

ALASKA LEGISLATURE COMMITTEE FILES 1997-1998 8672

9760 SENATE TRANSPORTATION

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

5. Inconsistency of Approach.

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

The bill expressly subjects ARRC revenues to legislative control by making the corporation subject to the EBA. Yet, it does not change the primary directive found in the Alaska Railroad Corporation Act ("ARCA") for the corporation to be managed on a self-sustaining basis². For example, the directors are required to, "in accordance with AS 37.07, apply to the legislature for an appropriation . . . to be used to fund the operating, capital, and debt service expenditures of the corporation; and . . . when necessary, provide" a non-self sustaining service. This implies that an annual appropriation is required for all expenditures of the corporation, with all the accompanying budget, operations plan and other documents that are generated in the governor's budgeting process. However, the EBA itself does not require ARRC revenues to be paid into the general governmental treasury,² and it is unclear whether the bill contemplates this result. If ARRC is to retain its receipts, it is inconsistent to require the corporation to seek appropriations for operating and other expenditures.

6. Lack of Definition.

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

The ARRC directors are directed to apply for appropriations to be used to, "when necessary", provide a non-self sustaining service, without any guidance as to what

² Another section of the Public Finance title, AS 37.05.146, provides that ARRC receipts are not general fund receipts. Without any other section of that title being made applicable to ARRC, there is apparently no requirement that corporation funds be paid over to the state treasury.

factors go into a determination of such necessity or who is to make the determination. A similar lack of guidance is found throughout the real estate provisions of the bill, as will be discussed in Section B below.

B. Land Related Aspects of the Bill

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

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

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

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

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

Another consideration is the environmental aspects of a transfer of rail land to the Department of Natural Resources ("DNR"). There is certain known contamination of rail land, both right-of-way ("ROW") and parcels and, no doubt, some amount of currently unknown contamination as well. ARTA provided that the United States

retained all liabilities that accrued prior to transfer, without specific reference to environmental liabilities. ARRC entered into an agreement with the Federal Railroad Administration ("FRA") in 1990 that addresses respective responsibilities for contamination, an agreement which is not specifically stated to be assignable. The FRA is currently somewhat unhappy with the agreement, and may take advantage of any opportunity, however flimsy, to repudiate it. Moreover, transfer of ARRC land to DNR will create two separate entities to deal with pre-transfer contamination--ARRC for the ROW and any retained rail land, and DNR for the other rail lands. DNR has no experience dealing with FRA, and FRA will resist having to deal with two different state "agencies" on the same underlying liability, rightly fearing it could be subject to different approaches. Lastly, given the inherent difficulties in dealing with contaminated properties and DNR's lack of experience in this area, it will present that agency with a new and onerous burden that is unnecessary and undeserved.

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

1. Land Title in Limbo for Considerable Period.

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

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

2. Necessity for U.S. Involvement.

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

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

3. Separation of ROW by Survey Required.

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

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

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

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

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

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

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

For lands that are not subject to the immediate "reservation", the ARRC board is authorized to "request" the DNR commissioner to make available other lands

"necessary or useful for present or future railroad purposes". No guidance is given as to what standards the DNR commissioner must apply in making this determination, although he is given 90 days to make the decision. What is the meaning of "necessary", "useful", or, for that matter, "railroad purposes"? Query whether different standards should be applied depending on whether additional ROW is being requested, as opposed to additional "rail land". Query what "appeal" rights ARRC would have as the aggrieved party if the commissioner refuses the request.

6. Unnecessary Administrative Burden Imposed on DNR.

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

The administrative burden imposed on DNR by adding these lands under these conditions to its inventory should be considered. DNR has an efficient mechanism in place to handle leases and other interests in land, which differs somewhat from the mechanism retained under this bill for rail land. For example, a lease of rail land to a party other than the state must be at fair market value "as determined by a qualified appraiser or by competitive bid." The DNR statutes provide a somewhat different approach, so that DNR will have to devise and master another system and apply them both efficiently. In addition, presumably all of ARRC current leases and permits on lands not "reserved" to the corporation under Sections B 2-4 above will be administered by DNR. These contracts are vested rights and may not be divested without payment of compensation. For example, there are a total of 261 current leases, the overwhelming majority of which are on non-"ROW" land.³ Therefore, DNR would acquire over 250 new leases to administer, with ARRC or federal railroad standard terms and conditions, and rental reappraisal cycles entirely different from its normal inventory. It will be necessary for DNR staff to administer these "unusual" leases for remaining terms of up to 35 years (or even longer, due to options to extend as well as hold-over federal leases which had longer terms from their inception). The enormity of this assignment should not be underestimated, and DNR must be prepared to expend sufficient resources to master those documents or the businesses and individuals who have contracted in good faith with the railroad will feel cheated. The potential for negative public relations is significant.

³ There are an unknown number of the 576 active permits granted by the railroad that would also fall under DNR administration, although the vast majority of these are on railroad ROW.

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

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

Section 5 of the bill amends AS 42.40.285 to add a new subsection (b), requiring the "state" to seek legislative approval when disposing of its entire interest in railroad land. First, the existing statute does not have a subsection (a). Presumably the intention is to make the existing language into a subsection (a), but this does not quite fit either because the new language appears to replace the intent in current subsection 285(1), which is indeed repealed by Section 22 of the bill. However, the lettering and structure of the remainder of the section must also be changed to match this bill's additional language. In addition to such technical changes, the intent of the bill should be clarified. Query what remains for which ARRC as the continuing corporation must seek legislative approval. Further, one must ask why DNR, as administrator of rail land removed from ARRC control under other portions of this bill, is required to act differently with respect to disposals of this land? DNR has an enormous inventory of state land to manage and has stringent provisions under the Alaska Constitution and the Alaska Lands Act governing its disposals. Imposing an additional and different procedure on DNR for just these lands creates an unwarranted administrative burden with no identified value added.

8. **Ratification of Leases to Third Parties.**

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

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

9. **Limitation on Future Leases of ROW.**

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

Leases or other disposals within the ROW may be authorized by ARRC but must "require that the land be used for transportation, communication and transmission purposes in perpetuity." Other "compatible" purposes are also allowed. One threshold issue is the definition of the word "compatible." Moreover, the reasoning behind the entire concept is unclear. If this provision is an effort to avoid forfeiting the ROW under ARTA's reversionary provisions (45 U.S.C. § 1209(b)), it goes much farther than necessary. That section of ARTA only requires that the ROW not go unused for transportation, communication and transmission purposes for more than 18 years or it will revert to the United States. A lease or permit could easily incorporate such a provision, or be limited to less than 18 years in length to accomplish this purpose. A complete disposal of the entire interest in such land requires legislative approval in any event, and the legislature could at that time seek to impose any condition it liked.

10. Inconsistency Created by Terminology.

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

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

sb42

CITY OF SEWARD

P.O. BOX 167
SEWARD, ALASKA 99664



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February 12, 1997

The Honorable Jerry Ward
Alaska State Senator
State Capitol, Room 423
Juneau, AK 99801-1182

OPPOSITION TO CHANGES IN THE STATUS OF THE ALASKA RAILROAD

At its meeting held February 10, 1997, the Seward City Council approved Resolution No. 97-023 which opposes certain changes in the status of the Alaska Railroad.

Seward is directly affected by the Alaska Railroad and any changes could have significant impact to the community. The Railroad is used throughout much of the state for shipment of freight, petroleum products, coal, and for transportation in the tourism industry.

A copy of the resolution is enclosed. Thank you for your consideration.

Sincerely,

The City of Seward

A handwritten signature in cursive script that reads "Betty Christian".

Betty Christian
City Clerk Office Assistant

Enclosure

**CITY OF SEWARD, ALASKA
RESOLUTION NO. 97-023**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SEWARD,
ALASKA, OPPOSING CERTAIN CHANGES IN THE STATUS OF THE
ALASKA RAILROAD**

WHEREAS, the Alaska Railroad was purchased by the State of Alaska to encourage its operation for the benefit of the citizens of Alaska; and

WHEREAS, currently, a Board of Directors, appointed by the Governor, conducts the Railroad's operations independent of other state activities as a for-profit business employing professional private sector railroad managers and well-trained, highly qualified workers who negotiate their contracts outside of state payroll and retirement systems; and

WHEREAS, under an independent Board of Directors, the Alaska Railroad has turned a profit for nine of the last eleven years and, in 1996 achieved an annual profit of over eight million dollars, all without state or other subsidies, and it has demonstrated during this short period that the State of Alaska made good management policy and operational decisions when it initially set up the Alaska Railroad; and

WHEREAS, notwithstanding the benefits and success of the Alaska Railroad outlined above, certain efforts are being made within the State Legislature to change the current status of the Alaska Railroad;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SEWARD, ALASKA, that:

Section 1. At this time, the City of Seward opposes any legislative or administrative effort to:

1. sell the Alaska Railroad to a private operator;
2. force the railroad to operate under the Executive Budget Act, thus exposing it to the political process; or
3. take or control Alaska Railroad land

for the following reasons:

1. If the Alaska Railroad were sold to a private operator:
 - a) the State could lose up to \$147 million in payments for fiber-optic cable right-of-way;
 - b) the private operator may not operate the Railroad in as benevolent a manner as its is currently operating, with "flag" stops, special agreements with large corporations and the University of Alaska, land use provided for recreational and scenic purposes, and care for the desires of the State's residents; and
 - c) the private operator/company may not be willing to spend appropriate funds for maintenance, repair and expansion.

CITY OF SEWARD, ALASKA
RESOLUTION NO. 97-023

2. Should the Alaska Railroad be operated under the Executive Budget Act, it would be subject to political pressures and its operational flexibility would be severely limited. The Railroad could no longer operate at a profit as it has over the past eleven years since its history of profitability is tied directly to its ability to run like a successful business. Swift reaction to changes or events are not possible under the Executive Budget Act. Many people feel that private operators control public services better than government. If that is true, we currently have the best of both worlds - The Alaska Railroad is being operated like the private sector while retaining its public responsibility.

3. Removing the control of railroad land from the Alaska Railroad Corporation would be the beginning of the end for the Railroad. The federal government realized that it takes railroad land holdings to successfully operate a railroad, not only for the actual operation, but also to provide income from leaseholders. When the State purchased the Railroad, both the Governor and the Legislature not only wanted the Railroad to run like a private business, they insisted that the land be transferred to the State along with the actual track, equipment and moving stock. The Railroad continues to responsibly develop its land holdings, creating vital income.

Section 2. BE IT FURTHER RESOLVED that copies of this resolution shall be sent to the Honorable Tony Knowles, Governor of Alaska; Governor Bill Sheffield, Chairman of the Board of the Alaska Railroad Corporation; and all members of the Alaska State Legislature.

Section 3. This resolution shall take effect immediately upon its adoption.

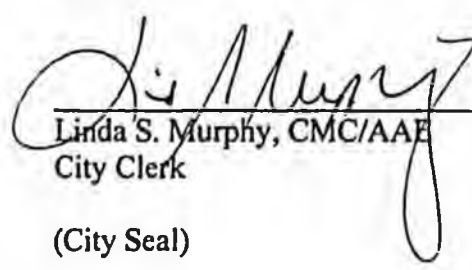
PASSED AND APPROVED by the City Council of the city of Seward, Alaska, this 10th day of February, 1997.

THE CITY OF SEWARD, ALASKA


Louis A. Bencardino, Mayor

AYES: Anderson, Bencardino, Blatchford, Clark, Crane, Keil, King
NOES: None
ABSENT: None
ABSTAIN: None

ATTEST:


Linda S. Murphy, CMC/AAE
City Clerk

(City Seal)



FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. SB42

Revision Date: _____ Dept Affected: Natural Resources
 Title: Alaska Railroad Budget and Land BRU: Resource Development
 Component: Land Development
 Sponsor: Rule by Request LB&A
 Requestor: (S)TRA Component Serial No. 431

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY98	FY99	FY00	FY01	FY02	FY03
PERSONAL SERVICES	230.8	193.3	103.0			
TRAVEL	2.0	1.0				
CONTRACTUAL	669.5	334.7				
SUPPLIES	3.5	2.5				
EQUIPMENT	3.0	2.0				
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	908.8	533.5	103.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	908.8	533.5	103.0			
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	908.8	533.5	103.0	0.0	0.0	0.0

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

POSITIONS

FULL-TIME	3.75	3.25	1.75	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

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

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

Prepared by: Jane Angvik, Director Phone: 269-8503
 Division: Land Date: 2/19/97
 Approved by Commissioner: [Signature] Date: 2-19-97
 Agency: Natural Resources

Fiscal Note SB42 continuation

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

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

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

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

Cadastral Survey

The speculative nature of possible land conveyances from ARRC to the state allows only the roughest estimates of cost to transfer the land. The location, size and status of existing survey will determine the cost to survey parcels. It is possible some of the parcels can be "paper-platted" without any field work or monumentation. The more likely need is to survey each parcel in the field to allow conveyance to the state. This requires field presence and the establishment of monuments.

For purposes of estimating the cost to implement land conveyances to the state, a preliminary review of ARRC land indicates that there are approximately 14 areas where there are lands excess to the operation of ARRC. These parcels comprise about 14,346 acres and the cost of survey is computed on an average per-acre cost of \$700. It will take about 1 1/2 years to complete the project.

If the state land is selected by a municipality under AS 29.65, the municipality is required to have the land surveyed at its expense. If other third-party interests are created on the state land, the state may require the party to survey the boundary between ARRC land and state land. Survey personnel costs are for issuance of survey instructions and plat reviews.

A paper-plat method of establishing parcel boundaries may be possible for some of the land, depending in part on platting authority requirements. After the corridor has been identified, the US Surveys that conveyed the land to ARRC would be paper-platted to separate the corridor from land to be conveyed to the state. With paper-platting, no field work is performed and no monuments are set.

71000	<i>Administration of the survey contracts</i>				
	1 Cadastral Surveyor	1.5 years @ 75.0		\$112.5	
	<i>Municipal Entitlement support</i>				
	.25 Land Surveyor Asst.	- 3 years @\$15.4	=	\$46.2	
	.10 Land Surveyor	- 3 years @\$ 7.0	=	\$21.0	
72000	Contract inspections			\$3.0	
73000	Survey Contracts			\$1,004.2	
74000	Computer and software upgrades			\$3.0	
75000	Survey equipment maintenance and upgrades			\$5.0	
TOTAL SURVEY COST ESTIMATE					\$1,194.9

Municipal Entitlements

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

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

Voice of The Times

The Anchorage Times

Publisher: BILL J. ALLEN

"Believing in Alaskans; putting Alaska first"

Editors: DENNIS FRADLEY, PAUL JENKINS, WILLIAM J. TOBIN

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Ralph Moody

THROUGHOUT HIS life Ralph Moody spoke with the soft accents of his Alabama boyhood. But after 50 years in the north-land, he was Alaskan through and through — a man whose public life spanned the period from the post-war territorial years to the era of the state's dramatic growth.

He played a huge part in building the state — as a legislator, as a top official in the state government, as a Superior Court judge of great distinction.

Judge Moody died last Wednesday at the age of 81, a gentleman of the old school whose public service was marked by the use of an enormous amount of common sense applied in heavy layers to resolve whatever issue might be before him.

There was nothing artful about Ralph Moody. He was a down-home, plain-speaking, up-front kind of man. He was that way when he served as a Democratic senator in the last session of the Alaska

Scientific scandal in Yellowstone continues

By ALSTON CHASE

In Washington, the hot conservation news is Bill Clinton's American Heritage Rivers initiative. The only green proposal mentioned in the State of the Union speech, this gambit will, says the White House, "protect and restore America's great rivers."

Since it promises a big-government solution, environmentalists, naturally, favor the plan. Rebecca Wodder, president of the green group American Rivers, declares that "it will help us build that bridge to the 21st century over clean and healthy rivers." More likely, the initiative would be money down the drain. It would harm rivers, not help them, and would invite micro-meddling by virtually every federal regulatory agency.

The feds are experts at ecological demolition, not reconstruction. But the damage they do usually passes unnoticed. Consider a stream in Yellowstone National Park called Slough (pronounced "slew") Creek.

Originating in Montana's Absaroka-Beartooth Mountains north of Yellowstone Slough is a



tems management," has allowed these animals to become so numerous that they've destroyed streamside vegetation that holds soil in place.

Photos of Slough taken in the 1880s, Kav says, reveal its banks were then dot-

eliminating the last official scientific voice independent of Park Service control.

This cover-up could not happen without the tacit complicity of the environmental community — whose antipathy to humanity, religious faith in the myth of

Public or private? Alaska Railroad can't have it both ways

By REP. TERRY MARTIN

There is an old Ebonics question that asks, "Is you or is you ain't?" That question needs to be asked about the Alaska Railroad's relationship to its owners, the people of Alaska. Is the railroad private or public?

Here is the problem: When the Legislature established the Alaska Railroad Corp. in 1984, it set up a quasi-governmental, quasi-private business entity, with deliberately arms-length, distant oversight by the Legislature. This arrangement has proven to be disadvantageous to the public.

When it is convenient for ARRC to be a public corporation, such as to enjoy exemptions from property taxes, corporate income taxes, some fuel taxes and license plate fees, the ARRC is a public corporation. But when it is convenient to wear its "private business" hat, such as when the legislative auditor wants to have a look at how ARRC is disposing of public assets, then it's a



private business with proprietary information to protect.

The ARRC can no longer have it both ways. Either it should be privatized, as was the intent of the public at the time it was purchased, or it should be brought under the Executive Budget Act and treated just like other public corporations. These include the Permanent Fund Corp., the Alaska Housing Finance Corp. and others. Under the budget act, the governor and Legislature have the opportunity to review and approve the budget and programs of the public corporations, along with all the rest of the programs of state government.

One top ARRC official recently decried that putting the railroad under the act "would be the beginning of the end of the railroad." Well, we

heard virtually the same argument from AHFC officials two years ago when they were brought under the same act, but AHFC is as healthy today as ever.

If we are to continue the ARRC as a public corporation, we must be willing to accept the liabilities that come with it. My greatest concern is that deferred maintenance, or simply the continued use of dangerous, slow-speed trackage, will lead to a disaster from which the railroad will not be able to recover.

Suppose a bridge collapses, or the railbed falls off the cliff into the Nenana River, taking a trainload of tourists or Mapco fuels with it. The \$75 million insurance coverage ARRC maintains would likely not even come close to covering the claims. As reported in the Voice of the Times recently, Burlington Northern Railroad is on the hook for \$250 million for the deaths of two drunks who died in a crossing collision. It isn't a far

stretch to envision railroad-generated lawsuits reaching for the deep pockets of the Permanent Fund.

Additionally, it seems obvious to many experts that the railroad needs an infusion of capital if it is to get caught up on deferred maintenance and expand to areas it does not currently serve. But you won't see that needed capital coming its way as long as it continues as the hybrid it is.

On the other hand, I have unabashedly advocated the privatization of the railroad for many years. It is clear to me that the people of Alaska believed the state would only be a conduit to receive the railroad from the federal government and then transition it to private business after a given number of years.

For example, the federal law required the state to operate the railroad for 10 years before any of the land could be transferred to a third party. And the state law required

the railroad to attempt to offer the line for sale and then report back to the Legislature after five years on the results.

I have no particular buyer in mind, although I have discussed the concept of selling it with at least three different groups. Perhaps even a buyout by the employees would work.

Last year, we in the Legislature placed a bill on Gov. Tony Knowles' desk that would have started the wheels turning to sell the railroad. Bowing to whatever pressure came to bear on him, he chose to veto that bill; I was pleased he did so.

This year, we will try a constitutional approach, that is, to make the railroad abide by public corporation laws and therefore answer to the public.

□ Republican Terry Martin represents Mountain View/Elmendorf in the Alaska State House.

cc:Mail for: lydia jones

Subject: Fiscal Note for SB 42
From: Lydia Jones 2/13/97 10:48 AM
To: Shari_Kochman@Gov.state.ak.us at CC2MHS1

Please prepare a fiscal note for:

SB 42 -- Alaska Railroad Budget and Land
Requesting committee -- Senate Transportation
Committee staff contact -- Lydia A. Jones @ 6641
Scheduled hearing date -- Thursday, February 20, 1997

Affected department -- Department of Commerce and Economic Development (ARRC)
Department of Natural Resources

Please advise if additional information is required.

Thanks,
Lydia A. Jones

*2/19 Contacted Shari Kochman's office to inquire
on status of fiscal notes.*

cc:Mail for: lydia jones

Subject: Re: Fiscal Note for SB 42
From: Shari Kochman at Gov_Juneau_Capitol 2/13/97 11:40 AM
To: Lydia Jones at LAA_TRANS

will put in request - thanks

Reply Separately
Subject: Fiscal Note for SB 42
Author: Lydia Jones at JNU LAA
Date: 2/13/97 10:48 AM

Please prepare a fiscal note for:

Sb 12 -- Alaska Railroad Budget and Land
Requesting committee -- Senate Transportation
Committee staff contact -- Lydia A. Jones @ 3641
Scheduled hearing date -- Thursday, February 20, 1997

Affected department -- Department of Commerce and Economic Development (DCEM)
Department of Natural Resources

Please advise if additional information is required.

Thanks, Lydia A. Jones

Senator Randy Phillips

Chairman

Rep. Terry Martin

Vice-Chairman

Sen. Al Adams

Sen. Dave Donley

Sen. Rick Halford

Sen. Drue Pearce

Sen. John Torgerson

Rep. Con Bunde

Rep. Eric Croft

Rep. Mark Hanley

Rep. Jeanette James

Rep. Gene Therriault

State of Alaska



Legislative Budget and Audit Committee

Session

Rm 103

State Capitol

Juneau, AK 99801

(907) 465-4949

Interim

P.O. Box 142

Eagle River, AK 99577

(907) 694-4949

Sponsor Statement

SB 42

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

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

Senate Bill 42 will make two changes to the railroad and the corporation. The bill will place the Alaska Railroad under the Executive Budget Act, and will transfer land not needed for rail operations to the state's Department of Natural Resources (DNR). After numerous audit requests, OMB procurement investigations, and many Legislative Budget & Audit Committee hearings spurred by concerned citizens, the LB&A committee recommended and approved introduction of Senate Bill 42.

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

Enactment of SB 42 will strengthen the financial integrity of the Alaska Railroad Corporation by securing sound procurement practices, strong financial management, and sensible Alaskan resident plans for expansion and service.

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

There are about 36,000 total acres owned by the Alaska Railroad in Alaska. It is estimated ARRC only needs about 18,000 to 22,000 acres of land for rail operations and rights-of-way. Under SB 42, railroad lands would be transferred from the Federal Bureau of Land Management to DNR, not to ARRC. The railroad corporation would continue to control land needed for maintenance and operation of the rail lines.

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

SB 42 does not seek to privatize the railroad or in any other way diminish its existence as a public corporation of the state. The railway has become an integral part of Alaska's economy and folklore. Consequently, SB 42 is the right step forward to enhance the future of the railroad.

The legislation will not address every facet of the Alaska Railroad nor is it meant to. SB 42 will give Alaskans the ability to manage their railroad through the system of checks and balances only offered by a strong democracy and an open door policy.

CITY OF SEWARD

P.O. BOX 167
SEWARD, ALASKA 99664



- Main Office (907) 224-3331
- Police (907) 224-3338
- Harbor (907) 224-3138
- Fire (907) 224-3445
- Fax (907) 224-3248

February 12, 1997

The Honorable Jerry Ward
Alaska State Senator
State Capitol, Room 423
Juneau, AK 99801-1182

OPPOSITION TO CHANGES IN THE STATUS OF THE ALASKA RAILROAD

At its meeting held February 10, 1997, the Seward City Council approved Resolution No. 97-023 which opposes certain changes in the status of the Alaska Railroad.

Seward is directly affected by the Alaska Railroad and any changes could have significant impact to the community. The Railroad is used throughout much of the state for shipment of freight, petroleum products, coal, and for transportation in the tourism industry.

A copy of the resolution is enclosed. Thank you for your consideration.

Sincerely,

The City of Seward

A handwritten signature in cursive script that reads "Betty Christian".

Betty Christian
City Clerk Office Assistant

Enclosure

**CITY OF SEWARD, ALASKA
RESOLUTION NO. 97-023**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SEWARD,
ALASKA, OPPOSING CERTAIN CHANGES IN THE STATUS OF THE
ALASKA RAILROAD**

WHEREAS, the Alaska Railroad was purchased by the State of Alaska to encourage its operation for the benefit of the citizens of Alaska; and

WHEREAS, currently, a Board of Directors, appointed by the Governor, conducts the Railroad's operations independent of other state activities as a for-profit business employing professional private sector railroad managers and well-trained, highly qualified workers who negotiate their contracts outside of state payroll and retirement systems; and

WHEREAS, under an independent Board of Directors, the Alaska Railroad has turned a profit for nine of the last eleven years and, in 1996 achieved an annual profit of over eight million dollars, all without state or other subsidies, and it has demonstrated during this short period that the State of Alaska made good management policy and operational decisions when it initially set up the Alaska Railroad; and

WHEREAS, notwithstanding the benefits and success of the Alaska Railroad outlined above, certain efforts are being made within the State Legislature to change the current status of the Alaska Railroad;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SEWARD, ALASKA, that:

Section 1. At this time, the City of Seward opposes any legislative or administrative effort to:

1. sell the Alaska Railroad to a private operator;
2. force the railroad to operate under the Executive Budget Act, thus exposing it to the political process; or
3. take or control Alaska Railroad land

for the following reasons:

1. If the Alaska Railroad were sold to a private operator:
 - a) the State could lose up to \$147 million in payments for fiber-optic cable right-of-way;
 - b) the private operator may not operate the Railroad in as benevolent a manner as its is currently operating, with "flag" stops, special agreements with large corporations and the University of Alaska, land use provided for recreational and scenic purposes, and care for the desires of the State's residents; and
 - c) the private operator/company may not be willing to spend appropriate funds for maintenance, repair and expansion.

CITY OF SEWARD, ALASKA
RESOLUTION NO. 97-023

2. Should the Alaska Railroad be operated under the Executive Budget Act, it would be subject to political pressures and its operational flexibility would be severely limited. The Railroad could no longer operate at a profit as it has over the past eleven years since its history of profitability is tied directly to its ability to run like a successful business. Swift reaction to changes or events are not possible under the Executive Budget Act. Many people feel that private operators control public services better than government. If that is true, we currently have the best of both worlds - The Alaska Railroad is being operated like the private sector while retaining its public responsibility.


3. Removing the control of railroad land from the Alaska Railroad Corporation would be the beginning of the end for the Railroad. The federal government realized that it takes railroad land holdings to successfully operate a railroad, not only for the actual operation, but also to provide income from leaseholders. When the State purchased the Railroad, both the Governor and the Legislature not only wanted the Railroad to run like a private business, they insisted that the land be transferred to the State along with the actual track, equipment and moving stock. The Railroad continues to responsibly develop its land holdings, creating vital income.

Section 2. BE IT FURTHER RESOLVED that copies of this resolution shall be sent to the Honorable Tony Knowles, Governor of Alaska; Governor Bill Sheffield, Chairman of the Board of the Alaska Railroad Corporation; and all members of the Alaska State Legislature.

Section 3. This resolution shall take effect immediately upon its adoption.


PASSED AND APPROVED by the City Council of the city of Seward, Alaska, this 10th day of February, 1997.

THE CITY OF SEWARD, ALASKA


Louis A. Bencardino, Mayor

AYES: Anderson, Bencardino, Blatchford, Clark, Crane, Keil, King
NOES: None
ABSENT: None
ABSTAIN: None

ATTEST:


Linda S. Murphy, CMC/AAE
City Clerk

(City Seal)



Sponsor Statement

SB 42

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

The Alaska Railroad has been a symbol of Alaska's history since the early 1920's and has been operating under state ownership for over 12 years. The federal government transferred the railroad to the State of Alaska in 1985 with a provision to transfer the 43,000 acres of railroad lands after the state operated the railroad for at least 10 years. While the railroad has continued to provide rail service for Alaska, no single financial or capital plan has been established for the railroad or its parent quasi-state owned corporation. During this 12 year span the corporation has had little state oversight. Currently, the Alaska Railroad Corporation (ARRC) is the only state owned corporation not under the Executive Budget Act (AS 37.07).

Senate Bill 42 will make two changes to the railroad and the corporation. The bill will place the Alaska Railroad under the Executive Budget Act; and will transfer land not needed for rail operations to the state's Department of Natural Resources (DNR). After numerous audit requests, OMB procurement investigations, and many Legislative Budget & Audit Committee hearings spurred by concerned citizens, the LB&A committee recommended and approved introduction of Senate Bill 42.

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SB 42 does not seek to privatize the railroad or in any other way diminish its existence as a public corporation of the state. The railway has become an integral part of Alaska's economy and folklore. Consequently, SB 42 is the right step forward to enhance the future of the railroad.

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LEGAL SERVICES

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

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

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

MEMORANDUM

January 20, 1997

SUBJECT: Sectional Summary of SB 42; An Act relating to the fiscal operations of the Alaska Railroad Corporation and to land acquired by the State of Alaska under the Alaska Railroad Transfer Act of 1982 or otherwise acquired for railroad purposes. (SB 42)

TO: Representative Terry Martin
Attn: Chris Knight

FROM: George Utermohle *GU*
Legislative Counsel

You have requested a sectional summary of SB 42; An Act relating to the fiscal operations of the Alaska Railroad Corporation and to land acquired by the State of Alaska under the Alaska Railroad Transfer Act of 1982 or otherwise acquired for railroad purposes.

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

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

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

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

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

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

Representative Terry Martin

January 20, 1997

Page 2

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

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

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

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

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

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

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

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

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

Representative Terry Martin

January 20, 1997

Page 3

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

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

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

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

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

GU:jdr

97-021.jdr

LEGAL SERVICES

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

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

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

MEMORANDUM

February 7, 1997

SUBJECT: Alaska Railroad Corporation (HB 55)

TO: Representative Terry Martin
Attn: Christopher Knight

FROM: Tamara Brandt Cook
Director *TBC*

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

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

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

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

REPLY TO:

1031 W 4th AVENUE
SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 276-3550

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

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

April 24, 1985

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

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

Dear Representative Adams:

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

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

CORRECTION

THE FOLLOWING DOCUMENT(S)
HAVE BEEN REFILMED TO
ASSURE LEGIBILITY OR PAGINATION



Rev. 6/98

Central Microfilm Services
Department of Education
State of Alaska

LEGAL SERVICES

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

(907) 465-3867 or 465-2450
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130 Seward Street, Suite 409
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Attn: Christopher Knight

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Director *TBC*

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

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Representative Terry Martin

February 7, 1997

Page 2

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

TBC:pl

97-030.plm

Enclosures

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

REPLY TO:

1031 W 4th AVENUE
SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 278-3550

1st NATIONAL CENTER
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FAIRBANKS, ALASKA 99701
PHONE: (907) 452-1568

POUCH K - STATE CAPITOL
JUNEAU, ALASKA 99811
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April 24, 1985

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House Finance Committee
Alaska House of Representatives
Pouch V
Juneau, AK 99811

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

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

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

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

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

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

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

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

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

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

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

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

*/ AS 18.56.020 provides:

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

Hon. Al Adams, Chairman
House Finance Committee
266-463-05

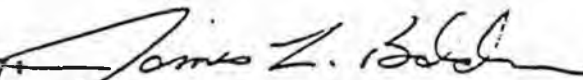
April 24, 1985
Page #5

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

We hope this memorandum has answered your questions.

Sincerely yours,

NORMAN C. GORSUCH
ATTORNEY GENERAL

By: 
James L. Baldwin
Assistant Attorney General

JLB/pjg

MEMORANDUM

State of Alaska

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

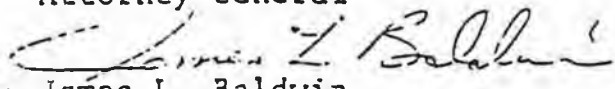
DATE: May 26, 1984

FILE NO: 366-575-84

TELEPHONE NO: 465-3600

FROM: Norman C. Gorsuch
Attorney General

SUBJECT: Appropriation of
Alaska Railroad
revenue


By: James L. Baldwin
Assistant Attorney General

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

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

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

We hope this opinion answers your question.

JLB/mg

ARR Financial Statement History

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

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

ALASKA STATE LEGISLATURE
LEGISLATIVE BUDGET AND AUDIT COMMITTEE
Division of Legislative Finance



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

MEMORANDUM

DATE: January 28, 1997

TO: Representative Terry Martin
House Finance Committee

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

BY: Dave Tonkovich, Fiscal Analyst
Division of Legislative Finance

SUBJECT: State Appropriations to the Alaska Railroad

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

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

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

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

SLA90, Ch. 208, Sec 145

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

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

FY 1997

110 STAT. 2962

PUBLIC LAW 104-205—SEPT. 30, 1996

PUBLIC LAW

HIGH-SPEED RAIL TRAINSETS AND FACILITIES

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

RAILROAD REHABILITATION AND IMPROVEMENT PROGRAM

The Secretary of Transportation is authorized to issue to the Secretary of the Treasury notes or other obligations pursuant to section 612 of the Railroad Revitalization and Regulatory Reform Act of 1976 (Public Law 94-210), as amended, in such amounts and at such times as may be necessary to pay any amounts required pursuant to the guarantee of the principal amount of obligations under sections 511 through 513 of such Act, such authority to exist as long as any such guaranteed obligation is outstanding: *Provided*, That no new loan guarantee commitments shall be made during fiscal year 1997.

NEXT GENERATION HIGH-SPEED RAIL

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

TRUST FUND SHARE OF NEXT GENERATION HIGH-SPEED RAIL

(LIQUIDATION OF CONTRACT AUTHORIZATION)

(HIGHWAY TRUST FUND)

For grants and payment of obligations incurred in carrying out the provisions of the High-Speed Ground Transportation program as defined in subsections 1036(e) and 1036(d)(1)(B) of the Intermodal Surface Transportation Efficiency Act of 1991, including planning and environmental analyses, \$2,855,000, to be derived from the Highway Trust Fund and to remain available until expended.

ALASKA RAILROAD REHABILITATION

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

RHODE ISLAND RAIL DEVELOPMENT

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

Contracts.

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

GRANTS TO THE NATIONAL RAILROAD PASSENGER CORPORATION

To enable the Secretary of the National Railroad Passenger Corporation, U.S.C. 24104, \$565,450,000 of which \$342,000,000 shall be for mandatory passenger equipment shall be for capital improvement this head for capital improvement before July 1, 1997: *Provided*, That appropriated shall be used for the purchase of passenger vehicles or for the hire of a passenger vehicle, other than the lease of a passenger motor vehicle while in official travel status.

FEDERAL TRAVEL EXPENSES

ADMINISTRATIVE

For necessary administrative expenses of the Administration's program: United States Code, §41.44

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For necessary expenses under sections 5311, and 5336, to remain available until expended: *Provided*, That no more than \$400,000,000 may be derived from the Highway Trust Fund under 49 U.S.C. 5336(d): *Provided*, That assistance provided in areas of less than 200,000 square miles shall not exceed five percent of the amount available to receive under

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ties when the limitation is operating in the area.

FY 1996

Oct 1 - Sept 30th

109 STAT. 446

PUBLIC LAW 104-50—NOV. 15, 1995

PUBLIC LAW

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

RAILROAD REHABILITATION AND IMPROVEMENT PROGRAM

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

NATIONAL MAGNETIC LEVITATION PROTOTYPE DEVELOPMENT

(LIMITATION ON OBLIGATIONS)

(HIGHWAY TRUST FUND)

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

NEXT GENERATION HIGH SPEED RAIL

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

TRUST FUND SHARE OF NEXT GENERATION HIGH SPEED RAIL

(LIQUIDATION OF CONTRACT AUTHORIZATION)

(HIGHWAY TRUST FUND)

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

ALASKA RAILROAD REHABILITATION

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

RHODE ISL

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

GRANTS TO THE NATIONAL

INCLUDE

To enable the Secretary the National Railroad P U.S.C. 24104, \$635,000,00 of which \$305,000,000 shu for mandatory passenger be for transition costs \$290,000,000 shall be for up to \$15,000,000 of the for capital improvements be transferred to the No *Provided further*, That fur ments shall not be made *further*, That none of the for lease or purchase of of vehicle operators for president of the Corporati vehicles for those officers

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

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

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Alaska Railroad Corporation (AS 42.40.010)

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

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

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

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

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

Alaska Railroad Corporation

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

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

Compliance with internal policies and procedures

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

Compliance with the State's Alaska Administrative Manual

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

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

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

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

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

Reimbursement for costs associated with questionable travel

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

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

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

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

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

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

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

Corporate entertainment policies

ARRC has established policies and procedures permitting entertainment expenses.

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

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

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

NATIONAL FREIGHT TRANSPORTATION ASSOCIATION

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

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

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

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

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

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

Use of legislative lobbyist by ARRC

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

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

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

Alaska Railroad Corporation

Recommendation No. 3

ARRC board should comply with AAM travel policies and procedures.

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

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

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

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

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

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

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

Recommendation No. 4

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

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

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

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

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

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

ALASKA RAILROAD CORPORATION



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

VIA FACSIMILE AND EXPRESS MAIL
December 28, 1994

EXECUTIVE OFFICES
Telephone (907) 265-2414
Facsimile (907) 258-1456

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

RECEIVED
DEC 29 1994

LEGISLATIVE AUDIT

Dear Mr. Welker:

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

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

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

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

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

Recommendation No. 4

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

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

Use of Legislative Lobbyist

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

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

CORRECTION

THE FOLLOWING DOCUMENT(S)
HAVE BEEN REFILMED TO
ASSURE LEGIBILITY OR PAGINATION



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Department of Education
State of Alaska

ALASKA RAILROAD CORPORATION



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VIA FACSIMILE AND EXPRESS MAIL

December 28, 1994

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

Compliance with the State's Alaska Administrative Manual ("AAM")

Your statement that the ARRC has not complied with the statute requiring its board members to follow the AAM's travel policies and procedures incorrectly assumes that the AAM applies to ARRC. First, the legislature intended to exempt ARRC from all of the provisions of Title 39 which includes the state travel regulations. See AS 42.40.710. This is readily apparent because the State does not pay for ARRC travel as it is required to do so for other state agencies. See AS 39.20.110 et seq.

Second, the corporation's governing statute, AS.42.40.050(b) specifically provides that appointed members of the board are "entitled" to per diem and travel expenses authorized by law for state boards and commissions, but it does not set a maximum amount or incorporate the AAM procedures by reference. Any suggestion that the Department of Administration or any other office, none of which have knowledge or expertise in railroad administration, should opine on the appropriateness of a board member's proposed travel flies in the face of logic. This is especially so in light of the exclusive authority over ARRC finances vested in the Board by ARCA and, also, the lack of any legislative appropriations to the corporation.

ARRC has provided the entitlement authorized by ARCA to its directors, and does so through its own internal travel policy and procedures which were established shortly after incorporation. Full reimbursement of director expenses is made from funds generated by the corporation, not from appropriated monies.

Your report also states that it is common practice for ARRC to pay the full coach rate for air fare. This is inaccurate, because the ARRC has always attempted to obtain the best fare available. Many of the trips cited in your report were for short periods of two or three days in the middle of the week without a Saturday night stop-over. Most airline fare structures require a Saturday night stop-over to obtain the lowest possible fare. Without a week-end stay, the rate increases substantially. The busy schedules of ARRC directors do not always allow an opportunity for an individual to stay additional days to accommodate the Saturday night requirement.

Recommendation No. 3

As discussed above, we believe the reimbursement of actual expenses to our directors does not violate any statute since AS.42.40.050(b) merely establishes a minimum level of "entitlement" to per diem and expenses and does not prohibit ARRC from providing full reimbursement.

Our internal travel procedures allow for reimbursement of expenses when adequate justification is provided that travel is necessary, the expenses are reasonable, and

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

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Use of Legislative Lobbyist

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

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

Letter to Mr. Welker
December 28, 1994
Page 4

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

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

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

Sincerely,



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

cc: ARRC Directors

ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit



P. O. Box 113300
Juneau, AK 99811-3300
(907) 465-3830
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January 5, 1995

Members of the Legislative Budget
and Audit Committee:

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

Alaska Aerospace Development Corporation (AADC)

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

Alaska Railroad Corporation (ARRC)

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

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

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

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

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

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

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

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

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

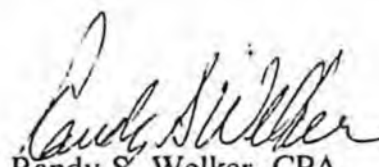
We have also reviewed ARRC's position that the use of a lobbyist does not violate the ban on political activities found in Alaska Statute 42.40.705. In light of ARRC's comments, we continue to emphasize the need for clear guidelines as to what constitutes permissible "communication" with the legislature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

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

Alaska Science and Technology Foundation (ASTF)

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

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


Randy S. Welker, CPA
Legislative Auditor

The Alaska Railroad: A Constitutional Responsibility of the Legislature

by Rep. Terry Martin

In a Point of View article in the February 6 edition of the Alaska Star, former Governor Bill Sheffield gives us some of what the Italians call "la stessa canzone"--the same (old) song--about the Alaska Railroad.

I have been an advocate of privatizing the Alaska Railroad for many years, mainly because that was the intent of the Legislature and of the public at the time of its purchase from the federal government in 1985. It is very clear that the public expected the state only to be a conduit to receive the railroad from the federal government and then to transfer it to private operation after a given length of time.

Under the federal transfer act, the state was to operate the line for 10 years before the lands could be transferred to any third party, an obligation we have fulfilled. At the same time, under the state transfer act, the railroad was to explore ways to privatize after five years.

After lengthy hearings and discussion of a number of audits on the railroad, the Legislative Budget and Audit Committee approved the introduction of legislation (HB 55 and SB 42) which does not seek to privatize the railroad, but which does two things: it brings the railroad under the Executive Budget Act; and it directs that the land be transferred to the Department of Natural Resources rather than the railroad.

First, the Executive Budget Act. In our deliberations over the railroad in the early 80s, it was decided to make the railroad a public corporation, but with deliberately distant oversight by the Legislature. This has not worked. Our experience, as a public oversight body, has been that railroad management likes to consider itself a public corporation when it's convenient to do so.

When it passed the ARRC legislation in 1984, the Legislature went too far in delegating its constitutional authority and responsibility to manage state assets. The ARRC enabling legislation should be reviewed in a new light, considering Article IX, sections 3,5,7,8, 13 and 14 of the constitution. It's clear to me that, while it wasn't the intent of the Legislature to violate these basic provisions, it appears we have.

Former Governor Sheffield emphasizes that the railroad is not a state agency. But it enjoys many of the perks of a state agency, including an exemption from paying corporate income taxes, municipal property taxes, and most fuel

taxes. All of its 113 cars and trucks carry exempt state license plates. These are not direct subsidies from the state treasury, but they are costs that a private company would have to pay.

But the railroad also wants to operate as a private business when that's convenient, such as when the legislative auditor would like to look at their books. Railroad officials have said that to put the railroad under the Executive Budget Act would be "the beginning of the end of the railroad."

Frankly, we heard the same complaints just a few years ago when the Legislature took steps to bring the Alaska Housing Finance Corporation under the Executive Budget Act, which we did. It didn't hurt them a bit: AHFC is healthier now than ever before. But the Legislature and the governor have a much better handle on what AHFC is doing with the billions of dollars of assets it controls.

Former Governor Sheffield also asserts the railroad makes money. What he means to say is the real estate leases subsidize the rail operations. When he claims a profit of "more than \$8 million," it is pertinent to ask how the \$10 million subsidy from the federal government is accounted for. Did the railroad really lose \$2 million? Or did they spend the federal money on maintenance that would simply have been deferred otherwise?

The second provision of HB 55/SB 42 regards the approximately 43,000 acres of land that comes with the railroad. My initial thought was to transfer the land to DNR, because that is the land management arm of the state. Lands that are essential to railroad operations would continue to be controlled by the railroad. However, lands that are not essential (and some are not even remotely related) to railroad operations should be transferred to municipalities, or the university, or sold to the people and businesses who are leasing them, etc.

Here again, the Legislature cannot ignore its constitutional responsibilities in Article VIII, sections 10 and 11, which require an open public process on the leasing or disposal of state lands and protects the state's interest in mineral rights, respectively.

For my part, I believe it is our responsibility as legislators to look after *all* of the assets of the State of Alaska, to look out for the good of *all* of the people of Alaska, and to make the tough decisions. I don't think any Alaskan, including those who work for the railroad, should have any fear of privatization.

Alaska Railroad Reserves

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

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

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

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

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

KENAI PENINSULA BOROUGH

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

Seward

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

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

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

Crown Point

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

Moose Pass

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

WHITTIER AND VALDEZ

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

Whittier

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

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

Valdez

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

**MUNICIPALITY OF ANCHORAGE
(MOA)**

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

Portage

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

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

Anchorage

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

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

Eagle River

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

Birchwood

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

MATANUSKA SUSITNA BOROUGH

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

Talkeetna

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

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

Curry

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

Hurricane

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

DENALI BOROUGH

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

Healy

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

Clear

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

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

NENANA

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

Nenana

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

FAIRBANKS NORTH STAR BOROUGH

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

Fairbanks

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

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

Governor Bill Sheffield
Pouch A
Juneau, AK. 99811

Senator Jalmar Kerttula
President, Alaska State Senate
Pouch V
Juneau, AK. 99811

Representative Joe Hayes
Speaker, Alaska House of Representatives
Pouch V
Juneau, AK. 99811

Gentlemen:

Enclosed herewith is the Interim Report of the Alaska Railroad Transfer Advisory Commission. This report is the product of ten months of public hearing, deliberation, and intensive analysis of the alternatives for management and operation of the Alaska Railroad after transfer from the federal government has been accomplished.

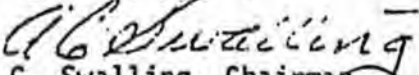
The Commission met a total of nine times in Anchorage, Fairbanks and Juneau. The Commission listened to over fifty hours of public testimony from individuals and groups from literally every corner of the State of Alaska. In addition, we have analyzed almost 1,000 pages of documents and submissions from interested individuals and groups.

In fulfillment of our legislatively mandated duties, we hereby formally tender this report to you for your consideration during the coming months as the transfer of the Alaska Railroad approaches. We hope you will find it helpful not only for the specific recommendation it contains but as a source of information about the wishes, desires and hopes of the people of the State of Alaska.

It should be mentioned that not all Commission members share each and every view expressed within this document. The combination of the change in State Administrations and the convening of the State Legislature made it difficult for the public officials on the Commission to attend all sessions. In many cases, the views expressed in the Interim Report represent an attempt by the Commission to summarize for your consideration consensus opinions heard again and again during public testimony. We feel this provides you with the full benefit of this information as it was expressed to us.

On behalf of the entire commission, I would like to thank you for the opportunity of serving the people of the State in this most important and worthwhile endeavor.

Very truly yours,


A.C. Swalling, Chairman
Alaska Railroad Transfer Advisory Commission

EXECUTIVE SUMMARY

The Alaska Railroad Transfer Advisory Commission met a total of nine times in Anchorage, Fairbanks and Juneau. The Commission listened to over fifty hours of public testimony and heard from over fifty individuals and groups regarding all aspects of the transfer of the Alaska Railroad from federal to state control. This Executive Summary is a compilation of the major policy recommendations of the Commission and a list of specific changes pending state legislation which the Commission feels are most important.

I--POLICY RECOMMENDATIONS OF THE COMMISSION

1. The railroad should eventually be owned and/or operated by private industry. Almost unanimously those testifying before the Commission felt strongly that it was in the best interests of the people of the State of Alaska and the best interests of the railroad to plan for the eventual transfer of the ownership and/or operation of the railroad to private industry.
2. Plans for expansion of the railroad should begin immediately. The Commission recommends the immediate preparation and filing of five right-of-way applications: (1) to Delta, (2) to Canada, (3) to Kenai, (4) to Beluga, (5) to Tanana and Kobuk/Ambler.
3. The railroad should cooperate with local governments. The Commission urges the State not to compete with local governments in the operation of railroad-related facilities, such as ports, which are historically operated by local governments.
4. The railroad should expand into connecting services by contracting with private enterprise. The Commission urges that the policy of the Alaska Railroad should be that, to the maximum extent possible, expansion should occur by contracting private enterprise and by not competing in a service area previously provided by private industry.
5. The interim operation of the railroad should be conducted by an independent authority under a separate department on a temporary basis. The Commission feels that the short term management of the railroad is critical to the overall future of the railroad and the state. Therefore, the Commission recommends the creation of an independent authority under a department of state government on a temporary basis as for in Article III, Section 22 of the Alaska Constitution....

6. State oversight of the railroad should be kept at a minimum. The Commission recommends that only the bare minimum of oversight consistent with good public policy be provided for in the legislation and that the legislation specifically provide for a public process so that policy determinations made by the board are based upon adequate public input.

7. Alaska railroad mineral rights should be preserved. The Commission recommends that any authority or private operator of the railroad should be able to utilize all subsurface resources and railroad land for railroad purposes without any restriction as to ownership or use of those resources which might otherwise be applicable under existing state law.

8. Additional appropriation for the Commission. The Commission feels that to adequately fulfill its legislative mandate between the date of this interim report and the final transfer of the Alaska Railroad to the State, an appropriation in the amount of \$75,000.00 is essential. This amount will provide the Commission with the ability to hire the necessary staff and incur necessary operational expenses so that a final report can be prepared.

II--SPECIFIC RECOMMENDATIONS FOR CHANGES IN PENDING STATE LEGISLATION

In the body of the report, the Commission makes numerous recommendations for specific changes in SB10, pending state legislation accepting transfer of the railroad. However, in this Executive Summary the Commission would like to call attention to a few specific matters which it considers to be critical.

1. The Commission urges that a seven-member board of commissioners be established for the railroad authority. Balanced geographic distribution for the board is critical and the Commission recommends that at least two members be from areas served by the railroad north of Windy Pass and at least two from south of Windy Pass.

2. If consistent with law, the Commission recommends that the Commissioner of Transportation and Public Facilities be a non-voting member of the authority.

3. The Commission recommends that a representative from the employee bargaining units and the general manager Alaska Railroad be non-voting members of the board of Commissioners.

4. Consistent with federal legislation, all bargaining agreements should be honored and maintained for a period of time until renegotiation can be accomplished smoothly and without disruption of rail service.

REPRESENTATIVE
TERRY MARTIN
VICE-CHAIRMAN
BUDGET & AUDIT COMMITTEE
MEMBER
HOUSE FINANCE COMMITTEE

Alaska State Legislature



MAY 15 - JAN 15 258-8169
716 W. 4TH. SUITE 650
ANCHORAGE, AK 99504
JAN 15 - MAY 15 465-3783
STATE CAPITOL
JUNEAU, AK 99801-1182

January 20, 1997

Kathryn Thomas, Chair
Alaska State Chamber of Commerce
ArcTech Services, Inc.
PO Box 3005
Kenai, Alaska 99611

Dear Ms. Thomas:

I am writing to tell you how much I appreciate your interest and the State Chamber's interest in the Alaska Railroad. As the railroad is an asset of the Alaska public, I believe that a broad-ranging debate over its disposition is appropriate at this time.

I would like to thank the State Chamber for its recently-adopted resolution urging the Governor and the Legislature to go forward with the process of investigating the privatization of the railroad. This is the kind of direction we as state officials need as we seek the proper relationship between the Alaska Railroad and the public it serves.

I think it would be appropriate to comment on the letter sent to you on December 27, 1996, by Bill Sheffield, the Chairman of the Board (and now acting CEO) of the Alaska Railroad Corporation. In my view, his letter is laced with disinformation intended to diminish support for the State Chamber resolution on the Alaska Railroad.

Mr. Sheffield states that the railroad is not a "state agency." This depends on how one defines what a state agency is. It is true that the ARRC is not a line agency of the state, with a commissioner sitting on the Governor's cabinet, such as is the Department of Fish and Game. It is, however, a public corporation of the state, wholly-owned by the people of Alaska, and the people of the state are ultimately liable. This means that if a train carrying Mapco fuels derails and spills its contents into the Nenana River, for the clean-up does not stop at the ARRC, but will come back on the state treasury.



Kathryn Thomas
January 20, 1997
Page 2

Mr. Sheffield asserts that the railroad "does not take a subsidy from the state... not a single nickel from the state treasury since the purchase 12 years ago." Again, on the surface this statement seems to be true; however, last year, Senator Stevens was successful in obtaining \$10 million in federal money for the railroad. In addition, the railroad is sitting on a 1990 appropriation of \$9 million (now \$12.8 million with accrued interest) for rail cars for the Wishbone Hill coal project. At some future date, the railroad may be authorized to use this money; it would have to be considered a state subsidy. Additionally, the railroad, as a state entity, is exempt from the taxation a private company in its place would have to pay, including corporate income taxes and local property taxes. If this doesn't amount to a subsidy, what would it be?

Mr. Sheffield states that the railroad makes money. Even ARRC officials acknowledge that the land management side of the railroad is where the money is made, subsidizing the railroad operations. One has to question how much greater subsidy would be required if the railroad was addressing all deferred maintenance and replacement of aging facilities.

Finally, I would like to briefly review for you the legislation the Legislative Budget and Audit Committee has introduced. House Bill 55 and Senate Bill 42 (copies enclosed). These bills are identical as introduced and seek to accomplish two things: First, to bring ARRC under the Executive Budget Act (AS 37.07), so that the Governor and the Legislature will have a greater hand in determining the annual budget of the railroad. I recognize that at the time of the state's acquisition of the railroad it was the recommendation of the transfer commission that legislative or state management and oversight be kept to a minimum and at a distance. Unfortunately, distant oversight has not worked, as the Legislative Auditor and the State Ombudsman have found out as they have conducted audits and investigations of the railroad over the past several years.

The second goal of the legislation is to have the title to the railroad lands, about 36,000 acres, transferred to the Department of Natural Resources, rather than to ARRC. It would then be our intention that ARRC continue those lands (between 18,000 and 22,000 acres) necessary for right-of-operation and maintenance of the railroad. However, excess acreage not needed for railroad operations, should be made available to the municipalities in which it is located.

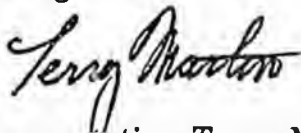
Kathryn Thomas
January 20, 1997
Page 3

I hope this letter has helped to make clear my views on the Alaska Railroad. As you are probably aware, I have been a longtime proponent of privatization of the railroad, as was the sentiment expressed by the majority of Alaskans who spoke out on the issue prior to the state's acquisition of the railroad in 1985. At this time, however, I think it is our responsibility, as public servants, to get a handle on the railroad, which will allow us to understand what we have and what we can do with it. And if privatization becomes a viable option later, that will be fine, too.

Please feel free to share this letter with any of your members whom you choose. Also enclosed you will find a copy of the four-page executive summary and transmittal letter of the interim report of the 1983 Alaska Railroad Transfer Advisory Commission, the first recommendation of which is in favor of privatization, and a copy of the evaluation notes submitted to the Legislative Budget and Audit Committee by Evan Allen and Arnold Tesh last August, which lay out today's alternatives for the railroad.

If you have any questions regarding this issue, please contact me in Juneau at 465-3783.

Best regards,

A handwritten signature in cursive script that reads "Terry Martin".

Representative Terry Martin

enclosures

ALASKA RAILROAD CORPORATION



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

265-2403

FAX 258-1456

Kathryn Thomas
PO Box 3005
Kenai, AK

December 27, 1996

Dear Kathryn,

As you may be aware, the chamber recently adopted a resolution concerning the Alaska Railroad submitted by the lobbyist representing Montana Rail Link. As chairman of the board of directors for the Alaska Railroad Corporation, I would like you to keep in mind three important points as we come into this Legislative session:

- The Alaska Railroad is not a state agency;
- The Alaska Railroad does not take a subsidy from the state;
- The Alaska Railroad makes money.

In 1995, the Railroad earned an \$8 million profit. In 1996, I expect the line will earn more than \$7 million. We have been able to do that by providing good service, using professional railroad management, and aggressively using our assets to increase revenues. We accomplished all this without taking a nickel – not for operating, not for capital, not for labor contracts or benefits – not a single nickel from the state treasury since the purchase 12 years ago. Our employees are not state workers and are not part of the state retirement system. Our labor contracts are in place, long-term, and independent of the state employee unions.

The Alaska Railroad is managed by a board of Alaskans. The operators are professional railroaders. The money the railroad makes is earned in Alaska, and stays in Alaska. Our balance sheet is rock-solid, and we have excellent access to capital for expansion. The bottom line is that the railroad is safe, profitable, professional, and Alaskan.

Very truly yours,

A handwritten signature in cursive script that reads "Bill Sheffield".

Bill Sheffield
Chairman of the Board
Alaska Railroad Corporation

ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Finance



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

MEMORANDUM

DATE: January 28, 1997

TO: Representative Terry Martin
House Finance Committee

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

BY: Dave Tonkovich, Fiscal Analyst
Division of Legislative Finance

SUBJECT: State Appropriations to the Alaska Railroad

A handwritten signature in black ink, appearing to be "Mike Greany", written over the "FROM:" line of the memorandum.

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

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

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

SLA90, Ch. 208, Sec 145

Locomotives, Rolling Stock, and associated equipment cost (Associated with Wishbone Hill Coal Project)	\$9,000,000 Railbelt Energy
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Alaska Railroad Corporation

Financial Audits

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

Performance Audits

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

Significant Special Audits

Ship Creek Redevelopment Follow-up, November 17, 1994

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

Anchorage Gravel Activities, July 3, 1996

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

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

Chena Landings Development, August 20, 1996

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

Ongoing or Pending Audits

Alaska Railroad Corporation, Equipment Purchases/Disposals

Alaska Railroad Corporation, Real Estate Appraisal Methodology

Auditor Observations

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

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

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

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

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

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

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

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

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