroad Corporation before railroad services can be expanded or reduced in any way and before the corporation can lease, grant easements or permits, or allow use of railroad land for a period of time that exceeds one year.

Section 4 amends AS 42.40.170(b) to remove the authority of the board of the Alaska Railroad Corporation to discuss land disposal or acquisition issues in executive session. The board's authority to discuss matters related to divisions and contract rate agreements in an executive session is also repealed.

Section 5 amends AS 42.40.220(b) by limiting the items of information which the Alaska Railroad Corporation may withhold from public disclosure to the following items:

- (a) personnel records
- (b) communications with and work product of legal counsel
- (c) information consistent with the standards and practices of the U.S. Interstate Commerce Commission for the protection of proprietary information associated with specific shippers.

The discretion of the corporation to identify additional similar types of information for non-disclosure is removed. Confidentiality is removed from information associated with divisions and contract rate agreements.

Section 6 amends AS 42.40.260 by requiring that the annual report prepared by the Alaska Railroad Corporation and provided to the governor and legislature include information on the land and natural resources held by the corporation. Pending proposals for the lease or disposal of land or natural resources must also be disclosed in the annual report.

Section 7 amends AS 42.40.285 by requiring that any lease of land by the Alaska Railroad Corporation for a period exceeding 35 years be approved by the legislature. The former exemption is repealed.

Section 8 amends AS 42.40.350(c) by permitting the Alaska Railroad Corporation to lease, grant easements in or permits for rail land for a term exceeding one year only if the board of the corporation determines that the transaction is in the best interests of the people of the state. Rail land is that land owned by the corporation that is not included in the railroad utility corridor along the main or branch lines of the railroad. At least 60 days before taking final action on the transaction, the board must prepare a written report on the proposed transaction and a determination that the transaction is in the best interests of the people of the state. The board must hold a public hearing in a city or borough affected by a lease, easement, or permit issued for a term exceeding one year.

Section 9 amends AS 42.40.350(d) by requiring that any lease or other disposal of land by the Alaska Railroad Corporation be at fair market value as determined by appraisal or by competitive bid unless the lease or disposal is to the state, a city or a borough.

Section 10 adds new language to AS 42.40.350 requiring that the disposal of natural resources from the land of the Alaska Railroad Corporation be by competitive bid unless the disposal is to the state or to a city or borough.

Section 11 adds new language to AS 42.40.420 to allow the Alaska Railroad Corporation to issue permits to individuals for temporary, short term, or emergency use of railroad land.

Section 12 adds a new section, AS 42.40.460, requiring the Alaska Railroad Corporation to salvage for human consumption the meat of big game animals killed by operations of the railroad.

STATE OF ALASKA THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

January 21, 1987

SUBJECT: AS 42.40.170(b)(7) and AS 42.40.220(b);
Information of a type treated as confidential
under the standards and practices of the
United States Interstate Commerce Commission

TO: Representative Kay Brown

FROM: George Utermohle *GU*
Legislative Counsel

This memorandum seeks to clarify the impact of certain language in AS 42.40.170(b)(7) and AS 42.40.220(b). Under the authority of these sections the Alaska Railroad Corporation may maintain the confidentiality of "information of a type treated as confidential under the standards and practices of the United States Interstate Commerce Commission." It is difficult to determine what information is kept confidential by this provision, however a review of the federal statutes and regulations pertaining to the Interstate Commerce Commission does explain what information is public.

Under 49 CFR 1001.1 the following records of carriers regulated by the Interstate Commerce Commission are available to the public:

(a) Copies of tariffs, rate schedules, quotations or tenders of a rate for transportation for the federal government, classifications, powers of attorney, concurrences, and contracts filed with the commission; however arrangements between carriers may be withheld from public disclosure if disclosure is not necessary in the public interest.

(b) Annual and other periodic reports containing answers to questions asked by the commission; the annual report must contain an account of the affairs of the carrier, in as much detail as the commission may require.

(c) Annual and other periodic reports, maps, profiles, and other data filed with the commission for the purpose of

valuing the property of the carrier; the commission may close these records to the public but must state its reasons for doing so. (49 U.S.C. 10783(d))

(d) All docket files, including pleadings, depositions, exhibits, transcripts of testimony, recommended and proposed reports, exceptions, briefs, reports and decisions of the commission in any proceeding, and carrier operating authorities granted in those proceedings.

(e) File and index of security interests in railroad property granted by carriers and required to be recorded with the commission.

Freight commodity shipment reports of railroads are also public. However reports involving the traffic of less than three shippers in a single commodity reporting class are not public. Information involving the traffic of less than three shippers must be included in supplemental reports which are confidential unless the commission approves their release. (49 CFR 1248.6)

According to the procedures of the Interstate Commerce Commission listed above, most of the information collected by the commission is public. Aside from the specific exemptions for freight commodity shipment reports involving less than three shippers in a single commodity reporting class and the discretionary exemptions for arrangements between carriers under 49 U.S.C. 10764(a)(2) and for valuation reports under 49 U.S.C. 10783(d), it is not clear what other information collected by the Interstate Commerce Commission may be withheld from public disclosure. Overall, a considerable amount of information about the operations of the Alaska Railroad is public information under the standards and practices of the Interstate Commerce Commission.

The true extent of the Alaska Railroad's power to withhold information under its authority to mirror disclosure decisions of the Interstate Commerce Commission cannot be ascertained in the abstract. Only on an issue by issue and case by case basis can the limits of the Alaska Railroad's power to withhold information be established. The ability to determine in advance what information is public is complicated by the discretionary authority of the Interstate Commerce Commission to make certain information confidential in one instance but to make it public in another instance. However, if the need should arise for information that the Alaska

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Railroad lawfully withholds under the authority of AS 42.40.170(b)(7) and AS 42.40.220(b), the legislature always has the authority to force disclosure by repealing these provisions.

Confidentiality of information collected by the Interstate Commerce Commission is maintained to protect the proprietary and financial interests of carriers regulated by the commission and of third parties such as customers of the carriers. The Alaska Railroad Corporation, or the State of Alaska as owner of the corporation, may waive its right to confidentiality in proceedings before the commission and thus allow otherwise sensitive information to be made public. The primary issue that the corporation or state would want to consider once it decides that it no longer wants to keep certain information confidential, is whether the interest of third parties will be adversely affected by disclosure of the information and if so, should the information still be made public.

If I can provide further information on this subject, please contact me.

GU:mkr
m8/034

Original sponsors: Brown, Ellis and Boyer

1 IN THE HOUSE

BY THE LABOR AND
COMMERCE COMMITTEE

2 CS FOR HOUSE BILL NO. 47 (L&C)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the Alaska Railroad Corporation."

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

8 * Section 1. AS 42.40.100 is amended to read:

9 Sec. 42.40.100. MANAGEMENT BY THE BOARD. The board is respons-
10 ible for the management of the corporation but shall delegate certain
11 powers and duties to the chief executive officer in accordance with
12 AS 42.40.120. In managing the corporation the board shall

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

15 (2) operate the Alaska Railroad as a common carrier subject
16 to the jurisdiction of the United States Interstate Commerce Commis-
17 sion consistent with 45 U.S.C. 1207;

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

20 (4) apply to the legislature for an appropriation with the
21 concurrence of the governor to be used to provide a particular service
22 that is not otherwise self-sustaining if a subsidy is required to
23 maintain that service;

24 (5) provide for safe, efficient, and economical transporta-
25 tion to meet the overall needs of the state;

26 (6) raise needed capital by issuing bonds of the corpo-
27 ration upon approval by the legislature while ensuring that borrowing
28 by the corporation does not directly or indirectly endanger the
29 state's own borrowing capacity;

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

4 (8) ensure that the procurement procedures of the corpo-
5 ration meet accepted railroad industry standards;

6 (9) ensure that the accounting procedures of the corpo-
7 ration meet generally accepted accounting principles consistent with
8 industry standards for comparable railroads;

9 (10) maintain or expand, to the extent practicable within
10 financial resources available, the level of passenger and freight
11 service provided at the time of transfer of the railroad to the state;

12 (11) manage land, interests in land, and natural resources
13 on land held by the corporation in the best interest of the people of
14 the state; in determining the best interest of the people of the state
15 the corporation shall consider land use plans and ordinances of munic-
16 ipalities where railroad land exists, adjacent land uses, the economic
17 development and revenue generating potential of the land and natural
18 resources, and public comment received on proposed land management
19 actions;

20 (12) consult with the Department of Fish and Game to mini-
21 mize adverse effects of railroad operations upon wildlife.

22 * Sec. 2. AS 42.40.120(b) is amended to read:

23 (b) The [WITHIN 60 DAYS AFTER ITS FIRST MEETING, THE] board
24 shall delegate the following activities of the corporation to the
25 chief executive officer or other executive officers designated by the
26 board:

27 (1) leasing [SUBJECT TO AS 42.40.285 AND 42.40.350(b) AND
28 (d)], granting easements in, issuing permits for the use of, or con-
29 veying other interests in railroad land for a term of less than one

1 year [PROPERTY THAT DO NOT CONSTITUTE A TRANSFER OF THE CORPORATION'S
2 ENTIRE INTEREST IN LAND];

3 (2) establishing specific rates, tariffs, divisions, and
4 contract rate agreements;

5 (3) making routine changes in service levels;

6 (4) establishing procurement and accounting procedures for
7 the corporation; and

8 (5) performing procurement activities.

9 * Sec. 3. AS 42.40.120(c) is amended to read:

10 (c) Notwithstanding (a) and (b) of this section, specific board
11 approval is required for the following:

12 (1) issuing bonds upon approval by the legislature;

13 (2) mortgaging or pledging corporation assets;

14 (3) donating property or other assets belonging to the
15 corporation;

16 (4) acting as a surety or guarantor;

17 (5) adopting a long-range capital improvement and program
18 plan;

19 (6) adopting annual reports;

20 (7) effecting general, comprehensive increases and de-
21 creases in rates;

22 (8) expanding or reducing services in a major way;

23 (9) expanding the main or branch rail lines including spur,
24 industrial, team, switching or side tracks, other than performing
25 routine track alignment as necessary to maintain existing service
26 levels;

27 (10) selecting independent auditors and accountants;

28 (11) entering into collective bargaining agreements;

29 (12) adopting annual budgets;

1 (13) beginning a capital project with an estimated com-
2 pletion cost of more than \$500,000 or an estimated completion time of
3 more than one year;

4 (14) exchanging, donating, selling, or otherwise conveying
5 its entire interest in land subject to approval by the legislature;

6 (15) leasing, granting easements in or permits for, or
7 authorizing use of railroad land for a term of one year or more;

8 (16) exercising the power of eminent domain.

9 * Sec. 4. AS 42.40.170(b) is amended to read:

10 (b) Only the following subjects may be discussed in an execu-
11 tive session:

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

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

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

19 4) matters pertaining to personnel;

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

21 and

22 (6) [LAND ACQUISITION OR DISPOSAL; AND

23 (7)] proprietary or other information of a type treated as
24 confidential under the standards and practices of the United States
25 Interstate Commerce Commission, including practices that protect
26 information associated with specific shippers [, DIVISIONS, AND CON-
27 TRACT RATE AGREEMENTS].

29 * Sec. 5. AS 42.40.220(b) is amended to read:

29 (b) The corporation may by rule designate and withhold public

1 disclosure of matters of a privileged or proprietary nature. Those
2 matters are [INCLUDE] personnel records, communications with and work
3 product of legal counsel, and, consistent with the standards and
4 practices of the United States Interstate Commerce Commission for the
5 protection of these matters, other information including proprietary
6 information associated with specific shippers [, DIVISIONS AND CON-
7 TRACT RATE AGREEMENTS].

8 * Sec. 6. AS 42.40.260 is amended by adding a new subsection to read:

9 (c) The annual report shall inventory land, interests in land,
10 and natural resources on land held by the corporation and shall de-
11 scribe present uses, future development plans, and known resource
12 development potential for the land, interests in land, and natural
13 resources. The annual report shall also provide information on pend-
14 ing proposals for the lease or other disposal of land, interests in
15 land, or natural resources on land held by the corporation during the
16 next year.

17 * Sec. 7. AS 42.40.285 is amended to read:

18 Sec. 42.40.285. LEGISLATIVE APPROVAL REQUIRED. Unless the
19 legislature approves the action by law, the corporation may not

20 (1) exchange, donate, sell, or otherwise convey its entire
21 interest in land;

22 (2) issue bonds;

23 (3) extend railroad lines; this paragraph does not apply to
24 a spur, industrial, team, switching or side track;

25 (4) lease land for a period in excess of 35 years [UNLESS
26 THE CORPORATION RESERVES THE RIGHT TO TERMINATE THE LEASE IF THE LAND
27 IS NEEDED FOR RAILROAD PURPOSES].

28 * Sec. 8. AS 42.40.350(c) is amended to read:

29 (c) When the board determines that the best interest of the

1 people of the state is served, the [THE] corporation may lease, sub-
2 ject to AS 42.40.285 and (d) of this section, grant easements in or
3 permits for, or otherwise authorize use of portions of rail land for a
4 term of one year or more. At least 60 days before taking final action
5 the board shall make a written finding of fact and determination that
6 the lease, grant of an easement in or permit for, or authorization of
7 use of rail land for a term of one year or more is in the best in-
8 terest of the people of the state. At least 30 days before taking
9 final action the board shall hold at least one public hearing in a
10 municipality affected by a land management action under this sub-
11 section. However, the corporation may not convey its entire interest
12 in rail land except as provided in AS 42.40.285, 42.40.370(d), and
13 42.40.400.

14 * Sec. 9. AS 42.40.350(d) is amended to read:

15 (d) A lease or disposal of land [APPROVED BY THE LEGISLATURE
16 UNDER AS 42.40.285] by the corporation to a party other than the state
17 or a municipality shall be made at fair market value as determined by
18 a qualified appraiser or by competitive bid.

19 * Sec. 10. AS 42.40.350 is amended by adding a new subsection to read:

20 (e) A disposal of natural resources from land held by the corpo-
21 ration to a party other than the state or a municipality shall be made
22 by competitive bid.

23 * Sec. 11. AS 42.40.420 is amended by adding a new subsection to read:

24 (b) Upon request of a person the corporation may authorize by
25 permit the temporary, short term, or emergency use of railroad land.

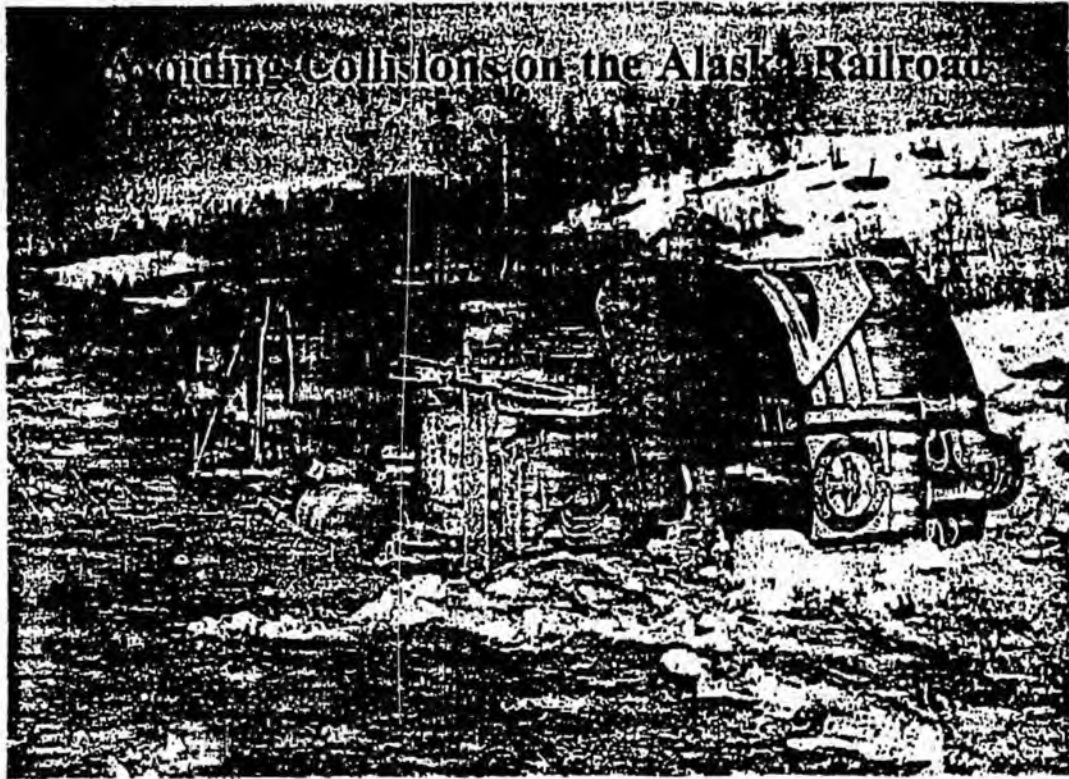
26 * Sec. 12. AS 42.40 is amended by adding a new section to article 5 to
27 read:

28 Sec. 42.40.460. SALVAGE OF BIG GAME FOR HUMAN CONSUMPTION. The
29 corporation shall salvage for human consumption the meat of big game

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animals, as defined under AS 16.30.030, killed by the operations of the railroad.

When Moose and Train Meet:



by Jack C. Didrlickson and Raymond J. Kramer

On the last day of February 1985, Alaska Railroad Locomotive Number 3006N chugged its way out of the Anchorage railroad yards bound for Fairbanks. None of its crew realized that an unwanted record would be set before it arrived at its destination the next morning. Nineteen moose would die that trip, crushed by the locomotive, while the helpless crew watched, unable to save the victims. And, as the winter snows continued, more moose died on almost every run until the annual total for the entire length of the railroad came to 385.

Fortunately, not every year is a duplicate of the winter of 1984-85. This past winter (1985-86), 17 moose were killed along the entire length of the Alaska Railroad.

What causes these mortalities, and what can be done to lessen or prevent them? These are questions of primary importance to not only game biologists and railroad employees, but also to the public, some of whom see this as a shameful situation that could be easily remedied. Although many ideas have been proposed and tried, there is no one good solution.

Initially, both ADF&G and the Alaska Railroad presumed

that the high mortality in some years occurred simply because the moose population periodically fluctuated, with most kills occurring when the population was high. We now know this is not the case. By correlating the Alaska Railroad's daily records over the years with weather patterns which coincided with the chronology of high moose losses, we could see a pattern. In years of deep snow depth (three to five feet) for long periods of time, moose losses along the tracks drastically increased. Conversely, in winter periods of little snow, or when spring thaws decreased the snow depths, moose-train incidents significantly declined.

A majority of the 1984-85 mortalities occurred on the tracks between Willow and Talkeetna, in an area known as Game Management Unit (GMU) 14B. This is an area with a large moose population, most of which remains in the high reaches of the Talkeetna Mountains throughout the summer and fall. In winter, as snow and winds increase in these highlands, a large number of the moose move down the mountain slopes to their critical winter food supply of willows along the Susitna River.

Unfortunately, both the railroad and the main highway from Anchorage to Fairbanks bisect their migration path.

When snows exceed three feet, the moose find these man-made "trails" a convenient place to walk or rest, and therein lies the cause of the mortality. Moose are somewhat reluctant to leave these cleared areas and they have not, for the most part, learned to fear trains or autos. As a result, an additional 77 animals were killed by highway vehicles during the 1985 season. Also, many become stressed by deep snow and the lack of near-by browse. In residential areas along the highway, stressed moose belligerently chased dogs, children, and adults, with the result that another 40 were killed in defense of life and property, bringing the total loss of moose in GMU 14B to 502. Hunters, on the other hand, took only 216 animals in the following 20-day September season, before the deep snows set in.

Although a large percentage of mortalities for all years occurs between Willow and Hurricane, with a few other "hot spots," mortalities are otherwise fairly uniformly distributed along the entire length of the tracks; therefore, the problem is not merely a local one. A solution must be provided that works along the entire railroad corridor from Seward to Whittier to Fairbanks.

Meetings have been held between the Alaska Railroad personnel and ADF&G game biologists to seek answers and actions, and members of the public have enthusiastically offered innovative ideas, but no single, concrete solution has been found.

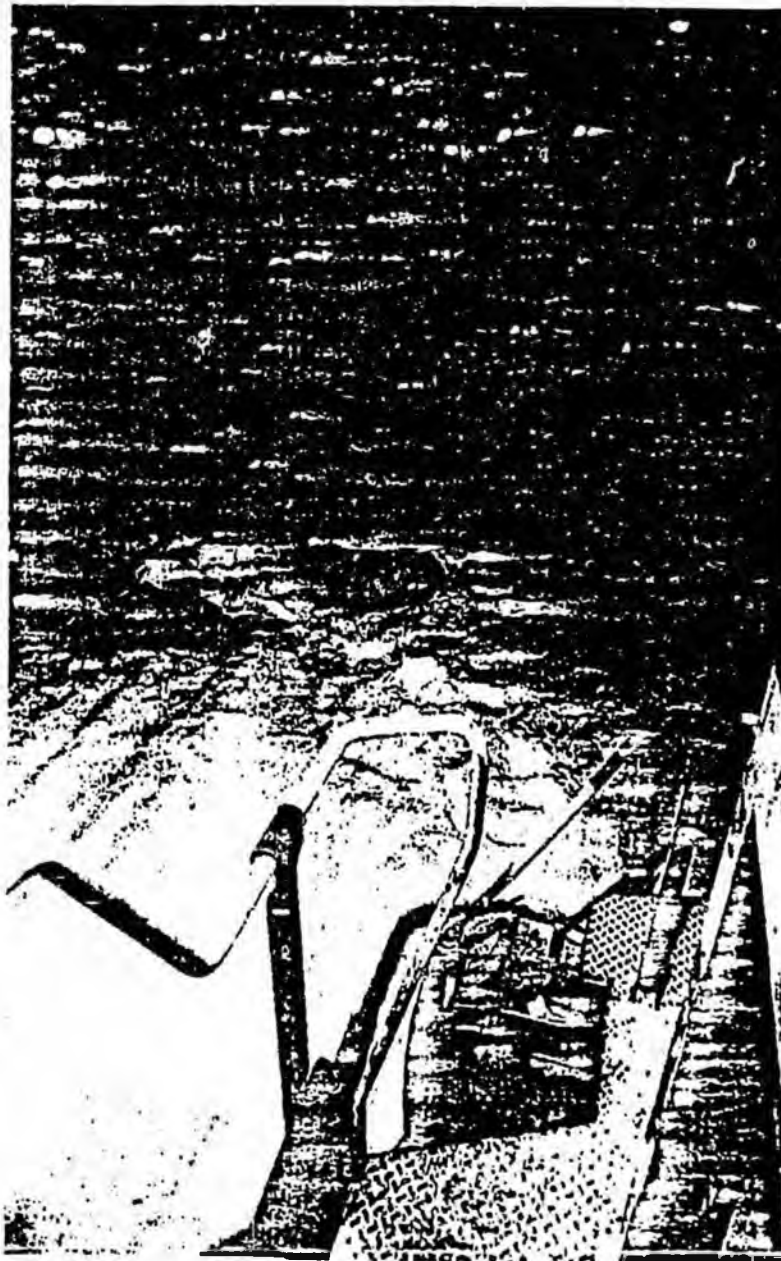
There are certain realities which must be faced where "compromise" simply won't work. The trains must run and they must run on or near schedule; too many people and businesses are dependent on the products delivered to interrupt service. Closing down the railroad in winter is no solution. Scheduling the trains to run only in daylight hours won't work, with only four to five hours of daylight present during the critical months. Accurately predicting where and when deep snows will occur is beyond human technology. We must look to the tracks and trains themselves for solutions.

Perhaps the most "far-out" solution offered so far was that of a giant cushioned rubber bumper attached to the front of the locomotive. Here, laws of physics and elasticity come to bear, causing visions of a moose being hit at 40 mph, sinking into this giant cushion, and then being sprung out in front of the train again, only to be picked up and thrust again, endlessly bouncing down the tracks.

Another more realistic attempt was to mount sonic whistles on the locomotive which might alert the animals. The experiment failed, however. When the train moved comparatively slowly, the whistles didn't whistle, and when it was very cold they froze into silence.

Slowing the train from 40 to 20 mph in "hot spot" areas was another idea. Not only did scheduling dif-

In times of heavy snow, moose make use of the cleared areas on the tracks of the Alaska Railroad for walking and resting. Here, a train has stopped for a moose bedded down on the tracks during a snowstorm in the winter of 1985.



M. Penn
Anchorage Daily News

difficulties make this impossible, but the trains couldn't climb certain grades on the icy tracks if momentum was lost.

Decking or covering the ties on trestle bridges to permit moose to safely cross was suggested, but this idea was denied because speed sensors on the train wheels reportedly will not work properly in the presence of the coverings.

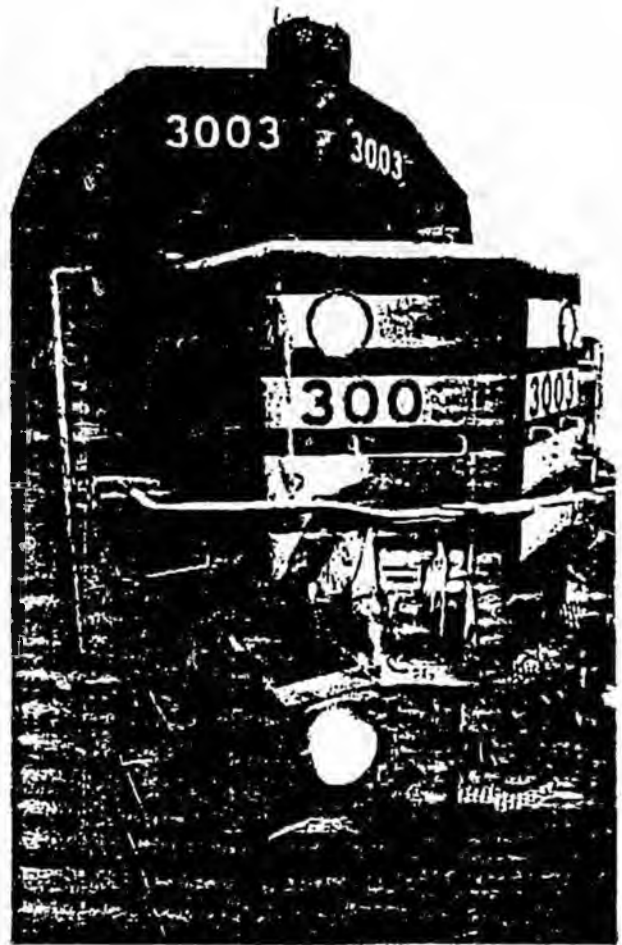
One of the major problems in deep snow is that of the "tunnel" effect which trains create with their own snow plow on the front. In this situation, once a moose is on the track, after struggling in deep snow, it won't leave even with a train bearing down on it. There is little room between the train and the wall of snow and the moose are often sideswiped. "Wing plowing," where special equipment plows 20 feet on either side of the tracks seems to have merit in certain areas where topography permits, but this is not the complete answer. When the railroad bed is significantly higher than surrounding terrain, moose still prefer the track bed to jumping down into deep snow.

The best, but perhaps most complicated, scheme offered so far is to allow permit hunters to harvest moose along the railway corridor, at times when heavy snowfall occurs. Logistically, this would prove difficult. First, permits would have to be fairly allocated and there would be no guarantee in any particular year that a hunt would be held. The hunt would occur only in areas determined to be "hot spots" and then only within a narrow corridor along the tracks. When snows are deep, snowmachines bog down and would prove worthless. Furthermore, hunters riding snowmachines, or even walking down the railroad right-of-way, simply would not be safe; eventually someone would be hit by a train.

The only apparent method of getting hunters afield would be to run a "hunter train" which could stop in designated areas, let hunters off for a period of time, and pick them up later, with their harvested moose. This plan, too, offers tremendous logistical problems and would require a great deal of common sense and wintercraft knowledge on the part of each hunter. If regular train schedules were to continue, each hunter would have to be back at his designated pickup point precisely on time, as the train could not delay its schedule. A hunter who took an animal too far away would perhaps have to leave all or part of his moose behind; this is a violation of wanton waste laws and would defeat the purpose of obtaining the meat.

Based on random permit drawing, there is a chance that some inexperienced hunters might be drawn who would have no idea of the severity of camping out in -40° weather. To leave them out in these conditions overnight could prove disastrous, particularly if a storm occurred. Inevitably, someone would get lost, frostbitten, or hypothermic.

For lack of a workable solution, the problem is far from resolved. We would all like to see a harvest shift from trains to hunters. In Canada, Sweden, Norway, and Russia, game managers are also seeking answers to this problem, but as yet no economically feasible solution has been found. Fencing both sides of the railway would not only be exorbitantly expensive, but would also cut the moose off from their winter habitat. Overpasses or underpasses, with wing fences to funnel the animals onto these routes, have shown promise in Europe, but



M. Fein
Anchorage Daily News

Frank Box, boilermaker for the Alaska Railroad, welds one of two lights that were attached to the locomotives to chase moose off the tracks.

because of the great mileage involved would require literally millions of dollars to accomplish effectively in Alaska. Just such an underpass has been proposed outside Anchorage under the Glenn Highway; the results of this experiment will tell us much over the next few years.

Can our railbelt moose populations sustain these losses? The answer is a cautious "yes," with the adjustment of seasons and bag limits, but game managers would prefer to see a better use for the tons of meat that are spoiled by a train's crushing impact.

As Alaska moves into the 21st century, answers to this vexing problem may be found. In the meantime, game biologists must continue to obtain basic biological information to justify attempts at possible solutions.

Jack C. Dirdrickson, who has been with the department since 1959, serves as Area Game Biologist with the Division of Game, ADF&G, Palmer.

Raymond J. Kramer serves as Game Biologist, Division of Game, ADF&G, Anchorage.

DRAFT: ATTACHMENT TO LETTER TO ALASKA RAILROAD CORPORATION

INTRODUCTORY CONSIDERATIONS:

- a. Throughout these questions, the term "documents" or "information" does not include documents or information which may be fairly classified as personnel records or communications with or work product of legal counsel.
- b. The term "rail property" includes all property transferred to the Alaska Railroad Corporation (ARRC) from the federal government.
- c. The term "land" includes all real property, interests therein and resources thereon, transferred to ARRC.
- d. The term "rail land" has the same definition as set forth in A.S. 42.40.350.
- e. The term "railroad utility corridors" has the same definition as set forth in A.S. 42.40.350.
- f. If the ARRC refuses to answer any question or provide any information requested by the Committee, please state the precise statute or ICC provision under which the information is held confidential.

QUESTIONS:

1. How much land was transferred to the ARRC from the federal government?
2. What percentage or what approximate number of acres is railroad utility corridors?
3. What percentage or what approximate number of acres is rail land?
4. What is the approximate number of acres of rail land which is necessary for the operation of the railroad? For example, for railroad terminals, yards, and offices.
5. For each of the following local government entities, state the approximate number of acres of land located within each entity, give a general description of the land and major

improvements, and give the estimated fair market value of the land:

- Anchorage
- Seward
- Fairbanks
- Whittier
- Palmer
- Wasilla
- Other municipalities

6. State the fair market value of (1) all land as described above and of (2) all rail land which is not necessary to the operation of the railroad.

7. If the ARRC is unable to provide the fair market value as requested in the preceding questions, give the railroad's most accurate estimate of the fair market value, describe the basis of the estimate, and describe what steps have been taken, if any, to determine the actual fair market value.

8. Describe each lease affecting rail land, specifically including a general description of the land involved, the term of the lease, and the lease rate.

9. Describe the leasing policy of the railroad for rail lands, including any factors considered and procedures followed to determine whether the lease is for the benefit of the people of the state, is in conflict with the land use plans of local governments, is compatible with adjacent land uses, or to otherwise communicate with local governments and adjacent land owners.

10. Which individual(s) is in charge of implementing the policies or procedures described in the preceding question?

11. Is the ARRC currently considering any leases in addition to those identified or those to which ARRC is currently a party? If so, describe.

12. Is the ARRC considering any development, sale or disposal of rail land or of any resources thereon? If so, describe.

13. What is the current status of the previously contemplated development of the bluff surrounding Government Hill, referred to by the residents as the Government Hill Greenbelt or West Bluff?

14. Describe any negotiations the ARRC is conducting with the Municipality of Anchorage regarding the above described development and any potential resolutions.

15. Is the ARRC currently negotiating or has the ARRC been requested to negotiate with any local governments regarding lease, transfer of interest, sale or other disposition of rail land? If so, please describe the local governments involved and issues raised in such negotiations or requests.
16. Describe the procedures the ARRC follows when a local government requests communication with the ARRC regarding rail land located within local government boundaries.
17. Describe all natural resources, including without limitation, sand, gravel, oil, gas, timber and minerals on rail land, and any existing or planned inventory of those natural resources.
18. Describe all disposals of interest in, development of, or lease of any of the resources identified in response to the above question.
19. Describe all changes in the levels of freight and passenger service which have been implemented since the transfer from the federal government.
20. Describe all currently proposed or planned changes in the levels of freight and passenger service which have been implemented since the transfer from the federal government.
21. Describe the procedures which the ARRC follows and the factors considered when it evaluates the need to change levels of freight or passenger service.
22. Describe all changes in the rates charged by the railroad for hauling freight since the transfer from the federal government.
23. Describe all currently proposed or planned changes in the rates charged for hauling freight since the transfer from the federal government.
24. Has the Board invoked an executive session to discuss the policy aspects (as opposed to the financial details) of acquisition or disposal of any interest in land? If so, please state when, describe the land affected, and the action discussed.
25. Why does the Board believe it is necessary to invoke executive session to discuss the policy aspects of acquisition or disposal of an interest in land?
26. Describe each instance since February 1985 in which the Board has invoked an executive session to discuss the subjects described in A.S.42.40.170 (b)(7).

27. Describe those specific categories of documents which the ARRC does not make public.
28. Describe those specific categories of documents which the ARRC does make public.
29. Describe the specific types of documents which ARRC withholds from the public as being "proprietary information" associated with specific shippers consistent with the standards and practices of the ICC.
30. Describe the specific types of documents which ARRC withholds from the public as being "proprietary information" associated with divisions consistent with the standards and practices of the ICC.
31. Describe the specific types of documents which ARRC withholds from the public as being "proprietary information" associated with contract rate agreements consistent with the standards and practices of the ICC.
32. Other than the specific types of documents described describe other specific types of documents which the ARRC withholds from the public as "proprietary information" consistent with the standards and practices of the ICC.
33. List each rule pursuant to which the ARRC has designated documents as privileged or proprietary under A.S.42.40.220 or otherwise, and describe the types of documents and information withheld from the public pursuant to each rule.
34. Describe the rationale of the ARRC in refusing to provide the Transportation Committee with documents requested by that committee in 1985 and 1986.
35. Describe the documents and categories of information the ARRC refused to give to the Transportation Committee.
36. Describe all procedures and practices by which the ARRC attempts to minimize the adverse effect of the operation of the railroad on wildlife.
37. Describe all actions taken by the ARRC if a train hits a moose, including names of people to whom the information is reported, reports made, and attempts to salvage meat.
38. How many moose were hit by trains in each calendar year from 1980 through 1986?
39. Describe all other procedures of which the ARRC is aware which would additionally minimize the risk of hitting moose and state why the ARRC has not implemented such procedures.

40. Describe all pesticides used by the ARRC, and the areas in which such pesticides are applied. Describe any complaints the ARRC has received regarding the use of pesticides, and describe the procedures the ARRC has or intends to implement to discuss such complaints in public.

41. Describe any action the ARRC has undertaken to determine alternate methods of vegetation control other than pesticides actions undertaken in the past.

42. Describe the current situation at Moose Pass.

43. How many residents are still not living in their homes as a result of the incident at Moose Pass?

44. How much money has the state of Alaska paid to attempt to rectify the adverse effects at Moose Pass?

45. How much money has the ARRC paid to attempt to rectify the adverse effects at Moose Pass?

46. Describe the procedures the ARRC has implemented to prevent a recurrence of the type of incident that occurred at Moose Pass?

47. What is the policy of the ARRC with regard to hiring Alaskan residents?

48. What is the policy of the ARRC with regard to purchasing Alaskan goods and services?

49. Who is the individual in charge of implementing the policies described above?

50. What percentage of ARRC employees are Alaskan residents?

51. What percentage of the goods and services (other than services rendered by employees) purchased by the ARRC are of Alaskan origin, production or manufacture?

52. Provide a copy of the 1985 budget of the ARRC.

53. Provide a copy of the 1986 budget of the ARRC.

54. Provide a copy of the proposed 1987 budget of the ARRC.

55. To the extent it is not clearly reflected in the above budgets, state the percentage of total budget and dollar amount for each year identified above expended on or allocated to:

- administration of the ARRC
- travel expenses for executive level employees
- salary levels for each executive level employee
- fringe benefits for executive level employees

56. What was the final net profit or loss of the ARRC in 1985, 1986, and projected for 1987?

57. What percentage of the ARRC's income for calendar years 1985 and 1986 was derived from passenger and freight operations, and how much from rail lands?

58. What was the actual dollar effect of the reduction of inventory (as described in the Performance Audit dated July 28, 1986) undertaken by the ARRC in 1985 and in 1986 on the figures identified in response to the above question?

59. What dollar amount, including allocable overhead, was spent during each year of operation by the ARRC on

- management of rail lands
- provision of passenger and freight service
- other operations (describe)

ALASKA RAILROAD CORPORATION



P.O. Box 7-2111 • Anchorage, Alaska 99510-7069

February 6, 1987

Representative Dave Donley, Chair
House Labor and Commerce Committee
Pouch V
Juneau, Alaska 99811

Re: HB 47, Labor and Commerce Committee Questions to ARRC

Dear Representative Donley,

Thank you for your January 29, 1987, letter. I do hope that the Alaska Railroad Corporation's position paper has been of some assistance to you and the Labor and Commerce Committee as HB 47 is considered.

We have answered the questions you sent with your letter. The answers and exhibits are attached. In a separate document we also provide some estimates of the bill's fiscal impact on the ARRC and the State of Alaska.

With the time available to us, some answers may not be as complete as we would have preferred. If additional questions arise, please feel free to call me at 265-2461.

Finally, we would simply reiterate that HB 47 is not remedial legislation. We believe that the concerns and issues implied by its provisions have been adequately addressed in the Alaska Railroad Corporation Act, other state or federal laws, Board rules and company policies, and management practices. Ironically, the legislation does threaten to largely undo the legislature's earlier vision of a self-sustaining, but publicly accountable, railroad.

Sincerely yours,

Larry D. Wood
General Counsel

cc: F.G. Turpin, President & CEO

Attached

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