

**ALASKA STATE LEGISLATURE
HOUSE COMMUNITY AND REGIONAL AFFAIRS
STANDING COMMITTEE**

May 8, 2004
11:05 a.m.

MEMBERS PRESENT

Representative Carl Morgan, Chair
Representative Kelly Wolf, Vice Chair
Representative Pete Kott
Representative Ralph Samuels
Representative Sharon Cissna

MEMBERS ABSENT

Representative Tom Anderson
Representative Albert Kookesh

COMMITTEE CALENDAR

HOUSE BILL NO. 560

"An Act relating to application of municipal ordinances providing for planning, platting, and land use regulation to interests in land owned by the Alaska Railroad Corporation; and providing for an effective date."

- MOVED CSHB 560(TRA) OUT OF COMMITTEE

CS FOR SENATE BILL NO. 395(FIN) am

"An Act authorizing the Alaska Railroad Corporation to extend its rail line to Fort Greely, Alaska, and relating to that extension; authorizing the corporation to issue bonds to finance the cost of the extension and necessary facilities and equipment; relating to the Railroad Planning, Platting, and Land Use Regulation Task Force; and providing for an effective date."

- SCHEDULED BUT NOT REFERRED

PREVIOUS COMMITTEE ACTION

BILL: HB 560

SHORT TITLE: MUNICIPAL LAND USE REGULATION

SPONSOR(S): TRANSPORTATION

04/27/04	(H)	READ THE FIRST TIME - REFERRALS
04/27/04	(H)	TRA, CRA

04/29/04 (H) TRA AT 1:30 PM CAPITOL 17
 04/29/04 (H) -- Meeting Canceled --
 05/04/04 (H) TRA AT 1:30 PM CAPITOL 17
 05/04/04 (H) Heard & Held
 05/04/04 (H) MINUTE(TRA)
 05/06/04 (H) TRA AT 1:30 PM CAPITOL 17
 05/06/04 (H) -- Meeting Postponed --
 05/07/04 (H) TRA RPT CS(TRA) NT 4DP 1NR
 05/07/04 (H) DP: STEPOVICH, KOHRING, OGG, HOLM;
 05/07/04 (H) NR: MASEK
 05/07/04 (H) TRA AT 8:00 AM CAPITOL 17
 05/07/04 (H) Moved CSHB 560(TRA) Out of Committee
 05/07/04 (H) MINUTE(TRA)
 05/08/04 (H) CRA AT 11:00 AM CAPITOL 124

WITNESS REGISTER

BARBARA KOTTING, Staff
 to Representative Jim Holm
 House Transportation Standing Committee
 Alaska State Legislature
 Juneau, Alaska

POSITION STATEMENT: Presented HB 560 on behalf of the sponsor, the House Transportation Standing Committee.

WENDY LINDSKOOG, Director
 External Affairs
 Alaska Railroad Corporation
 Anchorage, Alaska

POSITION STATEMENT: Reviewed HB 560 and answered questions.

ACTION NARRATIVE

TAPE 04-20, SIDE A

Number 0001

CHAIR CARL MORGAN called the House Community and Regional Affairs Standing Committee meeting to order at 11:05 a.m. Representatives Morgan, Wolf, Kott, and Samuels were present at the call to order. Representative Cissna arrived as the meeting was in progress.

HB 560-MUNICIPAL LAND USE REGULATION

CHAIR MORGAN announced that the only order of business would be HOUSE BILL NO. 560, "An Act relating to application of municipal ordinances providing for planning, platting, and land use

regulation to interests in land owned by the Alaska Railroad Corporation; and providing for an effective date."

Number 0090

BARBARA KOTTING, Staff to Representative Jim Holm, House Transportation Standing Committee, Alaska State Legislature, presented HB 560 on behalf of the sponsor, the House Transportation Standing Committee. Ms. Kotting explained that Section 1 allows the Alaska Railroad Corporation (ARRC) to extend its existing line from Eielson Air Force Base to Fort Greely and acquire land along the corridor for the railroad and associated facilities. Sections 2 and 3 authorize ARRC to issue bonds for up to \$500 million for this extension. However, before issuing the bonds ARRC must enter into a binding agreement with the United States government such that there is sufficient revenue to pay principal, interest, and other costs. Section 4 creates a Railroad Planning, Platting, and Land Use Regulation Task Force, which will make recommendations to the legislature regarding the extent to which local regulations should apply to ARRC land. The President of the Senate and the Speaker of the House of Representatives will jointly appoint municipal officials from each of the 13 governing bodies through which the railroad currently passes. Section 5 sunsets the task force on the second day of the 2005 legislative session. Section 6 is the immediate effective date.

Number 0315

WENDY LINDSKOOG, Director, External Affairs, Alaska Railroad Corporation, explained that originally HB 560 began as legislation addressing the Alaska Supreme Court case of Native Village of Eklutna v. Alaska Railroad. The aforementioned case addressed whether the Alaska Railroad was exempt from local planning and zoning regulations. The Native Village of Eklutna said that the Alaska Railroad needed to obtain a conditional permit for a quarry owned and operated by the railroad for the last 50 years. The case has been in court for some time, although the lower court ruled with the Alaska Railroad saying that as a state instrumentality the railroad was exempt from local planning and zoning regulations. However, the Alaska Supreme Court overruled the lower court decision. The Alaska Supreme Court said that the Alaska Railroad statute wasn't clear enough in that area. Therefore, the original legislation seeks to clarify that portion of statute such that the Alaska Railroad is exempt from local planning and zoning. However, the

aforementioned caused quite a stir with the Native Village of Eklutna as well as the municipalities along the Rail Belt.

MS. LINDSKOOG pointed out that although the municipalities along the Rail Belt haven't had power [over the Alaska Railroad with regard to local planning and zoning], the debate is now regarding whether there are parts of Alaska Railroad land that should be under local authority. This all led to the formation of the task force in the current legislation. Ms. Lindskoog said there are a lot of good arguments with regard to why the Alaska Railroad should be protected from jurisdictional control of the 13 different municipalities through which it travels. For instance, hours of operation and whistle blowing and other things would directly impact operations if 13 different communities could have their own rules. However, ARRC owns 36,000 acres of land, of which half is used for operations and half can be leased. When ARRC leases land, the leaseholder falls under local planning and zoning. Therefore, the land in question may be a small bit of land.

MS. LINDSKOOG highlighted that there is also a lot of federal protection for many interstate commerce concerns. Ms. Lindskoog explained that the Alaska Supreme Court case said that the Alaska Railroad should go through local planning and zoning, and if there is disagreement with regard to the local planning and zoning, the railroad should litigate that. Therefore, the railroad has been set up to litigate just about everything that has some kind of conflict. Ms. Lindskoog expressed the need for there to be a solution such that there are consistent rules by which the railroad can develop. Because there isn't much time left in the session for such a large policy decision, there was a decision to form a task force with members from the local municipalities, the railroad, and state leadership. The task force would provide recommendations to the legislature next year.

Number 0684

REPRESENTATIVE CISSNA asked whether the governments of Native corporation lands or tribal lands are involved with the task force when the railroad passes through such land.

MS. LINDSKOOG pointed out that the Native Village of Eklutna falls under the Municipality of Anchorage, and therefore the Native Village of Eklutna suggested that the railroad should obtain a conditional use permit from the Municipality of

Anchorage. Therefore, the task force would have membership from each community with the jurisdiction.

MS. LINDSKOOG, in further response to Representative Cissna, said that there is a lot of process involved with about every project with which the railroad is involved. About 80 percent of ARRC's capital program is touched by federal dollars or permits. For example, vast archaeological and historical studies were performed for a track-straightening project ARRC did through Eklutna. She reiterated that the case over the quarry is a quarry in which ARRC has owned and mined in for over 50 years. Furthermore, when land choices under the Alaska National Interest Lands Conservation Act (ANILCA) were made, it was recognized that ARRC would continue to perform operations in the quarry. The ARRC has a memorandum of understanding (MOU) signed with the Native corporation of Eklutna. However, she acknowledged that the Native Village of Eklutna is the entity that actually sued the Alaska Railroad.

Number 0923

REPRESENTATIVE CISSNA noted that when she lived in Kodiak she spent a lot of time with the historical society there. She recalled that often something of significance would come to light in an existing area being used for whatever purpose. Therefore, she surmised that this can't be the first time "that's" happened. She asked if there are laws or regulations that apply in a situation [in which something of significance comes to light on land that has been used for a specific purpose for some time].

MS. LINDSKOOG said that she wasn't aware of any other time in which the ARRC has ran into such a problem. Ms. Lindskoog opined, "I think what you're getting at, however, is ... that ... if we're not doing a project, what's going to kick us into a situation where we're going to resolve something like a cultural significance issue." To that Ms. Lindskoog reiterated that this legislation seeks to address a very important legal clarification to the current law that has placed the railroad in a difficult position. However, she acknowledged that there is also a real cultural situation that has to be addressed and should be addressed separately, which the railroad is doing. For the last couple of years, the railroad has been trying to address this. She explained that the quarry and the rock is virtually unusable on any federal project because of the cultural issue. Although a lot of work is being done with the Native Village of Eklutna, she wasn't sure where the solution

would lay. However, she reiterated that the two are separate issues.

CHAIR MORGAN, upon determining there was no one else who wished to testify, closed public testimony.

Number 1133

REPRESENTATIVE WOLF moved to report CSHB 560(TRA) out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 560(TRA) was reported from the House Community and Regional Affairs Standing Committee.

ADJOURNMENT

There being no further business before the committee, the House Community and Regional Affairs Standing Committee meeting was adjourned at 11:20 a.m.