

JOINT COMMITTEE ON LEGISLATIVE BUDGET AND AUDIT

June 25, 1996

9:00 a.m.

Fairbanks, Alaska

MEMBERS PRESENT

Representative Terry Martin, Chairman

Representative Con Bunde

Representative Gary Davis

Representative Vic Kohring

Senator Randy Phillips, Vice Chairman

Senator Al Adams

MEMBERS ABSENT

Representative John Davies

Representative Mark Hanley

Senator Rick Halford

Senator Steve Frank

Senator Steve Rieger

Senator Fred Zharoff

ALSO PRESENT

Representative Jeannette James

COMMITTEE CALENDAR

ALASKA RAILROAD UPDATE

WITNESS REGISTER

RANDY WELKER, Legislative Auditor

Legislative Audit Division

Legislative Affairs Agency

P.O. Box 113300

Juneau, Alaska 99811-3300

Telephone: (907) 465-3830

POSITION STATEMENT: Provided overview of what the audit committee has done.

EVAN ALLEN, Economic and Financial Consultant

Klick Kent Allen

66 Canal Center Plaza, Suite 305

Alexandria, Virginia 22314

Telephone: (730) 683-1120

POSITION STATEMENT: Provided information on history, valuations and other railroad issues.

ARNOLD TESH, President

Arnold S. Tesh Advisors (counselors and appraisers, specializing in railroad assets and real property)

1001 "G" Street, NW, Suite 1210

Washington, D.C. 20001

Telephone: (Not provided)

POSITION STATEMENT: Provided information on history, valuations and other railroad issues.

BILL SHEFFIELD, Former Governor and Chairman, Board of Directors

Alaska Railroad Corporation

P.O. Box 107500

Anchorage, Alaska 99510-7500

Telephone: (907) 265-2403

POSITION STATEMENT: Provided information on the railroad.

JIM BLASINGAME, Vice President

Corporate Affairs

Alaska Railroad Corporation

P.O. Box 107500

Anchorage, Alaska 99510-7500

Telephone: (907) 265-2403

POSITION STATEMENT: Provided information on the railroad.

PHYLLIS JOHNSON, Vice President

General Counsel

Alaska Railroad Corporation

P.O. Box 107500

Anchorage, Alaska 99510-7500

Telephone: (907) 265-2403

POSITION STATEMENT: Provided information on the railroad.

JOHN BURNS, Vice President

Real Estate

Alaska Railroad Corporation

P.O. Box 107500

Anchorage, Alaska 99510-7500

Telephone: (907) 265-2403

POSITION STATEMENT: Provided information on the railroad.

BOB HATFIELD, President and CEO

Alaska Railroad Corporation

P.O. Box 107500

Anchorage, Alaska 99510-7500

Telephone: (907) 265-2403

POSITION STATEMENT: Provide information on land the railroad.

ACTION NARRATIVE

TAPE 96-LB&A (TAPE 1 OF 3), SIDE A

[No log notes or tape numbers were provided]

CHAIRMAN TERRY MARTIN called the Joint Committee on Legislative Budget and Audit meeting to order at 9:00 a.m. in Fairbanks.

Members present at the call to order were Representatives Martin, Bunde and Davis, and Senators Phillips and Adams. Representative Kohring joined the meeting later.

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TAPE 96-LB&A (TAPE 2 OF 3), SIDE A

MR. BLASINGAME explained that the two-year period was to renegotiate the seven bargaining agreements. It took a little over two years, based on existing law that said the parties could agree to extend it for whatever reason. He noted that board membership includes a union representative, the commissioner of the Department of Transportation and Public Facilities (DOT/PF), the commissioner of the Department of Commerce and Economic Development, an employee representative, an individual who has at least ten years' experience on the U.S. railroad, and two appointed individuals who

represent the various judicial districts served by the railroad.

PHYLLIS JOHNSON, Vice President, General Counsel, Alaska Railroad Corporation, informed the committee about the current status of the lands. Legally, the title is about the same as in 1985. At transfer, the railroad got several different kinds of conveyances. Because the federal government was not certain of the status of its ownership of the land used by the railroad, only about 7,000 acres of the 38,000-odd acres acquired at transfer were in a patent. Another 10,000 acres came in a so-called interim conveyance, which means the government is sure that it owns the title to convey but it hasn't been surveyed yet.

MS. JOHNSON told members that the rest, about 17,000 acres, came in the form of an exclusive license; all the properties acquired that way in 1985 are still owned through exclusive license. The exclusive license is the preliminary method of conveyance, which means that the acreage is subject to some potential adverse party claims, whether from homesteaders, Native allottees, state selections or Native corporation selections. When the federal government was not quite sure of the status of its title, it gave the railroad a license to basically stand in its place and collect all the rent from leased property that would accrue, and to basically control the property the same way the federal government would have; they just couldn't patent it yet. Since 1985, the

federal Bureau of Land Management (BLM) has been slowly adjudicating all potentially conflicting titles to property, which has required a considerable amount of survey work.

MS. JOHNSON said about five years after the transfer, when the railroad hadn't received any new patents, they found out they weren't the top priority for getting the land surveyed so that it could be conveyed. It did not make a great difference to the railroad, and in fact it is sometimes useful not to own full title to property. That played into a ten-year delay in getting conveyances issued. The BLM has completed the surveys all up and down the Railbelt, and this past winter they negotiated a settlement in which the City of Whittier, the state and the railroad agreed upon a boundary line in Whittier so that the BLM did not have to adjudicate it in its normal manner. That was about the last one to fall into place. Ms. Johnson told members she would expect the BLM to start issuing patents now.

MS. JOHNSON noted that there will be further negotiations with the federal government because of ongoing disputes about language in documents relating to environmental liabilities. With all other aspects of the transfer in place, she believes the state and federal governments will be able to work out the language to start getting patents issued.

MS. JOHNSON reminded the committee that there will be restrictions,

more or less forever, on the way the railroad property is handled.

One stretch of right-of-way within Denali National Park will only get an easement, not a full conveyance, from the federal government; the rights on that easement will always be subject to the discretion of the park superintendent and they will carry on to whoever acquires the railroad.

MS. JOHNSON indicated that unless the federal legislation is changed, three different reversion provisions in the transfer would continue to apply. One is a reversion after five years if the railroad is sold; another is a ten-year reversion provision whereby the land would revert to the federal government if the state sells or transfers the railway to someone, which has fallen by the wayside now; and another says that if the state discontinues use of the right-of-way for transportation, transmission or communication purposes, and if that disuse continues for 18 years, then it reverts to the federal government. The latter provision was probably intended to prevent abandonment of sections of the right-of-way. Ms. Johnson noted that obviously all of their properties are subject to any contracts that were in place at the time of transfer.

REPRESENTATIVE JAMES asked whether the issues about the right-of-way between Fairbanks and Eielson are close to being resolved.

MS. JOHNSON said there are strict legal answers and practical

answers. The documents received so far, and ones to be received in the future, all guarantee to the state-owned railroad whatever interest the federal government owned in the right-of-way, called an exclusive-use easement; that was a term concocted for the transfer that she doesn't believe exists elsewhere in real property law. An exclusive-use easement is defined in the statute basically to guarantee to the state-owned railroad possession of the surface estate for transportation, transmission and communication purposes; the right to as much of the subsurface as necessary to support it; the right to lateral support; and the right to fence the right-of-way. Ms. Johnson told members that is what the federal government guaranteed to the state from Seward to Eielson.

MS. JOHNSON continued, saying that if the federal government didn't own that much to give, then they would condemn the majority of the property owners' interest to give to the state. Her answer to someone with a complaint is for that person to go see the federal government, which is the entity that condemned that person's land. She commented that it is neither practical nor neighborly. In places like the Eielson branch, and several other places scattered along the railroad, adjoining interests may claim they were there first, or may have some reason to believe that the federal government didn't own all that it thought it owned there. In those cases, Ms. Johnson said they have tried to look at the histories of



those adjoining owners' property rights to see how they acquired the property, whether they really homesteaded it or what the competing equities are. Then they can say, "OK, this is the technical legal answer, but we recognize you were there first and we'll work something out." She doesn't know all of the histories, and she hasn't finished all the title research yet, but she is working on it.

REPRESENTATIVE JAMES asked when the right-of-way issues could be settled in the near future.

MS. JOHNSON answered that she has made progress going through the Army Corps of Engineers' acquisition documents, but they don't cover the whole stretch. Once she gets through their documents, within the next four or five months, she should be able to get to the rest of it.

SENATOR ADAMS asked what the time frame is for the full transfer of the 38,000 acres of land to the state of Alaska.

MS. JOHNSON said she thought within 13 months they would be ready to issue transfer documents with everything. The only delay will be based on whether the federal government, specifically the Federal Railroad Administration (FRA), will sign this document once the BLM prepares it, because of the environmental language in it. She would like to think they will see the justice of the state's insistence that they guarantee that the environmental problems are

their problems; there is obviously no way to say how long it will take. If that falls away, the final conveyance could be within six months.

SENATOR ADAMS asked whether Ms. Johnson foresees any problems or restrictions relating to selling a piece of land, not a right-of-way, to Fairbanks, Anchorage or Seward.

MS. JOHNSON said not from the federal perspective, because the one remaining restriction relates only to right-of-way. The current statute has various provisions regarding disposal in general, whether to a municipality or otherwise, regarding legislative approval, appraisals and so on. She said in all of those they would want to use the Alaska Railroad Corporation.

CHAIRMAN MARTIN asked whether the title would be in the name of the state of Alaska or the Alaska Railroad Corporation.

MS. JOHNSON said the title goes directly to the Alaska Railroad Corporation, which is consistent with the federal statute that said it could either go to the state or the state-owned corporation.

CHAIRMAN MARTIN commented that there was a program where municipalities could get land in lieu of money. He asked if they still have an option of selecting railroad excess lands.

MS. JOHNSON said she didn't believe so, because the different statutes or constitutional entitlements that allow municipalities to select lands applied to railroad land per se.

CHAIRMAN MARTIN asked if municipalities would have any priorities regarding excess railroad land.

MS. JOHNSON replied that they don't under existing statute or constitutional law, as she understands it.

CHAIRMAN MARTIN asked who is responsible for liability, if there is a liability limitation, and what has been inherited.

MS. JOHNSON said the liability depends upon the contract between the railroad and whoever suffered the loss, and it depends upon what caused the accident. The transfer legislation from the federal government provided in fairly vague, bleak terms that liabilities that accrued prior to 1985 would remain with the federal government. Nowhere did it ever say anything specifically about environmental liabilities. About 1990 it was realized that there was some need to flesh that out with the federal government, because "superfund" sites were coming up and everyone was getting nervous. They entered into an agreement with the FRA that specifically dealt with environmental liability and followed the philosophy of the statute, saying that if the liability accrued prior to 1985, the federal government would remain responsible for it. Although there hasn't been an opportunity to make the federal government write a check, soon it will be seen if their checkbook is as good as the contract they signed. The commitment of the federal government would accrue to a future purchaser of the

railroad, as well.

CHAIRMAN MARTIN asked at what point the liability of the corporation stops.

MS. JOHNSON replied that under the statute only the Alaska Railroad Corporation is responsible for the debts and liabilities; the Alaska Railroad Corporation Act specifies that the state is not responsible. Many plaintiffs may have seen the state as a sufficiently deep pocket, but so far no one has tried to sue the state. The language of the statute discourages that.

CHAIRMAN MARTIN asked if the state is vulnerable because someone can say there has been negligence of deferred maintenance.

MS. JOHNSON said she couldn't say.

REPRESENTATIVE JAMES asked whether, if some maintenance on the highway has not been done and someone gets hurt, that person can sue the state.

PHYLLIS JOHNSON answered that there are a number of cases involved in DOT/PF's being sued for faulty maintenance.

CHAIRMAN MARTIN informed the committee that all the reports there that day would be kept in the Anchorage Legislative Information Office (LIO).