ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672

5138 HTRA HB 31 - HB 47 (FILE 1)

710

Rep. Pat Pourchot
Rep. Red Boucher
Jan. 19, 1987

SUMMARY

HB 31

Relating to Registration of
Commercial and Noncommercial Motor Vehicles

Background

Current State law or regulations require the registration of all vehicles operating instate. However, many new residents or non-residents working temporarily instate illegally maintain their vehicle registration in other states. These operators benefit from our roads and jobs without paying the required fees.

Current State law also does not specifically address the handling of nonresident commercial vehicles operating temporarily instate. Regulations now provide for permitting or registration for such vehicles. However, with the exception of licensed ICC and FMC carriers, the regulations do not require the display of a permit or registration for nonresident commercial vehicles. Thus, it is difficult for law enforcement officers and the public to distinguish between a vehicle holding a valid temporary permit and one operating illegally instate.

Additionally, fees for temporary permits for nonresident commercial vehicles are now determined administratively by prorating the resident commercial vehicle fee for the number of days the nonresident vehicle is registered for use instate. This method does not appear to result in fees appropriate for the privilege of operating nonresident commercial vehicles in Alaska.

HB 31 would accomplish the following:

1. Shorten the length of time a nonresident, noncommercial vehicle is exempt from State registration requirements and require proof of any exemption from registration.

2. Eliminate the distinction between resident and nonresident commercial vehicles for purposes of registration, assessing fees, and display of license plates.

3. Limit the authority for issuance of special permits and the exemption from normal registration to only short-term, one-way unladen commercial vehicles and licensed ICC and FMC carriers. Permits would have to be prominently displayed.

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

M E M O R A N D U M January 20, 1987

SUBJECT: Registration of Motor Vehicles - HB 31

TO: Representative Pat Pourchot

FROM: Michael F. Ford M. F.
Legislative Counsel

The following is a sectional analysis of HB 31, as requested:

Section 1

Lowers the nonresident exemption from registration of a noncommercial vehicle from 90 to 60 days, and the requirement that registration take place after employment is lowered from 15 to 10 days after the person becomes employed. Requires commercial vehicles to be registered when use begins, except as provided in AS 28.10.011 and 28.10.131(c).

Section 2

Requires the person claiming nonresident exemption from registration to provide proof of qualification for the exemption.

Section 3

Technical amendment in conjunction with section 4.

Section 4

Allows the owner of a commercial vehicle temporarily operating in-state to register a commercial vehicle, while maintaining title in another jurisdiction.

Section 5

Requires owners of commercial vehicles licensed by the I.C.C. or the F.M.C., and registered in another jurisdiction who desire to retain registration and title in the other jurisdiction, to register the commercial vehicle, but exempts the owner from title requirements.

Section 6

Adds an additional exemption from registration requirements for an unladen commercial vehicle making a single continuous trip not exceeding 10 days.

Section 7

Requires special permits issued under AS 28.10.151 to be prominently displayed.

Section 8

Technical amendment in conjunction with section 4.

Section 9

Effective date.

MFF:mkr
m8/026

DEPARTMENT OF PUBLIC SAFETY

BILL NO: HB 31

DATE: January 19, 1987

TITLE: An Act relating to registration of commercial and noncommercial motor vehicles.

CONTACT: Bill Brown
465-4335

The bill will require full registration of commercial vehicles not used as legitimate interstate carriers, and reduce the time period in which a person is required to register a vehicle.

All commercial vehicles may now obtain a "trip permit" that allows them to operate in Alaska for up to 90 days. This gives summer commercial operators an advantage over Alaska residents who must pay full fees. This bill restricts use of the trip permit to only licensed interstate carriers, and requires temporary operators to pay full fees. This is done to put non-residents on an equal economic basis with Alaska residents while, at the same time, not placing a restrictive burden on legitimate interstate carriers.

The Department of Public Safety supports this bill.

William R. Nix
Acting Commissioner

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

Bill Version : HB 31
Publish Date :

REQUEST:

Revision Date:
Title : An Act relating to registration of commercial and noncommercial motor..
Sponsor : Pourchot
Requestor : House State Affairs Comm.

Agency Affected : Public Safety
BRU : Motor Vehicles

Components :

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

CAPITAL						

REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Will not have any fiscal impact. There may be a slight increase in revenue, however, we are unable to predict the amount.

JNR 1/22/87

Prepared by : BB Bill Brown
Phone : 465-4335
Division : Motor Vehicles
Date : 1-16-87

Approved by Commissioner : [signature]
Date : 1-22-87
Agency : Public Safety

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

Alaska State Legislature

House of Representatives

Committee on Transportation

Rep. Bette Cato, Chairman

Pouch V
State Capitol
Juneau, Alaska 99811
(907) 465-4858

February 11, 1987

FOR TODAY'S MEETING YOU HAVE:

A FOLDER ON HB 31 THAT INCLUDES:

* a copy of the Committee Substitute
* a letter of support from the Dept. of Public Safety Chief of Driver Services
* a current status report
* a copy of the House Committe Report form signed by House State Affairs
* a report on which includes
  - a copy of HB 31
  - a summary of HB 31
  - a sectional analysis
  - a fiscal note
  - a position paper from the Dept. of Public Safety
  - an excerpt from the Alaska Statutes
  - an excerpt from the regulations of the Dept. of Public Safety

A FOLDER ON HB 94 THAT INCLUDES:

* a copy of HB 94
* a current status report
* a bill analysis from the Dept. of Health & Social Services Division of Public Health
* ~~a fical note~~
* a report prepared by the U.S. Coast Guard
* background material from Rep. Taylor
  - a paper from House Research
  - a cost benefit analysis from the Coast Guard
  - a question/answer paper from the Coast

5-0229B
Ford
2/10/87

Original sponsors: Pourchot and Boucher

IN THE HOUSE BY THE TRANSPORTATION COMMITTEE

CS FOR HOUSE BILL NO. 31 (Transportation)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to registration of commercial and noncommercial motor vehicles; and providing for an effective date."

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

* Section 1. AS 28.10.121(a) is amended to read:

(a) A nonresident owner of a noncommercial vehicle registered outside the state is exempt from the registration provisions of this chapter for 60 [90] days after entry into the state if the vehicle at all times when driven in this state is registered in and has displayed upon it a currently valid registration plate issued for it by another jurisdiction. However, if the person becomes gainfully employed in the state or takes action that [WHICH] indicates an intention to acquire residence in the state, the person shall comply with the licensing and registration provisions of this chapter within 10 [15] days of commencement of employment or of taking action that [WHICH] indicates the person's intention to acquire residence. If the vehicle is a commercial vehicle, the vehicle must be registered when its commercial use begins except as provided in AS 28.10.011 and 28.10.131(c) [IN ACCORDANCE WITH AS 28.10.141 AND OTHER APPLICABLE PROVISIONS OF THIS CHAPTER].

* Sec. 2. AS 28.10.121 is amended by adding a new subsection to read:

(d) It is the responsibility of the person claiming exemption under this section to provide proof of qualification for the exemption.

* Sec. 3. AS 28.10.131(a) is amended to read:

(a) If a vehicle to be registered under this chapter is previously registered outside the state, the jurisdiction of registry shall be stated in the application, and the owner shall surrender to the department all evidence of out-of-state registration in the owner's [HIS] possession or control except as provided in this section or AS 28.10.141, and the department may require verification of the vehicle identification number.

* Sec. 4. AS 28.10.131 is amended by adding a new subsection to read:

(c) If the owner of a commercial vehicle desires to maintain title in another jurisdiction, the department, when satisfied that the applicant is temporarily operating in-state and is the lawfully registered owner of the commercial vehicle, may register the commercial vehicle without issuing a title and shall type or stamp on the face of the State of Alaska certificate of registration "No Title Issued."

* Sec. 5. AS 28.10.141 is amended to read:

Sec. 28.10.141. INTERSTATE USE OF VEHICLES. When, in the course of regular interstate operation in this state [OF] a commercial vehicle licensed by the Interstate Commerce Commission under 49 U.S.C. 1-1240 (Interstate Commerce Act) or regulated by the Federal Maritime Commission under 46 U.S.C. 804 (Interstate Commerce Act) is registered in another jurisdiction, and it is desirable to retain the registration and title of the vehicle in the other jurisdiction, the owner or an agent of the owner shall register the vehicle and pay all required fees and taxes and submit for inspection the certificate of registration issued by that jurisdiction. The department, when satisfied that the applicant is entitled to the exemption from the title requirements of this chapter, shall register the vehicle but may not issue a certificate of title. [NOTICE OF THE FACT THAT THE VEHICLE IS REGISTERED

IN ANOTHER JURISDICTION SHALL APPEAR ON THE CERTIFICATE OF REGISTRATION ISSUED BY THIS STATE AND IN THE RECORDS OF THE DEPARTMENT MAINTAINED UNDER AS 28.10.071.]

* Sec. 6. AS 28.10.151 is amended to read:

Sec. 28.10.151. VEHICLES TRANSPORTED UNDER SPECIAL PERMITS. When moved or driven under a special permit to be designed and issued by the department, the registration required by this chapter is not required of

(1) a vehicle under construction and which is not completed;

(2) a vehicle while being moved from one place to another for the purpose of inspection, weighing, or meeting other requirements of the department; or

(3) a vehicle while being moved or driven from one location to another for the purpose of rebuilding, dismantling, or permanently removing the vehicle from the highways and vehicular ways and areas of the state;

(4) an unladen commercial vehicle making a single continuous trip by a noncircular route for a period of time not exceeding 10 days.

* Sec. 7. AS 28.10.151 is amended by adding a new subsection to read:

(b) A special permit issued under this section shall be prominently displayed.

* Sec. 8. AS 28.10.201(d) is amended to read:

(d) Except for vehicles registered under AS 28.10.131(b) or (c) and 28.10.141, the department may not register a vehicle unless the applicant for registration at the same time applies for and obtains a certificate of title under this chapter, or presents satisfactory evidence that a certificate of title was previously issued to the applicant. The department may not accept the application for the original certificate of registration or title to a vehicle unless the vehicle is in the state at the time of application. However, the department may accept an application for registration and certificate of title for a vehicle which is not in the state when the application is made by a registered and bonded dealer or by a resident of the state when the application is accompanied by a manufacturer's statement of origin, or in the case of a used vehicle, when the application is accompanied by a certificate of title issued in another jurisdiction [AND A CERTIFICATE OF INSPECTION BY A PEACE OFFICER OF THAT JURISDICTION STATING THAT THE VEHICLE HAS BEEN DETERMINED TO BE THE VEHICLE DESCRIBED IN THE CERTIFICATE OF TITLE AND THAT THE VEHICLE HAS NOT BEEN REPORTED STOLEN].

* Sec. 9. This Act takes effect immediately under AS 01.10.070(c).

STATE OF ALASKA

DEPARTMENT OF PUBLIC SAFETY

DIVISION OF MOTOR VEHICLES

STEVE COWPER, GOVERNOR

P.O. BOX 20
JUNEAU, ALASKA 99802-0020

PHONE: (907)465-2650

February 10, 1987

The Honorable Bette Cato
Chairman - House Transportation
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

Re: HB 31

Dear Representative Cato:

I would like to take this opportunity to advise you and the Transportation Committee that the Division of Motor Vehicles supports this piece of legislation.

Since working with Representative Pourchot prior to his introduction of the bill, the division has decided to recommend another change to Section 8 of the bill. That change would be to delete lines 10, 11, 12 and 13 on page 4, and putting a period at the end of line 9. It is the feelings of the division that this wording is no longer necessary, and it is creating a hardship on Alaska residents who purchase used motor vehicles out of state. It is also causing extra processing time for an action we feel is no longer necessary.

I am sorry I had to leave the hearing yesterday before I was able to testify because of a time conflict with another hearing.

Sincerely,

Bill Brown

Bill Brown
Chief of Driver Services

BB:ns

cc: Representative Pourchot

THE SEAL OF THE STATE OF ALASKA

Official Business

COMMITTEE: House Transportation

DATE: February 9, 1987

SIGN-IN

Subject of meeting:

HB 31: "An Act relating to registration of commercial and noncommercial motor vehicles; and providing for an effective date."

NAME	ADDRESS	PHONE	REPRESENTING	DO YOU WANT TO TESTIFY?
Rep Pat Pourchot	HB 31			✓
Bill Brown	P.O. Box N	465-4335	DMV	
Alyce Hanley	P.O. Box V	465-4939	Representative	✓

THE SEAL OF THE STATE OF ALASKA

Official Business

COMMITTEE:

House Transportation

DATE: February 11,1987

SIGN-IN

Subject of meeting:

HB 31 "An Act relating to registration of commercial and noncommercial motor vehicles; and providing for an effective date."
HB 94 "An Act relating to boat numbering, accidents, and safety; and providing for an effective date."

NAME	ADDRESS	PHONE	REPRESENTING	DO YOU WANT TO TESTIFY?
CDR. G.M. HERBEN	FED BUILDING Box 3-5000 Juneau 99802	586-7474	U.S.CG.	YES
Cdr DM WALDRON	612 Willoughby Ave Juneau 99801	586 7349	USCG MSO JUN	Yes
Randy Weaver	415 Coleman Juneau (H) 155 S. Seward Juneau, AK 99801 (W)	586-5255	Harbormaster	Yes
LT. D.M. Shippert	Fed Bldg	586 7398	USCG	NO
Cdr W.R. Lird	Fed Bldg	586-7359	USCG	NO
MARILYN COFFMAN IPDCO	108 TROY AVE JUNEAU 99801	586-6113	U.S.C.G AUXILIARY	YES
T.J. Thrasher *	3443 Minn Anch 99503 HB # ~~94~~ 31	463-3279	AK trucking Assoc	HB31 yes
Bill Brown *	P.O. Box N 99811 HB # ~~94~~ 31	465-4335	DMV	HB31 Yes
Rep. Adri Taylor	[illegible] Jr. AK	465 4905	Me	Yes

HOUSE COMMITTEE REPORT

(5) 2/13

Date referred: 1/28/87 FURTHER REFERRALS: Rules

DATE: February 11, 1987

The Transportation Committee has considered HB 31

"An Act relating to registration of commercial and noncommercial motor vehicles; and providing for an effective date."

RECOMMENDS:

[X] replace with CS HB 31(Trsp) [X] the same title

[ ] attached amendment(s) [ ] a new title

[X] 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

[ ] zero fiscal note

[ ] zero with analysis

[ ] same as previous fiscal note published ______

[ ] same as previous zero fiscal note published ______

SIGNING DO PASS:

Cato Bette Cato

Springer [signature]

Pearce [signature]

Hudson [signature]

Boucher [signature]

SIGNING OTHER RECOMMENDATIONS:

Bette Cato

Chairman's signature

HB

47

(FIlE 1)

ALASKA RAILROAD CORPORATION

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

January 28, 1987 MAR 02 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.

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

bcc: M.J. Yetter
J.B. Blasingame
P.C. Johnson, Esq.
L.J. Houle

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 accomodations 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 as 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.

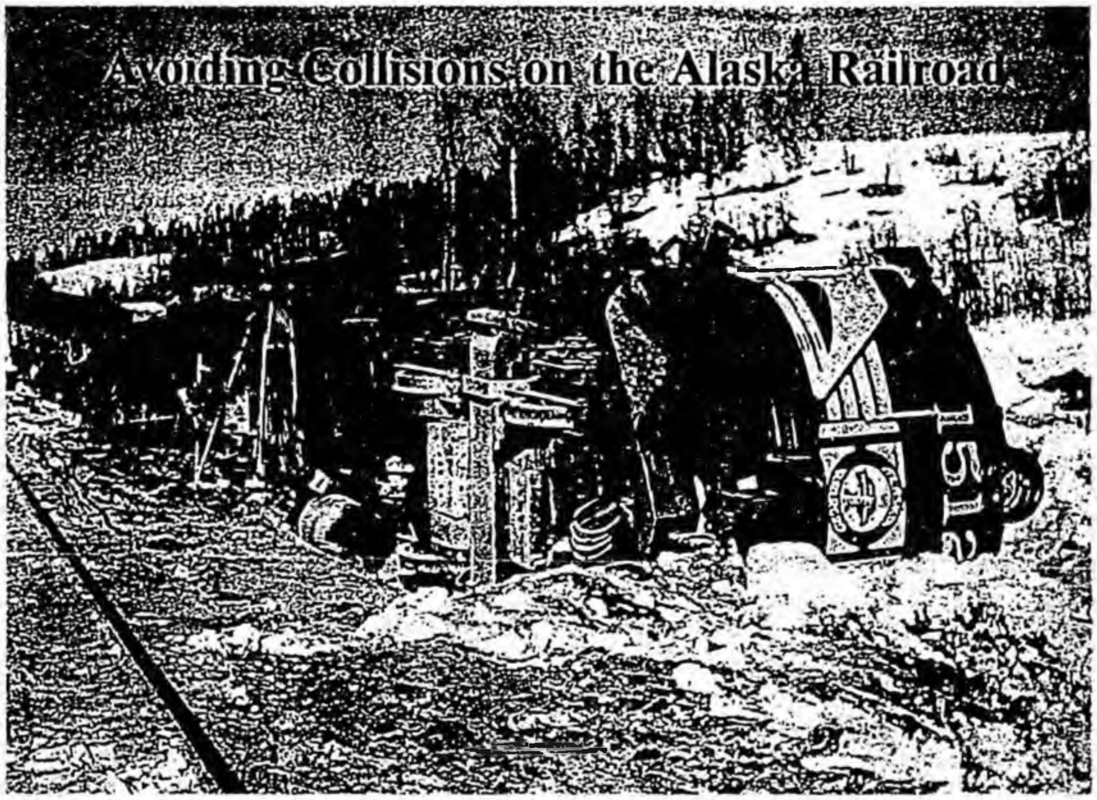
IV. Conclusion.

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

When Moose and Train Meet:



by Jack C. Didrickson 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 distrubuted 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*

ficulties 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 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.

M. Penn
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.

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. Didrickson, 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.

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 Kay

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

M E M O R A N D U M 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.

GU:mkr
m8/036

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

M E M O R A N D U M   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

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

file copy

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM February 9, 1987

SUBJECT: Comments on HB 47 by General Counsel to the Alaska Railroad Corporation

TO: Representative Kay Brown

FROM: George Utermohle GU
Legislative Counsel

At the request of Peg Mentele of your staff, I have reviewed the letter and comments by Larry D. Wood to Representative Dave Donley, dated January 28, 1987, regarding HB 47. For the most part, Mr. Wood comments on issues related to the operation, autonomy, and competitive position of the Alaska Railroad Corporation. These issues are policy oriented matters within the purview of the legislature and are not legal issues.

However I did find two legal issues presented by Mr. Wood's letter that I could address. The first issue related to disclosure of confidential information of shippers and consignees by the railroad. 49 U.S.C. 11910(a)(1) authorizes a fine of not more than $1,000 upon an employee of a railroad who discloses "the nature, kind, quantity, destination, consignee or routing of property" delivered to the railroad if the information could be used to injure the shipper or consignee or if the information improperly releases information about the business transactions of the shipper or consignee. This prohibition against disclosure does not apply to situations where (1) the shipper or consignee consents to the disclosure; (2) the information is given to an employee of the state; or (3) the shipment of goods is within a state and not subject to the jurisdiction of the Interstate Commerce Commission. The federal law does not prohibit the release of the rate charged for shipping the goods, however release of just the amount charged for shipping goods is useless information without knowing the kind of goods shipped, the origin, and the destination of the goods. It is the information protected by 49 U.S.C. 11910(a)(1) that conveys information value to the pure rate data. The release of just the rate data would not provide useful information.

The most significant exception to 49 U.S.C. 11910(a)(1) involves the release of protected information with the consent of the shipper or consignee. The railroad could require that shippers and consignees consent to disclosure of certain information as a condition of doing business. Such an arrangement would avoid the prohibition against disclosure, however there may be competitive and business ramifications if the Alaska Railroad was to require disclosure of otherwise confidential information.

To the extent that HB 47 does require release of information on divisions and contract rates protected under 49 U.S.C. 11910(a)(1) there does appear to be a conflict with federal law. As a general rule, federal law will prevail over contradictory provisions of state law. The disclosure requirements of HB 47 relating to release of division and contract rate information could be tailored to comply with federal law but the value of the information available may well be useless to the public or even to a competitor.

The second issue raised by Mr. Wood's letter relates to the lease of railroad land to municipalities at less than fair market value. In regard to AS 42.40.350(d), Mr. Wood says that "ARRC has consistently interpreted an existing exception for State leases to include political subdivisions." AS 42.40.350(d) states:

> (d) A lease or disposal of land approved by the legislature under AS 42.40.285 by the corporation to a party other than the state shall be made at fair market value as determined by a qualified appraiser or by competitive bid.

Since the term "state" as used in AS 42.40 is not defined, the definition of the term in AS 01.10.060(13) applies. In that section "state" means "the State of Alaska unless applied to the different parts of the United States and in the latter case it includes the District of Columbia and the territories." This definition refers only to the State of Alaska and does not include any reference to municipalities. Though municipalities, as political subdivisions of the state, draw their existence from the state, municipalities and the state are distinct legal, political, and corporate entities. It could be argued that the term "State of Alaska" implicitly includes political subdivisions of the state, but there is not a strong case for that interpretation in my view.

Thus an ambiguity exists as to the meaning of AS 42.40.350(d). HB 42 resolves this ambiguity by expressly including municipalities within the coverage of the exception to fair market value disposals of railroad lands and resources.

GU:csh
c7/051

MAR 0 2 1987

C[illegible]

Anchorage, Alaska
February 6. 1987

ALASKA RAILROAD CORPORATION 1987 LEGISLATIVE SESSION

FISCAL INFORMATION

House Bill No. 47
Publish date: 1/19/87

Title: An Act relating to the Alaska Railroad Corporation
Sponsors: Brown, Ellis and Boyer

HB 47 proposes numerous and substantial changes to the Alaska Raiload Corporation Act ("ARCA"). The issues fall into four categories, confidentiality of railroad marketing and business data, passenger and freight service operational restraints, leasing procedures, and wildlife losses.

A position paper submitted by the Alaska Railroad Corporation ("ARRC") has explained that the issues and concerns implied by the bill's provisions have been adequately accomodated or protected by existing laws and/or ARRC Board rules and management practices. In addition, 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. If this occurs, the legislature's earlier vision of a financially and operationally independent railroad will in large part be undone.

We anticipate that, as a result of this legislation, revenues will be lost and expenses will be increased. ARRC will be unable to sustain its operations without State subsidies. Given the fact that ARRC projects a very modest profit in 1987, subsidy requests should be expected to closely mirror the added costs and losses attributed to legislative changes. These figures are listed below.

Although it is extremely difficult to accurately estimate just what figures should be expected, the following summary provides a reasonable projection of anticipated annual expenses/losses.

Should the economy continue its present decline, these figures should be expected to increase, perhaps by as much as 10% per year.

Passenger Service Losses

As a result of innovations in equipment and scheduling, ARRC has been able to significantly reduce its passenger service losses which existed at transfer, some $2.2 million annually. HB 47 would require ARRC to maintain the "level of passenger...service provided at the time of transfer." If this means that ARRC would be required to add back to its passenger service the cost of a full service train to northbound winter service and replace its self-propelled rail diesel cars, an additional $512,000 loss should be anticipated. Should ARRC lose its financial self-sufficiency as a result of this requirement and others, entire State subsidy of passenger service would be required. Without meaningful innovations, the loss could be as high as $1.5 million annually.

Additional Real Estate Administrative Costs and Revenue Losses

The additional procedural requirements related to land leases and renewals are expected to require an additional $50,000 in administrative costs. Estimating a growth rate of 25% in real estate revenues and a 50% reduction in lease revenues due to significant procedural requirements and time delays not common to commericial enterprises, ARRC projects an annual $250,000 loss of real estate business.

Confidentiality of Railroad Marketing and Business Data

HB 47 proposes that, unlike other modes of transportation including truck and water barge, its confidential marketing data and proprietary business information be available for public, and competitor, inspection. Beyond the policy and legal issues raised by this suggestion, ARRC expects to lose a significant portion of its freight revenues should this proposal be implemented. These losses are directly attributed to restrictions in railroad marketing mechanisms and opportunities which would be caused by HB 47. General freight revenue losses are estimated at $4.6 million annually.

Total Annual Fiscal Impact

Passenger Service Losses	$1,500,000
Real Estate	300,000
General Freight Revenues	4,600,000
Total	$6,400,000

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

3722L

Anchorage, Alaska
February 6. 1987

ALASKA RAILROAD CORPORATION 1987 LEGISLATIVE SESSION

FISCAL INFORMATION

House Bill No. 47
Publish date: 1/19/87

Title: An Act relating to the Alaska Railroad Corporation
Sponsors: Brown, Ellis and Boyer

HB 47 proposes numerous and substantial changes to the Alaska Raiload Corporation Act ("ARCA"). The issues fall into four categories, confidentiality of railroad marketing and business data, passenger and freight service operational restraints, leasing procedures, and wildlife losses.

A position paper submitted by the Alaska Railroad Corporation ("ARRC") has explained that the issues and concerns implied by the bill's provisions have been adequately accomodated or protected by existing laws and/or ARRC Board rules and management practices. In addition, 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. If this occurs, the legislature's earlier vision of a financially and operationally independent railroad will in large part be undone.

We anticipate that, as a result of this legislation, revenues will be lost and expenses will be increased. ARRC will be unable to sustain its operations without State subsidies. Given the fact that ARRC projects a very modest profit in 1987, subsidy requests should be expected to closely mirror the added costs and losses attributed to legislative changes. These figures are listed below.

Although it is extremely difficult to accurately estimate just what figures should be expected, the following summary provides a reasonable projection of anticipated annual expenses/losses.

Should the economy continue its present decline, these figures should be expected to increase, perhaps by as much as 10% per year.

Passenger Service Losses

As a result of innovations in equipment and scheduling, ARRC has been able to significantly reduce its passenger service losses which existed at transfer, some $2.2 million annually. HB 47 would require ARRC to maintain the "level of passenger...service provided at the time of transfer." If this means that ARRC would be required to add back to its passenger service the cost of a full service train to northbound winter service and replace its self-propelled rail diesel cars, an additional $512,000 loss should be anticipated. Should ARRC lose its financial self-sufficiency as a result of this requirement and others, entire State subsidy of passenger service would be required. Without meaningful innovations, the loss could be as high as $1.5 million annually.

Additional Real Estate Administrative Costs and Revenue Losses

The additional procedural requirements related to land leases and renewals are expected to require an additional $50,000 in administrative costs. Estimating a growth rate of 25% in real estate revenues and a 50% reduction in lease revenues due to significant procedural requirements and time delays not common to commericial enterprises, ARRC projects an annual $250,000 loss of real estate business.

Confidentiality of Railroad Marketing and Business Data

HB 47 proposes that, unlike other modes of transportation including truck and water barge, its confidential marketing data and proprietary business information be available for public, and competitor, inspection. Beyond the policy and legal issues raised by this suggestion, ARRC expects to lose a significant portion of its freight revenues should this proposal be implemented. These losses are directly attributed to restrictions in railroad marketing mechanisms and opportunities which would be caused by HB 47. General freight revenue losses are estimated at $4.6 million annually.

Total Annual Fiscal Impact

Passenger Service Losses	$1,500,000
Real Estate	300,000
General Freight Revenues	4,600,000
Total	$6,400,000

1. How much land was transferred to the ARRC from the federal government?

Response: Approximately 40,600 acres were transferred to the state-owned Alaska Railroad Corporation ("ARRC") by the federal government on January 5, 1985. Transfer documents included interim conveyances, quit claim deeds, exclusive use easement deeds, patents and exclusive licenses, each reflecting varying quality of ownership interest. As competing claims to the parcels of land involved are adjudicated by the federal Bureau of Land Management and surveyed, the title documents will be reissued and acreages may change.

2. What percentage or what approximate number of acres is railroad utility corridors?

Response: Railroad utility corridors comprise approximately 34% of the ARRC's total acreage, or 13,800 acres.

3. What percentage or what approximate number of acres is rail land?

Response: Rail land (non-right-of-way) constitutes 66% of the total real property of the corporation, or 26,800 acres.

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.

Response: This figure cannot be accurately estimated at this time. As noted below, all rail lands are needed for support of railroad operations. Lease and permit revenues are responsible for a significant portion of ARRC income. Like other American railroads, ARRC depends upon its land resources to sustain its economic viability. See responses to Questions No. 6 and No. 17 below.

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

Response: The following figures are exclusive of the 200-foot right-of-way which runs throughout each governmental entity's jurisdiction. Fair market value figures are derived from the Jackson-Cross appraisal performed prior to transfer.

Anchorage: Approximately 660 acres in the Anchorage Terminal Reserve, of which some 300 acres are used for terminal operations. Approximately 95% of this district is zoned I-2 and intended primarily for heavy manufacturing, storage, major shipping terminals and other related uses. Uses which are generally permitted in commercial districts are also found here. Approximately 50% of the property is leased to third parties, whose improvements include warehouses, tank farms, Quonset huts and storage yards. An additional 900 acres is located at Portage and used in part for the railroad's loading facility and parking associated with the Whittier Shuttle. Fair market value estimated at $39 million.

Seward: Approximately 300 acres, of which 50 acres are used for railroad operations (i.e. TOFC yard, railroad dock). The remainder is unimproved and submerged lands in Resurrection Bay. Fair market value estimated at $1.4 million.

Fairbanks: Approximately 461 acres, of which some 270 acres are utilized for a TOFC yard, shops, and other railroad facilities. Approximately one-half of the remaining land is leased, for uses and with improvements similar to those found in Anchorage, i.e. warehouse, tank farms, Quonset huts, storage yards. Fair market value estimated at $6.1 million.

Whittier: Approximately 272 acres, of which approximately 150 are used for railroad operations. Major improvements include railroad docks, barge slips, ferry terminal, shuttle ramp, small boat harbor, and several commercial buildings leased to third parties. Fair market value estimated at $.9 million.

Palmer: Right-of-way only.

Wasilla: Right-of-way only.

Nenana: Approximately 270 acres, most of which is leased to the City of Nenana for commercial purposes. Fair market value estimated cannot readily be broken out of the "other" category in the Jackson-Cross appraisal.

Valdez: Approximately 60 acres, which includes raw and undeveloped land as well as trackage for rail barges and two lessees. Fair market value estimated at $365,000.

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.

Response: The fair market of the lands discussed in the responses above was obtained from the Jackson-Cross appraisal that was used as a basis for evaluation prior to transfer. Because of the overall declining economy statewide, ARRC believes that this fair market value (in the neighborhood of $51 million for the total real property now owned by ARRC) has probably decreased.

In light of the fact that revenues derived from non-operational leases and other uses of real estate by third parties represented 9.6% of the ARRC's total revenue in 1986, ARRC believes that all rail land is necessary for the operation of a financially sound 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.

Response: Since transfer, the ARRC has not commissioned a full fair market value appraisal of its properties. Individual appraisals are being done in accordance with the requirements of some lease agreements. These recent appraisals on individual parcels of leased land show a decline in value over the past two years.

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.

Response: The ARRC is presently the lessor in approximately 300 leases and permittor or grantor in some 700 other permits, road crossing agreements, easements or other land use agreements. ARRC will be happy to provide the Committee with a computerized listing summarizing the 1000 total agreements if it desires, but for convenience furnishes the following general information.

Revenues in 1986 from ground leases was approximately $5.5 million. Generally speaking the railroad lands are located in industrial zoned districts where the intended use is primarily for heavy manufacturing, storage, major shipping terminals and other related uses. The term of these ground leases ranges anywhere from 10 to 55 years. The average lease rate among the 300 tenants would fall between 8.5 and 9.5% per year. The annual rate being set in new leases is 9.5%, as established in a study performed for ARRC (copy attached).

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.

Response: The attached copy of the ARRC's long-term lease policy indicates that the corporation considers all the factors listed in the Committee's question. The procedures followed are also addressed.

It is the policy of the ARRC Real Estate Department to approve of those leases, subdivisions, plats, and land uses that are consistent with local municipal ordinances and land use regulations. For example, for rail lands within the Municipality of Anchorage, Title 21 of the Municipality's ordinances, "Land Use Regulations", would be strictly adhered to with respect to leasing and approved activities of lessees, just as any other commercial enterprise.

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

Response: The ARRC's Director of Real Estate, Larry J. Houle, is the individual in charge of implementing the policies or procedures described in the preceding question. His actions are subject to the chain of approval expressed in the corporation's Approval Authority Guide (relevant pages are attached).

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.

Response: There are presently five requests before the Real Estate Department to lease ARRC property. Three of these requests pertain to land located in the Fairbanks Terminal Reserve, each parcel approximately 5 acres in size. The fourth request to lease has been made by the Municipality of Anchorage for a tract ranging from 61.4 acres to as much as 120 acres in size located south of the mouth of Ship Creek. The fifth relates to acreage at the head of Passage Canal in Whittier.

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

Response: Presently, the only such activity being considered is the potential land trade with the Municipality of Anchorage for the Government Hill bluff area. There is a remote possibility that the Municipality of Anchorage may also be interested in the 12 acres of land underlying the Panoramic View Apartments also located on Government Hill.

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?

Response: In accordance with the ARRC Board of Directors' wishes expressed at its September 1986 monthly meeting, there is no development presently contemplated as to the bluff lands adjacent to the Government Hill area of Anchorage.

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

Response: There are no on-going negotiations between the Municipality and ARRC, although both parties have expressed interest in the concept of an exchange of lands which would permit the Municipality to administer the site as a greenbelt or park.

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.

Response: The ARRC has worked with all of its host local governments in the past regarding uses of railroad land. For example, the City of Whittier requested a lease for a camper park located on railroad land. A lease was offered to the City but was never executed because funding for the project evaporated. A lease was finalized with the City of Seward for property underlying the new U.S. Coast Guard Shore Support Facility. At the request of the Tri-Valley community located in the Healy area, a long-term lease for a cemetery site was granted. The ARRC is presently finalizing a lease with the City of Palmer for expanded use of the old depot and beautification of the right-of-way through town. Negotiations are proceeding with the City of Nenana over the issue of periodic fair market rental value adjustments under its existing lease.

ARRC has also worked with local governments regarding historic sites. The City of Talkeetna and ARRC cooperated in the leasing of the German Bachelor's Cabin, although the lease was executed by ARRC and the Talkeetna Historical Society. The ARRC also worked with the state Department of Natural Resources in leasing property currently occupied by the Potter Section House south of Anchorage.

Finally, the ARRC has worked with the Municipality of Anchorage to achieve the development and construction of a portion of the Coastal Trail along and within the railroad right-of-way adjacent to Knik Arm in Anchorage. Negotiations are still underway regarding some aspects of this use. The Municipality of Anchorage has also initiated discussions with ARRC concerning its desire to assume a lease presently held by Anchorage Dredge and Dock. The Municipality plans a Ship Creek Landing development at the site, and has proposed that ARRC grant it a new lease for the property.

ARRC is involved in negotiations with several Native corporations regarding land entitlements under the Alaska Native Claims Settlement Act and the Alaska Railroad Transfer Act. Settlement of one of these matters was recently reached with Eklutna, Inc.

16. Describe the procedures the ARRC follows when a local government requests communication with the ARRC regarding rail land located within local government boundaries.

Response: When a local government communicates with ARRC for leasing purposes, the corporation responds either in writing or in person, at times by telephone. Responses may come from either the President and CEO or the Director of Real Estate. Communications regarding other activities on rail lands, either existing or proposed, such as road crossings or utility easements, are customarily assessed first by the appropriate technical department (e.g., Engineering, Telecommunications). The final permitting document is executed by the Real Estate Director.

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.

Response: No inventory has yet been taken, nor is one presently planned. Railroad lands do contain sand, gravel, timber, and coal reserves.

18. Describe all disposals of interest in, development of, or lease of any of the resources identified in response to the above question.

Response: The only agreement relating to disposal of such resources to date has been an entry permit granted to the Usibelli Coal Mine Company for exploratory analysis upon railroad properties located in the Healy area.

19. Describe all changes in the levels of freight and passenger service which have been implemented since the transfer from the federal government.

Response:

Changes in freight service since the transfer from the federal government:

a) ARRC has added daily scheduled overnight freight service between Anchorage and Fairbanks which is particularly important for shipments of petroleum products, trailers on flat cars, and general commodities.

b) ARRC has added unit trains for export coal service between Healy and Seward.

Changes in level of passenger services since transfer from the federal government:

a) ARRC found that ridership between Anchorage and Fairbanks in the winter was primarily from persons needing access to their homes and cabins between Anchorage and Hurricane. Consequently, ARRC increased the number of trips through the north local area (Anchorage to Hurricane) from eight per month during the 1984/85 winter to fourteen per month during the winter of 1986/87. With this increase in local service, ARRC found that a reduction in number of winter trips each month to Fairbanks from four to two served customers' needs.

b) The northline trains were split into an express and a local train during the summer season. This increased the number of trains on the north line from fourteen to twenty per week from 1984 to 1986.

c) The Budd car, a self-propelled rail diesel passenger coach (RDC), is used on the north local trains instead of full service trains.

d) The number of shuttles between Portage and Whittier increased from twenty-five per week during the summer of 1984 to thirty-four per week during the summer of 1986.

e) During the winter, the number of Portage/Whittier shuttles increased from six to eight per week from 1984/85 to 1986/87 with the addition of the Saturday Budd service.

f) Buses instead of passenger rail cars are used on the Whittier Shuttle and between Anchorage and Portage. This enables ARRC to provide faster service with direct pick-up and drop-off at many Whittier locations. This change was partially due to the retirement of an antiquated passenger train set. At Portage, the buses are driven onto flat cars for the rail trip to Whittier. There, the buses disembark and make various stops in the community.

g) Anchorage to Seward service was provided by Budd car one day a week during the summer of 1986 versus none in 1984.

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.

Response:

Proposed changes in the level of freight service:

There are no proposed changes in the level of freight service at this time. ARRC plans to change its service level as and when needed to serve its customers and meet market demand.

Proposed changes in passenger services:

a) ARRC plans to purchase a new passenger train to arrive in 1988 which will increase the available seats in the summer season. The retirement of an antiquated train set may result in additional "sold-out" days during the 1987 summer season.

b) Seven more private rail passenger cars will arrive in 1987. This will add four hundred and twenty more available seats per day in the summer of 1987, between Anchorage and Fairbanks.

c) The number of Portage/Whittier shuttles increased from 25 per week during the summer of 1984, to 34 in 1986, and will probably increase to 42 in 1987.

d) If the Whittier citizens and other shuttle customers desire, the ARRC may replace two full train shuttles per week during the 1986/87 winter with four Budd car shuttles per week during the winter of 1987/88.

e) The Seward summer service will increase to three Budd car roundtrips per week in 1987 from one in 1986 and none in 1984.

f) ARRC may add one roundtrip per week to Seward during the 1987/88 winter.

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.

Response: Management reviews ARRC's costs, competitive factors, market demands, and customer and community needs before making a change in level of either freight or passenger

service. In some cases, ARRC management has attempted to elicit community input through public hearings.

22. Describe all changes in the rates charged by the railroad for hauling freight since the transfer from the federal government.

Response: ARRC has used contract rate agreements and exempt rate quotations in an effort to take better advantage of opportunities under deregulation as well as to respond to competitive pressures. As a result, individual rates have varied upward and downward. There have been no across-the-board changes in tariff rates. With regard to specific rate amounts that are not set forth in ARRC's tariff, please see answer to Question No. 29.

23. Describe all currently proposed or planned changes in the rates charged for hauling freight since the transfer from the federal government.

Response: ARRC plans to restructure its exempt rate quotes for intermodal traffic to simplify that segment of ARRC's business. ARRC plans to restructure exempt rate quotes for other segments in the future for the same reasons. Otherwise, ARRC does not have any present plans to change its rates other than to change them when necessary to meet competition and improve profitability.

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.

Response: No, the Board has not invoked an executive session to discuss the policy aspects of any land acquisition or disposal.

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?

Response: It would be necessary to invoke an executive session for discussion of land acquisition and disposal when the financial details of proposed transactions would have a significant chilling effect on the marketability or viability of the proposal. Depending upon the financial, operational, or legal aspects of a transaction, early public disclosure may discourage interest by responsible developers, afford real estate competitors an opportunity to frustrate ARRC plans, and/or increase or decrease market values to ARRC's detriment. Please note that no Board action can take place in executive session.

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).

Response: Those instances included the following Board meetings:

February 15, 1985 - Board Mtg. - Tariff Increase
November 21, 1985 - Board Mtg. - Corporation Marketing Plan
- Costing Procedures
December 19, 1985 - Board Mtg. - Corporation Marketing Plan
February 20, 1986 - Board Mtg. - Marketing Update
April 17-18, 1986 - Board Mtg. - Marketing and Financial Projections
May 21, 1986 - Board Mtg. - Marketing Update

Such information was also discussed in executive session as part and parcel of litigation reports. For example, a state case, City of Valdez v. ARRC, unsuccessfully sought protected pipe rate costing information, and an ICC boxcar exemption proceeding was an unsuccessful effort by watercarriers to deny ARRC the benefit of ICC deregulation of railroad boxcar movements.

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

Response: ARRC does not specifically designate by type those documents that are open for public inspection and those that are not. Rather, when a particular request for information is received, ARRC first determines the nature of the request and then provides the information if it is not within the scope of those matters set forth in AS 42.40.210(b) and Board Rule No. 4.

ARRC's Board of Directors has adopted Rule 4, a copy of which is attached as an exhibit, which elaborates upon matters not available for public inspection.

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

Response: See response to Question No. 27.

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.

Response: The types of documents which fall into the category relating to proprietary information, divisions and contract rate agreements would include cost studies, cost data, contract rate agreements, exempt rate quotations, divisions sheets, bills of lading, waybills, any documents relating to a shipper's business, and any notes or correspondence relating to any of the above.

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.

Response: See response to Question No. 29.

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.

Response: See response to Question No. 29.

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.

Response: See response to Question No. 29.

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.

Response: See response to Question No. 27.

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

Response: It is our recollection that the information requested was operating costs for movement of freight via trailers on flat cars. Railroads in the United States have not been required by law to divulge costs. Such information has always been considered proprietary, and confidentiality has been protected. Clearly, such rules promote competition by allowing railroads the same business advantages and marketing mechanisms enjoyed by other transportation modes. In those instances where it was necessary for the Interstate Commerce Commission to have the costs in order to arrive at a conclusion, the cost data was submitted to the Commission on a confidential basis, was not divulged to the complainant or to the public, and did not appear in any printed report. Federal and state laws provide ARRC the same rights and benefits to protect confidential information. This enables the company to price and contract its services on a businesslike basis and to respond quickly to market conditions.

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

Response: Although we are not certain at this date what documents were refused, they were most probably those which would divulge confidential contract rates or operating costs, and which could be attributed to any freight service segment.

Categories of information which must remain confidential:

- contract rates
- operating costs for specific freight moves
- any information which would identify shipments concerning one shipper or consignee

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

Response: In cooperation with the Alaska Department of Fish and Game ("ADF&G"), the ARRC has experimented with numerous methods to minimize the adverse effects of its operations on wildlife, specifically big game. Historically, moose are the game population most affected by the railroad, primarily in years of deep snow (3 to 5 feet) for long periods of time. Unfortunately, many of the experiments have failed to demonstrate a reliable way to discourage moose usage of the plowed track (see response to Question No. 39 below). Presently, the effort is concentrated on plowing the right-of-way as wide as possible, and a combination of lights, horns and bells to frighten them away from the track. Where possible, the train engineers slow down to reduce the chance of a strike.

ARRC is again cooperating with ADF&G in its ongoing study of the moose mortality along the tracks. For example, arrangements are being made for game biologists to accompany a locomotive on several trips north this season. The corporation has also engaged a private consultant to develop electronic equipment to frighten the moose and drive them away from the track. Research and equipment design under that contract are scheduled for completion within the current winter season, with construction and installation of equipment to follow depending on the results of research.

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.

Response: The ARRC has, at least since the early 1980's, cooperated with the ADF&G and fish and wildlife enforcement officers of the Department of Public Safety ("DPS") to ensure the retrieval and salvage of moose hit by trains. Since 1983, this process has been refined and carried on under an informal understanding by which railroad crews immediately reported a strike to the train dispatcher, who called the appropriate fish and wildlife number for the game management unit involved. If the moose was salvageable (that is, sufficiently intact after the collision), the railroad section crew was under instructions to transport the carcass to the nearest public road crossing, where DPS had notified the next eligible charity to pick it up. The process was completed within 20 hours after the collision and in most cases (when the section crew could be immediately contacted), within only a few hours. ADF&G game biologists have assured ARRC that game retrieval within this time frame is sufficient, so long as the air temperatures are as cold as is generally the case during the period when moose strikes occur.

The train which strikes a moose is required to stop and make an inspection unless it is clear that the animal is free of the track and presents no danger to train movement. The crew evaluates the condition of the animal (i.e. is it alive and crippled? is it salvageable if already dead?) and immediately notifies the Dispatcher by radio. The local section crew is then notified of the necessity to either dispatch a crippled moose and/or salvage the carcass. The carcass is field dressed, with the ARRC providing necessary equipment for this purpose, and delivered to crossings as discussed below.

This procedure was formalized for the current season with an addition to the ARRC's Timetable No. 120, a set of operating rules utilized by all operations personnel. A copy of the procedure is attached as an exhibit. It generally restates the process which had been previously developed by ARRC and DPS officers and includes the specific telephone numbers used by the Dispatcher to notify DPS. In addition, for the Gold Creek area where DPS has not in the past maintained a charity list (due to the area's isolation from the public road system), the ARRC has worked with DPS to distribute sign up sheets among area residents and return those sheets to DPS to compile a list of eligible recipients. In these areas, the ARRC crew retrieving a moose is authorized by DPS to transport the carcass to a convenient spot along the track for access by the next eligible recipient. The section crew members, residents of the area themselves, are well aware of the best locations for such pick-up.

Such salvage activities cost ARRC money and divert employees from other necessary duties. For example, in 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

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

Collisions on the Alaska Railroad," Alaska Fish & Game (Sep.-Oct. 1986). A copy of this article is attached as an exhibit.

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.

Response: Beginning in the 1950's, the federal Alaska Railroad conducted a herbicide program to control vegetation along the railroad right-of-way. Vegetation maintenance is periodically required to ensure safe railroad operations. The state-owned ARRC has not applied any such chemicals since it took over operation of the railroad in 1985. It applied to the state Department of Environmental Conservation in 1985 for a permit to apply a herbicide known as hexazinone on the right-of-way. After public hearings, a working draft of ARRC's proposed Vegetation Maintenance Management Program study was distributed to interested parties for comment. To allow sufficient time for public and agency input, ARRC withdrew its application for spraying in 1985. No application was filed for the 1986 spraying season and thus the right-of-way has not been treated for some time.

Because of the likelihood of harm to its roadbed (vegetation allows water to seep in among ballast and gravels, weakening support of ties and rails) and the encroachment of brush along the right of way which blocks train crews' view (particularly to see dangers in time to avoid collisions), ARRC expects to file an application for a permit to apply hexazinone in the coming summer. All the comments received on the draft study will be used in the preparation of the permit application.

Hexazinone is low in toxicity to mammals, fish, birds, and invertebrates and has been fully tested to EPA standards. The permitting process will, of course, comply with the public notice and opportunity to comment required by state law and DEC regulations. See AS 42.40.440. ARRC has received complaints regarding the proposed use of any herbicide, including hexazinone, from a group of Talkeetna area residents in the past and expects they, as well as any others, will again have an opportunity to express their concerns on the matter in the public notice process.

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

Response: The working draft referred to in the response to Question No. 40 was commissioned from the Corps of Engineers and included an assessment of alternative methods of vegetation control. The study concluded that the available alternatives, which included general expansion of roadbed maintenance, manual labor, and mechanical control, among others, were either cost prohibitive or not feasible to completely eliminate the need for herbicide application. ARRC does mechanically remove vegetation outside the ballast section of the roadbed.

42. Describe the current situation in Moose Pass.

Response: The current situation in Crown Point has remained largely unchanged during the fall and winter of 1986. Exhaustive environmental monitoring in addition to work already performed by ARRC has been ongoing by State of Alaska contractors. Currently Dames & Moore, a contractor working on behalf of the state, is completing work on a study to determine what chemical residues may still remain in the Crown Point impact area. The final report is due on March 2, 1987.

Despite study results which indicate that suspect chemicals are not present in homes or appear at or below ordinary household levels, complaints persist by some residents that the March 2, 1986 tank car release has a continuing detrimental effect on their health. Many other residents have returned to their "pre-release" lifestyles, and appear not to be impacted whatsoever. In an effort to determine the health and property issues, and to assist those who remain displaced, the defendants in a lawsuit brought by some 50 Crown Point residents have brought in experts to assist in the monitoring of ongoing problems. In addition, some claims have settled.

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

Response: It is difficult to determine precisely the number of residents that are currently out of their homes because of the gas release. Most residents of the area returned to their homes immediately after the incident. In the following months, some individuals moved back in the area on their own volition. Others have reaccommodated themselves in the area in new or renovated living quarters. Approximately 45 people remain out of their homes at the present time, which makes up approximately 18 families.

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

Response: In December 1986, the State of Alaska estimated that expenditures were in the neighborhood of $650,000.00. Estimates of the overall expenditure for the state by the time it ceases making payments exceed $850,000.00.

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

Response: Approximately $650,000.00 was initially spent in assisting Crown Point residents immediately after the release, and in clean up and environmental monitoring. Ongoing expenses are accruing as claims are settled, and costs are incurred for professional and outside services.

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

Response: New steam track heating procedures have been implemented which are intended to greatly reduce any risk of human error in the heating of tank car commodities. It must be noted, however, that the March 1986 release was not simply a case of the overheating of a tank car commodity. Once the error had been realized, railroad personnel properly contacted the consignee and shipper and explained the situation. The shipper's disastrous advice was that the product was probably not harmed and the car could be safely moved to its designation, where its load would cool. After the event, ARRC soon learned that the exothermic chemical reaction which resulted could have been easily avoided by cooling the shipment by running cold water through the car's steam coils. Procedures will also insure that accurate and reliable information concerning heating is received from shippers and/or manufacturers. Finally, UF-85, the commodity in the March tank car, is now heated by the consignee at the delivery point when necessary to offload it into tanker trucks. Rather than heating the entire load at once, the consignee heats the material as it enters the exit hoses. Temperatures are also well within safety ranges.

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

Response: The ARRC was one of the first businesses in Alaska to join the Governor's Council on Alaskan Hire. ARRC recruits almost exclusively with Alaska Job Service offices throughout the state. The only positions which are advertised outside Alaska are those positions for which a highly qualified candidate cannot reasonably be expected to be found in the state or positions in our Seattle office.

Attached is Board Resolution No. 85-5: Relating to the policy of Hiring Alaska Residents.

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

Response: ARRC's Procedure 33-2.01, adopted at the July 18, 1985 ARRC Board Meeting states:

> 3.5 Female, Minority, and Alaskan Vendors. It is the policy of the ARRC to encourage meaningful participation of female, minority, and Alaskan owned vendor sources to provide useful and acceptable quality services or materials at competitive prices. Procurement personnel are responsible for making practical efforts to locate and solicit minority vendor bids for products or services. The Manager of Procurement is responsible for the effective implementation of this guideline in ARRC procurement activities.

This policy was subject to public review and input prior to adoption by the Board of Directors. A public hearing was conducted June 21, 1985 at ARRC Headquarters which was attended by approximately thirty local vendors. Their input was considered in the procedure subsequently presented to the Board on July 18, 1985, at which time public comment was allowed by the Board and considered prior to adoption. This procedure follows the legislature's mandate in ARCA "that the procurement procedures of the corporation meet accepted railroad industry standards." AS 42.40.100(8).

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

Response: The Manager, Procurement or his or her equivalent.

50. What percentage of ARRC employees are Alaskan residents?

Response: As of February 6, 1987, 98% of ARRC employees are Alaskan residents (some employees are located in Seattle).

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?

Response: ARRC purchased approximately $8,000,000.00 in goods during 1986. Of this figure $4,000,000.00 represents locomotive and other fuels which are all of Alaska origin, production and manufacture. All office supplies, lumber and other building materials are purchased on the local market. Whether these are of Alaskan origin, production or manufacture is not known, except with respect to wooden railroad ties. During 1985-86, the ARRC purchased approximately 35,000 hardwood ties from Wrangell Forest Products Ltd. in southeast Alaska for its summer maintenance programs. Goods which are peculiar to the ARRC, such as locomotive parts, passenger car parts, and the like, are not obtainable on the local market and must be purchased from vendors outside Alaska. Additionally, the majority of such parts must be obtained from the original manufacturer to maintain warranties.

Services purchased by ARRC include engineering expertise, legal counsel, risk management services, adjusters, printing and binding services, employee counseling services and medical referral services. To the greatest extent possible and available, these services are obtained through competitive procurement practices. In most cases these services are obtained from the local market.

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

Response: Attached (1985 Budget Prepared by Federal Railroad).

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

Response: Attached.

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

Response: Attached.

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

Response:

Percentage

1985	1986	1987	
21.9	20.5	19.2	administration of the ARRC
0.5	0.8	0.5	travel expenses (total management)
--	11.9	11.8	salary of non-represented employees

Thousands of Dollars

1985	1986	1987	
13,209	11,909	10,826	administration of the ARRC
322	450	300	travel expenses (total management)
--	6,919	6,668	salary of non-represented employees

Above percentages are approximate.

Salary Levels*:

Range	Number of Positions	Position
$125,000	1	President/CEO
$70,000-92,000	16	Vice Presidents and Department Managers (3 levels)
$58,000-64,000	40	Mid Level Managers (3 levels)
$22,000-53,000	56	First Level Managers and Professional Staff

* Information only for February 1987; prior years have not yet been compiled. Please advise if this is needed.

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

Response:

Thousands of Dollars		
1985	1986	1987
7,133	(1,500) Estimated Loss	354 Estimated Income

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?

Response:

Percentage				
Income 1985	Revenue 1985	Income 1986	Revenue 1986	
42.6	93.6	91.9	(440.0)	- Passenger and Freight
57.4	6.4	9.1	340.0	- Real Estate
100.0	100.0	100.0	100.0	- Total Percent

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?**

Response:

Balance (Millions of Dollars)		
1-06-85	12-31-85	6-30-86
7.5	4.6	4.6

*Inventory was revalued during 1985 to compensate for obsolete items as well as remove from inventory those items of no value.

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)

Response:

Thousands of Dollars		
1985	1986	
500	650	Management of rail lands (estimated)
59,601	57,242	Passenger and freight service

3702L

EXHIBITS

Response to Question No. 8 Exhibit A	Market Analysis to Establish Fair Market Rental Rate Applicable to Alaska Railroad Corporation Leased Lands -- March 1986, Prepared by Franklin M. King, Jr., MAI,
Response to Question No. 9 Exhibit B	Alaska Railroad Corporation Long Term Lease Policy
Response to Question No. 10 Exhibit C	Alaska Railroad Corporation Approval Authority Guide, May 1985
Response to Question No. 27 Exhibit D	Rule 4 - Public Disclosure of Information
Response to Question No. 37 Exhibit E	Operating Circular No. 37 Engineering Bullention No. 87-01 Policy for Moose That Have Been Struck By Trains
Response to Question No. 39 Exhibit F	Article from Alaska Fish & Game "When Moose and Train Meet: Avoiding Collisions on the Alaska Railroad" by Jack C. Didrickson and Raymond J. Kramer
Response to Question No. 47 Exhibit G	Resolution No. 85-5: Relating to the policy of Hiring Alaska Residents
Response to Question No. 52 Exhibit H	1985 Budget Prepared by Federal Railroad
Response to Question No. 53 Exhibit I	1986 Budget
Response to Question No. 54 Exhibit J	1987 Approved Operating and Capital Budget

3719L

MARKET ANALYSIS TO ESTABLISH

FAIR MARKET RENTAL RATE

APPLICABLE TO ALASKA RAILROAD CORPORATION

LEASED LANDS -- MARCH 1986

PREPARED FOR:

Alaska Railroad Corporation
Larry J. Houle, Asst. V.P.
Realty Policy & Planning

PREPARED BY:

Franklin M. King, Jr., MAI
Executive Vice President
Real Estate Services Co.

File #86-16

EXHIBIT A

TABLE OF CONTENTS

CERTIFICATION

I certify that, to the best of my knowledge and belief,...

1.-- the statements of fact contained in this report are true and correct.

2.-- the reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions, and are my personal, unbiased professional analyses, opinions, and conclusions.

3.-- I have no present or prospective interest in the property that is the subject of this report, and I have no personal interest or bias with respect to the parties involved.

4.-- my compensation is not contingent on an action or event resulting from the analyses, opinions, or conclusions in, or the use of, this report.

5.-- my analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the requirements of the Code of Professional Ethics and the Standards of Professional Practice of the American Institute of Real Estate Appraisers.

6.-- the use of this report is subject to the requirements of the American Institute of Real Estate Appraisers relating to review by its duly authorized representatives.

7.-- I am currently certified under the voluntary continuing education program of the American Institute of Real Estate Appraisers.

Franklin M. King, Jr., MAI

STUDY OBJECTIVE

The objective of this study is to estimate the current "fair market rental rate" applicable to lands leased under the terms and conditions of the Alaska Railroad Corporation's newly-drafted, Long-Term Lease Policy. The estimated rental rate (a/k/a lease rate) is to be applied to the market value of land (fee simple interest) to determine the annual rent payment. A copy of the Long-Term Lease Policy is included in the addenda to this report.

SCOPE OF INVESTIGATION

The appraiser reviewed the ARR Long-Term Lease Policy and, for comparison purposes, secured information on land leases throughout the State. The comparative lease data are divided into private and public sector categories.

Private Sector Leases:

Data was gathered on over 50 land leases between private parties. A breakdown of the leases by locale is: Anchorage - 46%; Juneau - 23%; Fairbanks - 17% and; other areas - 14%. When possible, the appraiser reviewed the lease instrument but, in some cases, it was necessary to rely on interviews of the parties and prior "write-ups" by other appraisers. A tabular summary of the private sector lease data is set forth later in this report. Additional details, leases copies,etc., are on file.

Public Sector Leases:

Various public entities have active land leasing programs and information on same was obtained through interviews and review of lease documents. Data sources included: State of Alaska (Department of Natural Resources); Municipality of Anchorage; City of Cordova; Fairbanks North Star Borough; City & Borough of Juneau; City of Kenai and; City of Seward. A summary of pertinent public sector lease data is contained later in this report.

SUMMARY OF LAND LEASE RATES

Private Sector Land Leases

Lease No.	Rent As % FMV	Eff. Date	Lease No.	Rent As % FMV	Eff. Date	Lease No.	Rent As % FMV	Eff. Date
A-1	10.0%	7-85	A-18	9.0%	7-81	J-2	10.0%	11-85
A-2	7.0%	1-84	A-19	10.0%	9-79	J-3	9.0%	12-84
A-3	9.0%	6-84	A-20	8.0%	8-79	J-4	10.0%	5-84
A-4	10.0%	7-84	A-21	8.5%	6-78	J-5	9.0%	7-83
A-5	10.0%	9-84	A-22	8.0%	6-77	J-6	10.0%	8-83
A-6	8.0%	1-84	A-23	8.0%	10-75	J-7	11.0%	9-82
A-7	7.6%	3-84	A-24	9.0%	4-73	J-8	8.0%	11-82
A-8	8.0%	1-84	F-1	10.0%	8-84	J-9	11.0%	1-79
A-9	5.8%	3-83	F-2	10.0%	7-84	J-10	10.0%	10-78
A-10	8.4%	3-83	F-3	10.0%	8-84	J-11	9.0%	9-76
A-11	10.5%	9-83	F-4	12.0%	1983	J-12	8.0%	4-72
A-12	14.0%	8-83	F-5	9.8%	10-82	O-1	6.8%	9-84
A-13	9.0%	3-83	F-6	13.0%	10-82	O-2	12.0%	11-84
A-14	10.0%	12-81	F-7	7.0%	1983	O-3	10.0%	4-83
A-15	13.0%	8-81	F-8	5.3%	2-78	O-4	8.0%	3-83
A-16	10.0%	4-81	F-9	7.7%	1978	O-5	10.0%	10-83
A-17	12.0%	4-81	J-1	12.0%	1-86	O-6	10.0%	7-81
						O-7	10.0%	12-81

Range of Lease Rates: 5.3% --- 14.0%
Average: 9.5%
Median: 10.0%
Mode: 10.0%

Public Sector land leases

State of Alaska (DNR)	6.0% --- 15.0%	(Eff. 1981 - 86)
Muni. of Anchorage (Port)	8.0% --- 10.0%	(Since late 1970's)
City of Cordova	9.0%	(Since mid-1970's)
Fairbanks N. Star Borough	10.0%	(7-84)
City & Borough of Juneau	9.0% --- 12.0%	
City of Kenai	6.0%	(Since mid-1960's)
City of Seward	8.0%	(Since mid-1970's)

MARKET DATA ANALYSIS

Lease Rates:

Private sector annual ground rents tend to be set within a range of about 5% to 14% of fair market value (FMV) as depicted on the facing page. The mean of the sample considered in this study was 9.5% and two-thirds of the private sector leases were at 8% to 10% of FMV. Nearly all of the leases involved commercial sites.

Unlike private sector lease rates which are normally determined through open-market negotiations, public sector rates are most often established by appraisal. Not surprisingly, the indicated lease rate range of 6% to 15% closely approximates that of the private sector. This range is demonstrated by State Department of Natural Resources (DNR) leases but, narrows when one considers that the low-end rates are applicable to residential and recreation lands and the high-end rates are for 25-year fixed rent leases.

It should also be noted that: (1) All but one of the Port of Anchorage leases are at 9% to 10% of FMV; (2) The most recent lease rates for City & Borough of Juneau lands are at 10% and; (3) The City of Kenai deliberately maintains a relatively low lease rate of 6%.

From all indications, lease rates are not locationally-sensitive but are fairly uniform in range around the State. There is also an apparent uniformity of rates over the past 10 or so years.

Lease Term:

The standard ARR long-term ground lease will be for 35 years (longer periods may be negotiated). Excluding five short-term leases (1 to 5 years), the private sector leases have an average term of 53.71 years (including optional renewal periods), with a median and mode of 50 years. The public sector lease terms were:

State of Alaska (DNR)	25 -- 55 yrs.
Port of Anchorage	19 -- 61 yrs., typ. 50 yrs.
City of Cordova	20 yrs.
Fairbanks N. Star Bor.	50 yrs.
City & Bor. of Juneau	35 yrs.
City of Kenai	55 -- 99 yrs.
City of Seward	30 yrs. typically

The five private short-term leases demonstrate lease rates of: 7.6% (A-1); 8.4% (A-10); 10.5% (A-11); 10% (A-14) and; 7% (F-6). These rates are in the central data range and there is no evidence that the term of lease has a measurable impact on the selection of a lease rate.

Rent Adjustment Method:

The standard ARR lease will provide for rent adjustments at 5-year intervals based on appraisal of fair market rental value. Rent revisions are to be regulated by a rent "floor" determined by changes in the CPI (All Urban Consumers - U.S. Cities Average) and a rent "ceiling" or "cap" established through negotiation.

Nearly one-half of the private sector long-term leases (confirmed cases) call for rent adjustments at 5-year intervals. The others varied with the frequency of rent adjustments ranging from annually to as seldom as 10-year intervals. Rent floors were typically set at prior rent amounts, although there were a few leases specifying minimum annual increases of 5%. Several of the leases have rent caps whereby maximum rent is determined by an annual percentage increase in the previous rent. The maximum rates of increase ranged from 4% to 15%/year with the average being 8.74%.

Most of the private sector, 5-year adjustable leases provide for rent revisions in line with CPI variations and a lesser number call for adjustments based on reappraisals. Since land value appreciation has usually exceeded inflation in most Alaskan cities, it would seem reasonable for reappraisal leases to carry lower rental rates than those of indexed leases. This is supported by a matched pair of leases (A-2 and A-5) which are similar except that the former is a reappraisal lease with a going in lease rate of 7% and the latter is an indexed lease with a rate of 10%. As can be expected of an imperfect market, paired leases O-2 (reappraisal with 12% rate) and O-3 (indexed with 10% rate) are contradictory.

The data are also inconsistent with respect to rent caps (see A-1 vs. A-2, A-6 vs. O-2 & A-5 vs. A-18) but, all other things being equal, a lease with reasonable limits on potential rent increases should reflect a higher going in rate than one without limitations.

All of the public sector leases surveyed call for periodic rent adjustments based on reappraisals and this is predominantly done at 5-year intervals. The newer State DNR leases do not provide for rent adjustments during the first 25 years and, predictably, their lease rates (9.5% to 15%) are normally higher than rates for leases that are updated to market rent levels on a more frequent basis. Relatively few of the public sector leases include rent floors or caps.

Lessee Expenses:

Long-term land leases are usually structured so that lessees pay all property expenses, i.e., land rent is net to the lessor. This is true of all the public sector leases surveyed and also of over 80% of the private sector leases (confirmed cases).

The standard ARR lease will require lessees to pay all property expenses and, as such, fits the market norm.

Subordination, A signment & Subleasing:

The standard ARR lease will not permit subordination of the lessor' interest (leased fee estate) but will allow assignment and subleasing with lessor approval. These are typical features as over 80% of confirmed private sector leases do not provide for subordination and 97% allow assignment and subleasing. Those leases allowing subordination to lessee financing exhibit lease rates ranging from 8% to 10% with an average rate of 8.6%. These rates seem low considering the added risk normally associated with subordination. However, it is recognized that there are factors blended into the rates.

Public sector leases do not allow subordination of the leased fee but usually permit assignment and subleasing with lessor consent.

Option to Purchase:

The ARR standard lease will not provide the lessee with an option to purchase the premises and, as would be expected, this is normally true of public sector leases. In those confirmed instances, 75% of private sector leases do not include an option to purchase either.

Although the sample data are inconclusive on this point, it would seem that an option to purchase should not affect lease rates if the price is at current market value. Other prices and unusual purchase terms could justifiably influence rental value.

Reversion of Lessee Improvements:

About 86% of the confirmed reversion clauses in the long-term private sector leases provide that either the improvements revert to the lessor upon expiration of the lease or the lessor may opt to remove same at lessee's expense. Notably, in these instances, the lease term (including renewal periods) approximates or exceeds the economic life expectancy of the improvements. This is also true in those few instances where the lessee has the option of removing the improvements.

Public sector reversion clauses vary, but most frequently call for tenant removal of improvements. Here again, lease periods are generally scheduled to approximate anticipated improvement economic life.

The ARR's standard reversion clause parallels that of the typical private lease in that,"....Lessor may, at its option, become the owner of all improvements located on the demised premises, or may require lessee, at the expense of lessee, to remove, demolish, or otherwise dispose of such improvements....".

Assuming that: (1) ARR lease periods will be negotiated to coincide with the normal useful life of lessee improvements and; (2) Salvage value will tend to be offset by the cost of removing improvements; then neither lessor nor lessee would benefit or lose from retention of the improvements upon expiration of the lease. Accordingly, lease rates would not be measurably affected by the reversion clause.

Condemnation Clause:

Private and public sector leases typically provide for awards based on the respective interests of the parties and, at a minimum, entitle lessees to awards for their improvements. The eminent domain provisions of the ARR lease are not unusual in that they specify lessee compensation to be governed by State law.

Arbitration:

The ARR lease provides for binding arbitration of disputes involving rent revisions, condemnation aspects and assignments of lessee's interest. Only 37% of the private sector leases (confirmed instances) allow for some form of arbitration and public sector leases do not normally include arbitration clauses.

Arbitration is normally a less expensive method of settling disputes than litigation and, as such, can benefit both landlord and tenant. Unfortunately, the sample data are mixed as to the effects of arbitration provisions (see A-2 & A-3 vs. A-6 and also A-18 vs. O-3). Even though there is no quantifiable market support, it seems reasonable that a small lease rate premium would accrue to an arbitration clause like that of the ARR lease.

LEASE RATE RECOMMENDATIONS

Although land leases constitute a large part of the market in some areas of the country, their limited use in Alaska makes it difficult to quantify differences in specific conditions and provisions. However, in spite of market irregularity, there is a relatively uniform range of lease rates around the State.

Private sector leases that are most comparable to the standard ARR lease are as follows:

Lease No.	Rate	Comparability
A-6	8.0%	Most similar
A-2	7.0%	Very similar but no arbitration
A-3	9.0%	Very similar but no arbitration
O-2	12.0%	Very similar but no rent cap
O-5	10.0%	Very similar but no rent cap
O-6	10.0%	Very similar but no rent cap
A-1	10.0%	Very similar but no rent cap or arbitration
Average=	9.4%	

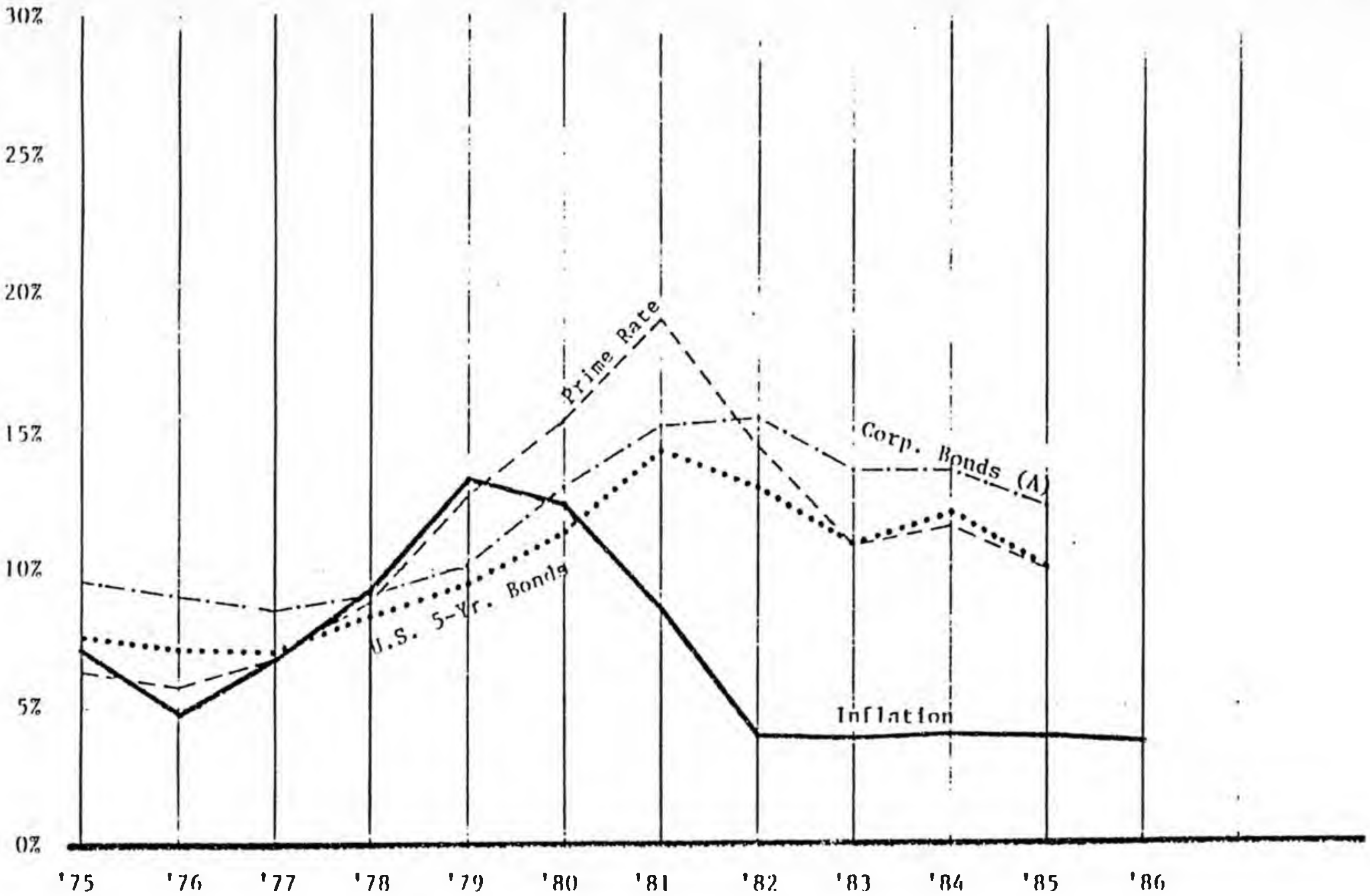
These leases epitomize market imperfection and, interestingly, their average rental rate is nearly the same as the average of the total private sector sample.

Based on analysis of private and public sector leases, a fair rental rate for ARR long-term Leases would be at 9% to 10% or, say, 9.5% of market value. This lease rate is considered appropriate for all railbelt locales from Seward to Fairbanks (locational variations in land rents would, of course, be a function of land value).

This rate is based on the assumption that: (1) Lease periods will be negotiated to coincide with economic lives of lessee improvements; (2) The cost of removing such improvements at the end of a lease will be offset by their salvage value and; (3) Rent caps will be negotiated to limit rent increases to 5% to 10% per year.

It is recognized that methods of leasehold taxation vary within the State and those jurisdictions utilizing valuation of "possessory interests" tend to be more costly to lessees of tax-exempt lands than those that rely on appraisal of "rent savings". Nevertheless, the recommended lease rate of 9.5% is considered appropriate regardless of taxation method since it is consistent with the market norm, i.e., land rents are typically net to the lessor with the tenant being responsible for all property operating expenses.

SELECTED ECONOMIC INDICATORS



——— INFLATION: % change in C.P.I. (Dec. over Dec.). 1986 forecast of 3.7% by TIME magazine's Board of Economists.

•••••• U.S. 5-Yr. BONDS - Taxable

— — — PRIME RATE (yearly average).

—·—·— CORPORATE BONDS (A)

YIELD ANALYSIS

Ongoing inflation and land value increases over the term of most leases result in internal rates of return (IRR) or yield rates in excess of actual lease rates. Three possible scenarios involving an ARR lease with a fair market rental rate of 9.5% are as follows:

Assumptions: (1) Initial Land Value = $100,000
(2) Lease Term = 35 Years
(3) Reversion Value of Lessee Improvements = 0

	EXAMPLE A Inflation & Land Apprec. @ 3%/Yr. (compounded) Annual Rent	EXAMPLE B Rent Cap @ +25% Over Prior Amt. & Land Apprec. @ 5%/Yr. (comp.) Annual Rent	EXAMPLE C Rent Cap @ +50% Over Prior Amt. & Land Apprec. @ 10%/Yr. (comp.) Annual Rent
1st 5 Yrs.	$ 9,500	$ 9,500	$ 9,500
2nd " "	11,013	11,875	14,250
3rd " "	12,767	14,844	21,375
4th " "	14,800	18,555	32,063
5th " "	17,157	23,193	48,094
6th " "	19,890	28,992	72,141
7th " "	23,058	36,240	108,211
Land Rever. End 35th Yr	281,386	551,602	2,810,244
YIELD =	12.01%	13.42%	17.05%

Example A is believed to be on the conservative side as annual inflation has been closer to 4% since 1982 and is forecast at 3.7% for 1986 (see chart on facing page). Example C could be more representative of yield on urban lands such as those in Anchorage where the average compound rate of appreciation for commercial and industrial sites was 10.0% and 8.7%, respectively, over the past ten years (per survey data published annually by our firm).

Pre-tax yields in the range of 12% to 17% for ARR leases would certainly be in line with returns on competitive investments:

	4th Qtr.'85	3rd Qtr.'85	2nd Qtr.'85	4th Qtr.'84
Real Estate Yield	12.75-15%	12.75-15%	12.75-15%	13-15.5%
	December	**September**	**June**	**December**
Bond Yields				
Corp.(Aaa)	10.16%	11.07%	10.94%	12.13%
Corp.(A)	11.19%	11.99%	11.98%	12.92%
Corp.(Baa)	11.58%	12.48%	12.40%	13.40%

The real estate yields are on a pre-tax basis and are published by Real Estate Research Corporation. They primarily reflect IRR on unleveraged investments in prime properties such as major office buildings, industrial and R&D facilities, and large apartment complexes.

The bond yields are those of major corporations as reported by Moody's Bond Survey. Real estate capital requires greater yields than corporate bonds due to relative risk factors.

SYNOPSIS OF LAND LEASES - PRIVATE SECTOR

ANCHORAGE AREA	No. A-1	No. A-2	No. A-3	No. A-4	No. A-5
Lessor/Lessee	Sanchis/Fifth & "F" Bldg. Corp.	Murray & Scott/ Racheff & Bright	Korpi/Newcore Partnership	Tsakres/Kakaras	Toppers Oil/North-shore Partnership
Land Area/Use	41,914 s.f./Bank-office bldg.	2 acres/car wash	29,247 s.f./ office bldg.	30,258 s.f./Retail bldg.	10,000 s.f./Con-venience store
Lease Date	9-1-85	1-16-84	6-7-84	10-1-84	12-1-84
Term	25 years	25 years	75 years	55 years	25 years
Renewal Option	Three (5 yrs. ea.)	None	None	One (55 yrs.)	Four (5 yrs. ea.)
Annual Rent Effective Date	$1.55/s.f. 7-85	$.69/s.f. 1-84	$1.37/s.f. 6-84	$.79/s.f. 7-84	$2.40/s.f. 9-84
Rent Basis	10% FMV (est.)	7% FMV (stated)	9% FMV (stated)	10% FMV (est.)	10% FMV (est.)
Rent Adjustment	@ 5 yr. intervals. Greater of 10% FMV or CPI	11.7% step-up after 3rd yr.; 5th yr. & every 5 yrs. there-after by appraisal.	@ 5 yr. intervals by agreement or appraisal.	5% annual increase, implemented @ 3 yr. intervals.	CPI @ 5 yr. intervals.
Rent Floor/Ceiling	Floor @ prior rent	Limited to 50% increase over previous level	+ 50% ceiling on first adjust-ment		min. 5% increase annually; cap @ 8% annually.
Lessee Expenses	All	All	All	All	All
Assign/Sublet	Requires lessor consent	Requires lessor consent	Requires lessor consent	Yes (without lessor approval)	Requires lessor consent
Subordination	No	No	No	No	No
Option to Purchase	No	No	No	No	No
Reversion of Improvements	@ lessor's option	Removal @ lessee's option	@ lessor's option	To lessor	To lessor
Condemnation	Lessee award limited to improvements	Typical	Lessee award limited to improvements	Typical	All awards to lessor
Arbitration Clause	No.	No	No	No	No
Other					

SYNOPSIS OF LAND LEASES - PRIVATE SECTOR

ANCHORAGE AREA

	No. A-6	No. A-7	No. A-8	No. A-9	No. A-10
Lessor/Lessee	Riendl/George & Ferrara	Von Wichman/ Kiester, et al	Tsakres/Chambers, et al	Calais Co./ Saent Ltd.	Arctic Plaza/Cook Inlet Natives
Land Area/Use	64,825 s.f./ commercial	33,064 s.f./Medical office bldg.	39,146 s.f./strip mall	75,360 s.f./ commercial	20,000 s.f./ parking
Lease Date	7-1-84	3-2-84	2-1-84	3-83	3-83
Term	35 years	2 yrs. & 7 mos.	40 years	55 years	yr.-to-yr.
Renewal Option	Three (5 yrs. ea.)	Long-term replace.	Five (10 yrs. ea.)	Two (10 yrs. ea.)	
Annual Rent Effective Date	$.56/s.f. 1-84	$1.51/s.f. 3-84	$1.07/s.f. 1-84	$1.15/s.f. 3-83	$1.26/s.f. 3-83
Rent Basis	8% FMV (stated)	7.6% FMV (est.)	8% FMV (est.)	5.8% FMV (est.)	8.4% FMV (est.)
Rent Adjustment	@ 5 yr. intervals by agreement or appraisal	10% increase in 2nd year		Level 10 yrs.; then @ 5 yr. intervals based on 8.5% of agreed value	Nego. ea. yr.
Rent Floor/Ceiling	Floor @ orig. rent & ceiling @ +20% ea. adjustment			Floor @ initial rent; ceilings for 3 adjust. periods = 100%, 50% & 50%. No ceiling thereafter	
Lessee Expenses	All	All		All	All but taxes
Assign/Sublet	Requires lessor approval	Requires lessor approval		Requires lessor approval	No
Subordination	No	No		No	No
Option to Purchase	No	No		No	No
Reversion of Improvements	Removal @ lessee's option			@ lessor's option	N/A
Condemnation	Lessee award limited to improvements	All awards to lessor		Lessee award limited to improvements	No clause
Arbitration Clause	Yes-condemn.	No		No	No
Other		Method of Financing			Land not to be

SYNOPSIS OF LAND LEASE – PR

ANCHORAGE AREA

	No. A-11	No. A-12	No. A-13		
Lessor/Lessee	Alaska Sales & Service/MacNutt	Dickerson/ Freeman	Bailey & Fredric J./Bowden	Hickel Investmen[illegible] Co./E. Drage	Co[illegible]
Land Area/Use	47,475 s.f./open storage	18,975 s.f./Automotive services	75,111 s.f./office condos.	Service station	25,000 s.f./[illegible] Food Restaurant
Lease Date	9-1-83	8-8-83	3-30-83	12-4-81	11-15-81
Term	1 year	45 years	75 years	5 years	45 years
Renewal Option	None				Three(10 yrs.ea
Annual Rent Effective Date	$.63/s.f. 9-83	$2.53/s.f. 8-83	$1.92/s.f. 3-83	$19,440/12-81	$1.56/s.f. 8-81
Rent Basis	10.5% FMV (est.)	14% FMV (est.)	9% FMV (est.)	10% FMV (est.)	13% FMV (est.)
Rent Adjustment	None	@ 3 yr. intervals based on CPI-U.S. avg.	@ 5 yr. intervals alternate % increase & appraisal	17.8% increase 2nd yr.; + 8% ea. yr. therafter	Annual based on CPI changes (U.S. avg.)
Rent Floor/Ceiling		Floor @ orig. rent. Ceiling = +20% prior rent	Floor @ 5%/yr. increase. Ceiling @ 10%/yr. increase		
Lessee Expenses	All but taxes		All		All
Assign/Sublet				Requires lessor approval	Requires lessor approval
Subordination	No			Yes	No
Option to Purchase				No	No
Reversion of Improvements	N/A			Removal @ lessee's option	@ lessor's option
Condemnation					Lessee award limited to improvements
Arbitration Clause	No				No
Other	Land not to be built on			Use restricted to filling station	

CORRECTION

THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY