

**ALASKA STATE LEGISLATURE  
HOUSE TRANSPORTATION STANDING COMMITTEE**

May 4, 2004

1:45 p.m.

**MEMBERS PRESENT**

Representative Jim Holm, Chair  
Representative Beverly Masek  
Representative Vic Kohring  
Representative Dan Ogg  
Representative Nick Stepovich  
Representative Mary Kapsner  
Representative Albert Kookesh

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

CS FOR SENATE BILL NO. 31(RES) am

"An Act relating to a transportation corridor for extension of the Alaska Railroad to Canada and to extension of the Alaska Railroad to connect with the North American railroad system."

- MOVED CSSB 31(RES)AM OUT OF COMMITTEE

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."

- HEARD AND HELD

SENATE BILL NO. 316

"An Act relating to motor vehicle safety belt violations."

- MOVED HCS SB 316(TRA) OUT OF COMMITTEE

**PREVIOUS COMMITTEE ACTION**

BILL: SB 31

SHORT TITLE: RAILROAD UTILITY CORRIDOR TO & IN CANADA

SPONSOR(S): SENATOR(S) COWDERY

01/21/03 (S) READ THE FIRST TIME - REFERRALS  
01/21/03 (S) TRA, RES, FIN  
02/11/03 (S) TRA AT 1:30 PM BUTROVICH 205  
02/11/03 (S) Heard & Held  
02/11/03 (S) MINUTE(TRA)  
02/25/03 (H) TRA AT 1:30 PM CAPITOL 17  
02/25/03 (S) <Bill Hearing Postponed to 3/11>  
03/11/03 (H) TRA AT 1:30 PM TERRY MILLER 104  
03/11/03 (S) <Bill Hearing Postponed to 3/18/03>  
03/18/03 (H) TRA AT 1:30 PM CAPITOL 17  
03/18/03 (S) <Above Bill Hearing Postponed>  
03/27/03 (H) TRA AT 1:30 PM CAPITOL 17  
03/27/03 (S) Moved CSSB 31(TRA) Out of Committee  
03/27/03 (S) MINUTE(TRA)  
03/31/03 (S) TRA RPT CS 2DP 2NR 1AM NEW TITLE  
03/31/03 (S) DP: COWDERY, THERRIAULT;  
03/31/03 (S) NR: OLSON, WAGONER; AM: LINCOLN  
04/14/03 (S) RES AT 3:30 PM BUTROVICH 205  
04/14/03 (S) Heard & Held  
04/14/03 (S) MINUTE(RES)  
04/23/03 (S) RES AT 3:30 PM BUTROVICH 205  
04/23/03 (S) Moved CSSB 31(TRA) Out of Committee  
04/23/03 (S) MINUTE(RES)  
04/24/03 (S) RES RPT CS 4DP 3NR NEW TITLE  
04/24/03 (S) NR: OGAN, ELTON, LINCOLN;  
04/24/03 (S) DP: SEEKINS, STEVENS B, WAGONER, DYSON  
05/07/03 (S) FIN AT 9:00 AM SENATE FINANCE 532  
05/07/03 (S) Heard & Held  
05/07/03 (S) MINUTE(FIN)  
01/29/04 (S) FIN AT 9:00 AM SENATE FINANCE 532  
01/29/04 (S) Heard & Held  
01/29/04 (S) MINUTE(FIN)  
04/22/04 (S) FIN RPT CS(RES) 3DP 1DNP 2NR 1AM  
04/22/04 (S) DP: WILKEN, DYSON, STEVENS B;  
04/22/04 (S) NR: GREEN, HOFFMAN; DNP: BUNDE;  
04/22/04 (S) AM: OLSON  
04/22/04 (S) FIN AT 9:00 AM SENATE FINANCE 532  
04/22/04 (S) Moved CSSB 31(RES) Out of Committee  
04/22/04 (S) MINUTE(FIN)  
04/26/04 (S) BEFORE THE SENATE IN SECOND READING  
04/28/04 (S) TRANSMITTED TO (H)  
04/28/04 (S) VERSION: CSSB 31(RES) AM  
04/29/04 (H) TRA AT 1:30 PM CAPITOL 17  
04/29/04 (H) -- Meeting Canceled --  
04/30/04 (H) READ THE FIRST TIME - REFERRALS  
04/30/04 (H) TRA  
05/04/04 (H) TRA AT 1:30 PM CAPITOL 17

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

BILL: SB 316

SHORT TITLE: SEAT BELT VIOLATION AS PRIMARY OFFENSE

SPONSOR(S): SENATOR(S) BUNDE

02/11/04 (S) READ THE FIRST TIME - REFERRALS  
02/11/04 (S) STA, JUD  
02/26/04 (S) STA AT 3:30 PM BELTZ 211  
02/26/04 (S) Moved SB 316 Out of Committee  
02/26/04 (S) MINUTE(STA)  
02/27/04 (S) STA RPT 2DP 1NR  
02/27/04 (S) DP: STEVENS G, COWDERY; NR: STEDMAN  
03/12/04 (S) JUD RPT 1DP 2NR  
03/12/04 (S) DP: SEEKINS; NR: FRENCH, THERRIAULT  
03/12/04 (S) JUD AT 8:00 AM BUTROVICH 205  
03/12/04 (S) Moved SB 316 Out of Committee  
03/12/04 (S) MINUTE(JUD)  
03/19/04 (S) TRANSMITTED TO (H)  
03/19/04 (S) VERSION: SB 316  
03/22/04 (H) READ THE FIRST TIME - REFERRALS  
03/22/04 (H) TRA, JUD  
04/23/04 (H) JUD AT 1:00 PM CAPITOL 120  
04/23/04 (H) <Bill Hearing Postponed>  
04/27/04 (H) TRA AT 1:30 PM CAPITOL 17  
04/27/04 (H) Heard & Held  
04/27/04 (H) MINUTE(TRA)  
04/28/04 (H) JUD AT 1:00 PM CAPITOL 120  
04/28/04 (H) -- Meeting Canceled --  
05/03/04 (H) JUD AT 1:00 PM CAPITOL 120  
05/03/04 (H) Scheduled But Not Heard  
05/04/04 (H) TRA AT 1:30 PM CAPITOL 17

**WITNESS REGISTER**

RICHARD SCHMITZ, Staff  
to Senator John Cowdery  
Alaska State Legislature  
Juneau, Alaska

POSITION STATEMENT: Presented SB 31 on behalf of Senator Cowdery, sponsor.

BOB LOEFFLER, Director  
Mining, Land and Water  
Department of Natural Resources (DNR)  
Juneau, Alaska

POSITION STATEMENT: During discussion of SB 31, answered questions.

BARBARA COTTING, Staff  
to Representative Holm  
Alaska State Legislature  
Juneau, Alaska

POSITION STATEMENT: Provided information on CSHB 560, Version I.

PAT GAMBLE, President & CEO  
Alaska Railroad Corporation  
Department of Community & Economic Development (DCED)  
Anchorage, Alaska

POSITION STATEMENT: Related ARRC's views and proposals with regard to CSHB 560, Version I.

LAUREN WICKERSHAM, Staff  
to Senator Con Bunde  
Alaska State Legislature

POSITION STATEMENT: Spoke on behalf of the sponsor of SB 316, Senator Bunde.

KATHY WELLS, Executive Director  
Friends of Mat-Su  
(No address provided)

POSITION STATEMENT: Testified in opposition to HB 560.

MARC LAMOREAUX, Eklutna Tribe  
(No address provided)

POSITION STATEMENT: Urged the committee to reject HB 560.

SARA HEIDEMAN, Attorney  
Native Village of Eklutna  
Anchorage, Alaska

POSITION STATEMENT: During discussion of HB 560, provided information regarding the situation between ARRC and the Native Village of Eklutna.

VERA JAMES

Alaska Native Health Board (ANHB)  
Anchorage, Alaska

POSITION STATEMENT: Urged the legislature not to pass HB 560 because it fails to take into account the voices and interests of residents [of Eklutna] and the public.

SUSANNE DiPIETRO  
Anchorage, Alaska

POSITION STATEMENT: Related her opposition to Section 1 [of Version I].

KEVIN RITCHIE, Executive Director  
Alaska Municipal League (AML)  
Juneau, Alaska

POSITION STATEMENT: During discussion of HB 560, related AML's belief in local control of community development while acknowledging that with a statewide transportation system some issues will have to be regulated consistently throughout the state.

#### **ACTION NARRATIVE**

#### **TAPE 04-16, SIDE A**

Number 0001

**CHAIR JIM HOLM** called the House Transportation Standing Committee meeting to order at 1:45 p.m. Representatives Holm, Masek, Stepovich, and Kookesh were present at the call to order. Representatives Kohring, Ogg, and Kapsner arrived as the meeting was in progress.

#### SB 31-RAILROAD UTILITY CORRIDOR TO & IN CANADA

CHAIR HOLM announced that the first order of business would be CS FOR SENATE BILL NO. 31(RES) am, "An Act relating to a transportation corridor for extension of the Alaska Railroad to Canada and to extension of the Alaska Railroad to connect with the North American railroad system."

Number 0084

RICHARD SCHMITZ, Staff to Senator John Cowdery, Alaska State Legislature, explained that SB 31 establishes a series of steps toward the ultimate goal of opening the way to complete a railroad connection between Alaska and the North American rail system. The legislation doesn't require any appropriations, although it allows the Alaska Railroad Corporation (ARRC) to use

funds it can obtain to go into Canada and possibly connect with the railroad in British Columbia. He informed the committee that in the Senate Resources Standing Committee there was concern with what would happen if once the corridor is established, the pipeline comes along. The Senate Resources Standing Committee and the Department of Natural Resources developed language specifying what would happen as the process progresses. [With that goal], SB 31 authorizes ARRC to obtain ownership or right-of-way through any of the land "where the federal private". The legislation also mandates a 500-foot corridor for other uses, such as fiber optic cable, power transmission lines, et cetera. Additionally, the corridor would allow specific railroad-related uses, such as depots, material storage, gravel pits, et cetera.

Number 0362

BOB LOEFFLER, Director, Mining, Land and Water, Department of Natural Resources (DNR), turned to how DNR deals with the gas line. Mr. Loeffler explained that SB 31 requests that ARRC designate a corridor, which is really managed by DNR. Before a railroad is built, DNR retains the right to authorize the gas line through a lease after consulting with ARRC in order to review possibilities for accommodating future railroads. If the railroad is constructed before a gas line, DNR reserves the right to cross the railroad, authorize a gas line, and retain the revenues. He pointed out that the aforementioned is found in subsections (f) and (g) on pages 4 and 5 of the legislation. Mr. Loeffler opined that the language places DNR in the "driver's seat" in order to ensure that the [railroad and the gas line] are compatible. In response to Chair Holm, Mr. Loeffler confirmed that the legislation doesn't forego the authority of the State of Alaska by giving it to ARRC.

MR. SCHMITZ acknowledged the possibility that the railroad could be built at the same time as the gas line or even before the gas line. However, the reality is that a railroad, unlike trucks, can carry the 80-foot sections of pipe for the gas line. Therefore, the railroad has an opportunity to lower the construction costs of a gas line. In fact, if a railroad could save 25 percent of the actual building costs of a gas line, then that would "sort of" pay for building the railroad. For those reasons, throughout the world a number of railroads have been built the same time as a pipeline. To have a railroad connection with rest of North America is a real economic development opportunity and would be a tremendous boost for the oil and gas sector.

CHAIR HOLM asked if the right-of-way is fee simple.

MR. SCHMITZ answered that it's fee simple for state land.

MR. LOEFFLER explained that DNR would retain the land until ARRC has the financing and is ready to build a segment. Once a segment is built, an as-built survey is performed. At that point, ARRC would retain 100 feet plus the necessary sidings while DNR would retain the remainder of the 500-foot corridor. In further response to Chair Holm, Mr. Loeffler explained that although ARRC would obtain a patent from the state, DNR would reserve a couple of things from that patent. He specified that DNR would reserve the ability to transport people. For instance, if a village needed access to good recreation grounds, it's DNR's responsibility. Mr. Loeffler noted that DNR would also reserve the subsurface estate.

Number 0820

REPRESENTATIVE MASEK moved to report CSSB 31(RES)am out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, it was so ordered.

HB 560-MUNICIPAL LAND USE REGULATION

CHAIR HOLM announced that the next 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."

BARBARA COTTING, Staff to Representative Holm, Alaska State Legislature, informed the committee that before it is CSHB 560, Version I. Version I reflects changes made in the Senate adding bonding for the railroad to Greely.

Number 0907

REPRESENTATIVE MASEK moved to adopt CSHB 560, Version I, dated 5/4/04, as the working document.

CHAIR HOLM objected for discussion purposes.

The committee took an at-ease from 1:58 p.m. to 1:59 p.m.

Number 0945

PAT GAMBLE, President & CEO, Alaska Railroad Corporation, Department of Community & Economic Development (DCED), turned to the rail corridor portion of Version I. He related that there has been discussion between ARRC and the military regarding the active duty military from Fort Wainwright who need to access upwards of 1 million acres of training land south of Fairbanks and those at Fort Greely [who need access to] the missile site. The ARRC has reviewed those two missions and has suggested it may be able to provide an alternative in terms of enhancing the capability to perform the mission, the quality of life for the work place as well as the families, and doing it cheaper by using ARRC's tax-free bonding capability. Mr. Gamble emphasized that this concept is being presented today in order to obtain pre-approval so that if the dialogue is continued with the military, the concept could be taken to the proposal level. He expressed the need to know that the legislature would find favor with bonding for the aforementioned.

CHAIR HOLM commented that it's difficult for the legislature to agree with something before the fact.

MR. GAMBLE said that the initial concern has centered on the financing. Mr. Gamble explained that ARRC's proposal is that the debt service would be paid by contract through the Department of the Army and the financial means of the Strategic Defense Missile Command. Therefore, two contracts would be combined in order to guarantee the debt service over the period of the bond. The aforementioned seems to be the main concern. "As far as the DNR hook would be that we would in fact use the same geographical corridor area that has been surveyed several times over the past ... half a century and that we, for example, are talking about the gas pipeline going down," he said. The corridor would follow the east side of the Tanana River to Flag Hill where it would cross the river at a bridge and proceed down the west side and eventually traverse across [via another bridge] to the Fort Greely and Delta Junction area. Mr. Gamble related that he didn't believe there have been objections to continuing to consider the aforementioned corridor. In response to Chair Holm, Mr. Gamble related his hesitation in referring to the area beyond Delta Junction because the route hasn't been surveyed to his satisfaction.

CHAIR HOLM related his interest in a long-term approach [to the area beyond Delta Junction] because it doesn't seem to make sense to be on the west side of the Tanana River.



MR. GAMBLE informed the committee that the engineers have to determine which side [of the river] is suitable for rail. Furthermore, the current route to Delta Junction under discussion has been reviewed specifically for 79 mile per hour (mph) track because of the commuter service to Delta Junction. The aforementioned calls for certain geographic requirements. Mr. Gamble turned to the Delta Junction Fort Greely area where [the track] would round the corner and move east, there's not a mandate to have 79 mph track. He indicated that if there is a need to slow down in that area in order to keep the costs down due to the geography of the area, it could be done. For example, the railroad could cut through a mountain to keep the track straight and maintain a speed of 79 mph or the railroad could proceed around the end of the mountain and slow down to 49 mph. In the aforementioned case, the cost would be considerably less to use the curved track versus going through the mountain.

CHAIR HOLM related that going east to the border is quite flat terrain, and therefore there should be options for the railroad.

Number 1360

REPRESENTATIVE STEPOVICH interjected that the costs, route, and options of the railroad are dictated by the projected use of the railroad. Therefore, he inquired as to the use of the railroad by Fort Greely.

MR. GAMBLE pointed out that the [legislation] includes a trigger relating the notion that this has to be viable from a military point of view. The military has to agree to the life of the bonds to fund the debt service. Mr. Gamble explained that the concept is to handle the service requirements of two separate military entities through a single line. He noted that each of the military entities intend to accomplish their mission and have forecasted the costs to do so. The ARRC's proposal is to lay the debt service costs down and on a year-by-year basis allow the military to review what ARRC would charge them under a contract as opposed to what would be required for that military entity in appropriations plus what would've been paid for operations and maintenance moving forward alone. The aforementioned has been done internally in Alaska with the active duty Army at Fort Wainwright and there was very strong support for the proposal by which the active duty Army at Fort Wainwright would have rail access down to Flag Hill across the river with a spur entering 11 miles in the training area. The remaining approximately 35 miles down to Fort Greely would [be used] for some freight but mainly to provide the National Guard

in the area the opportunity to decide whether they want to live at Fort Greely - Delta [Junction] or Fairbanks. Fairbanks offers an attractive living environment compared to living in renovated housing at Fort Greely, not to mention that certain services are [only] provided in Fairbanks. Allowing the option to live in Fairbanks could avoid the appropriated costs of rebuilding Fort Greely. The aforementioned provided a lot of merit to the proposal and elicited interest and desire to move to the next level in the process.

REPRESENTATIVE STEPOVICH surmised that the railroad would be constructed in time for the missiles to be transported on it.

MR. GAMBLE related his educated guess that the railroad would probably be a backup plan when weather conditions prevented the missiles from being flown in and out of the airfield. Mr. Gamble informed the committee that the principle way to move the missiles is by air and there is no backup plan.

Number 1595

REPRESENTATIVE OGG inquired as to the current bonding authority of ARRC.

MR. GAMBLE explained that ARRC has quite a unique capability to issue tax-free revenue bonds, which aren't subject to the state cap. The restriction for ARRC probably lays within the fact that it [has] to be for state and railroad purposes. In further response to Representative Ogg, Mr. Gamble confirmed it would be unlimited on revenue. In fact, last year the legislature pre-approved \$17 billion of authorization for ARRC due to the possibility of the gas pipeline. Mr. Gamble informed the committee that ARRC has never before bonded. In further response to Representative Ogg, Mr. Gamble confirmed that [statute] specifies that when ARRC comes to the legislature for bonding approval it has to be project specific.

CHAIR HOLM turned attention to [the rail] from Healy to Flag Hill.

MR. GAMBLE stated that it's a separate issue that hasn't entered into this proposal.

Number 1703

MR. GAMBLE turned to the first half of Version I. Mr. Gamble explained that [this legislation] is to reenact the status quo

and the capability that ARRC has had for 18 years until the recent Alaska Supreme Court decision. With regard to planning and zoning authority over ARRC at the municipal level, ARRC argued that we were exempt while the challenge stated that ARRC needed to obtain a permit. The court did not decide on the issue as to whether ARRC was or wasn't exempt. He related that the court said: "Because the legislature did not clearly express its intent to exempt the railroad from local zoning laws, we reverse and remand." Therefore, there is the option of the legislature to express the intent more clearly and if it doesn't, the court provided some guidance. The ARRC agreed with the minority on the decision, which said that ARRC is exempt from planning and zoning. Mr. Gamble explained that he agreed that ARRC is exempt from planning and zoning because there is a federal exemption from planning and zoning for railroads. When the transfer occurred, the legislature attempted to mirror the federal exemption for the railroad at the state level for much of the same purposes that the federal government exempted railroads. However, the court specified that the legislature's language was unclear. Mr. Gamble specified that he agreed ARRC is exempt from planning and zoning because the legislature passed the legislation, which was signed by the governor. The legislation has been in existence for 18 years, and therefore it seems that the intent of the legislation and the [bodies that passed it] are clear. The court's decision has led to this legislation, which attempts to provide a clear expression of the intent that has been enforced for the last 18 years.

Number 1850

REPRESENTATIVE MASEK, upon hearing from those in the Matanuska-Susitna Borough, expressed concern with Section 1, which she said she didn't support.

REPRESENTATIVE KAPSNER inquired as to ARRC's understanding of the relationship between Eklutna and (indisc.). She further inquired as to ARRC's view of a municipality having authority over its site and how "we" can be more neighborly.

MR. GAMBLE opined that a healthy relationship between ARRC and the Native Village of Eklutna and Eklutna, Inc., needs to be maintained because a lot of business has been done and will be done with those two entities. He said that the court case doesn't poison the relationship in any way. It's important that the legal issues not become personal. The ARRC is trying to keep the large picture in [perspective]. In regard to the federal exemption for interstate commerce, ARRC's position is

that it's an instrument of the state and the same concerns exist for intrastate commerce. Mr. Gamble acknowledged that interest of the municipalities and boroughs is related to land use rather than operational control of the railroad. However, the court has said that without the exemption, a permit must be applied for in every case. If one disagrees "with what you get back," then litigation is the next step. During litigation, the court will decide whether it agrees with ARRC's position, after which the appeals process can occur. Mr. Gamble said that the aforementioned occurs with over 13 entities along the Railbelt. The very nature of the dialogue and concern expressed by the entities along the line is the reason the federal exemption was made in the first place because when the process is tied up in court on a case-by-case basis, it, in effect, stops the action. "It is precisely this issue that ... the federal law and the legislators ... when they wrote the state law were trying to overcome," he said. The actions of one municipality or borough can have a ripple effect with the municipality or borough next door.

MR. GAMBLE related, in an attempt to allay concerns, that about 80 percent of ARRC's projects are federally funded. Therefore, a very involved public process is required through the National Environmental Policy Act of 1969 (NEPA). All ARRC's projects are listed on its web site and listed by municipality and borough. Mr. Gamble said that taking away all that public process leaves a number of ARRC funded projects, which tend to be the cheap ones because ARRC likes to use federal money to leverage ARRC's money. The smaller projects, such as fixing an electrical junction box, are capital projects. Some have expressed interest in that level of detail, but he opined that's for the legislature to decide. The issue is whether the legislature wants to exercise control over ARRC at the state level rather than at the individual municipality and borough level.

Number 2121

REPRESENTATIVE STEPOVICH inquired as to the largest project or most track laid since the completion of the railroad in 1923.

MR. GAMBLE stated that no new track has been laid since 1923. The project to Fort Greely would be the first new main line track for the Alaska railroad, in fact in the United States.

REPRESENTATIVE OGG inquired as to the reasons behind the exemptions for the railroad.

MR. GAMBLE posed a situation in which ARRC requests a permit and obtains agreement from the Matanuska-Susitna Borough to bypass the alternate route around Wasilla. Suppose the project is upwards of \$100 million and ARRC doesn't own the land. He further proposed that an agreement is reached with the borough and the entire NEPA process goes through and there is the decision to build the project with federal funds. Due to the court decision, the process can include any individual or private group who wants to challenge the approval or disapproval of a permit request and leave ARRC with no tool to illustrate that it has done the public outreach, NEPA process, and agreed with the municipality. Therefore, ARRC has to stop and litigate each challenge.

REPRESENTATIVE OGG inquired as to how [subsection] (b) deals with the individual because [subsection] (b) seems to address local control through the local government and doesn't speak of individuals at all.

MR. GAMBLE specified that [subsection] (b) addresses the court's concern such that clarifying the language allows the exemption [to be reinstated]. The exemption speaks to the individual or local private group, who can't prevail under the exemption. Mr. Gamble clarified that state law preempts an individual's ability to have an equal opportunity as a municipality or borough to challenge [the project].

Number 2335

REPRESENTATIVE OGG posed a situation in which ARRC has the exemption and owns real estate through a municipality with the 500-foot corridor specifications. If this was the railroad proposal from Fairbanks to the Alaska border, he supposed that the railroad could hug that 500-foot corridor on one side and wouldn't be under Tok's ordinances and could develop a shopping center or a rock pit. He asked if that is the type of power ARRC wants.

MR. GAMBLE replied no. The ARRC board thought of that in 1993 and established Board Rule 17, which specifies that ARRC has to stay in the railroad business and not become equity partners in other business ventures for construction. With regard to the gravel pit being located next to a residential area, ARRC has never done that ... [tape changes mid-sentence].

**TAPE 04-16, SIDE B**

MR. GAMBLE related that as a rule, ARRC would continue the outreach currently done with the municipalities and boroughs. It's not likely, he opined, that ARRC would ever try something like [constructing a gravel pit next to a residential area]. Although the concern is that the risk of that is high, ARRC has not done such under the past 18 years under the exemption. Therefore, he opined that the risk is very low.

Number 2337

REPRESENTATIVE OGG agreed that ARRC probably wouldn't do the aforementioned, but he questioned what would be wrong with writing the language similar to that for a road right-of-way. This [exemption language] seems fairly broad and raises red flags.

MR. GAMBLE noted that there has been a suggestion in the Senate Finance Committee that a sunset clause could be included such that ARRC would continue under the status quo, save Eklutna, for a period of time during which a task force will try to develop the seam between operational use and the flexibility to operate the railroad would want for interstate commerce purposes. He suggested the sunset would be July 1st. The task force could be comprised of the 13 entities along the Railbelt as well as appropriate representation from the House and Senate and the majority and the minority without the rush of the end of session being a factor. The ARRC is willing to do the aforementioned, he related.

Number 2202

REPRESENTATIVE KAPSNER related that one of the letters she received in opposition to this legislation had to do with the Eklutna spiritual site. The author of the letter had the impression that ARRC wants to make a gravel pit out of the original site of the community. For that reason, communities in her district have supported Eklutna.

MR. GAMBLE said that there has been a bit of a miscommunication because ARRC has never used that area as a gravel pit. The rock quarry has been continuously mined by ARRC since the early 1940s. In the Land Transfer Act and the Alaska Native Claims Settlement Act (ANCSA) there was an agreement made as the land was partitioned and the approximately 36,000 acres was granted to ARRC in the transfer. During that process, the rock quarry was allocated to ARRC as part of the settlement. In the 1990s,

there was an MOA regarding the continued use of the quarry with the provision that "at such time as the railroad would stop using the quarry - the need for that rock went away and the railroad didn't need it anymore - it would revert back to Eklutna, Inc." The aforementioned agreement was made with Eklutna, Inc. whereas the court case is with the Village of Eklutna. Mr. Gamble reiterated that ARRC has not and would never obtain gravel from this particular area because gravel is used for fill and used for things that are relatively unimportant compared to the quality of the rock at the Eklutna site. There aren't a lot of sources of the quality of rock found at the Eklutna site, which is why ARRC has used it. Mr. Gamble acknowledged that ARRC would want the rock found at the Eklutna site, but emphasized that it would want it on terms amendable to the Village of Eklutna. If there are no terms, ARRC would still like to determine the appropriate use of the site. He emphasized that he wanted to keep the rock quarry issue out of the court case because it's possible it could be worked out with the Village of Eklutna because a number of issues are being worked on successfully with Village of Eklutna. Mr. Gamble said, "As a state instrumentality, in this day and age, ... the check and balance first has to be through the board and the board has a sense of what is going to work and doesn't work and then if that board is to be overruled, it's going to be overruled by this body right here." He opined that ARRC's policy for the future will have to be to address each municipal and public issue head-on and in an amicable manner.

Number 2037

REPRESENTATIVE KOOKESH recalled Mr. Gamble's desire to have some time between now and next July based on the status quo. However, he pointed out that the status quo isn't how [ARRC] has envisioned it due to the Supreme Court decision.

MR. GAMBLE clarified that the status quo to which he is referring is that of the [past] 18 years ago.

REPRESENTATIVE KOOKESH reiterated that since the Alaska Supreme Court decision, the status quo of the [past] 18 years is no longer the status quo.

MR. GAMBLE clarified that the status quo he is defining is the exemption that ARRC has been operating under since [the Transfer Act].

Number 1988

REPRESENTATIVE MASEK related her understanding that ARRC is protected by the Interstate Commerce Commission Termination Act, 49 U.S.C. 701, which she said read: "State or local economic regulations which could significantly interfere with railroad operations is prohibited."

MR. GAMBLE explained that the aforementioned addresses that in planning and zoning, a municipality may, for example, want to control the speed of a particular track section or the hours of operation of a particular track section. The aforementioned would impact interstate commerce and that operational nature of ARRC is exempt with regard to the federal legislation.

REPRESENTATIVE MASEK noted that seven of the railroads that transport the majority of the nation's freight aren't exempt from local planning authority. For example, Union Pacific, the largest railroad company in the nation, operates in 23 different states and hundreds of local communities without the type of blanket exemption ARRC is seeking.

MR. GAMBLE reiterated, "The railroads are exempt. In fact, there are a lot of court cases challenging that." The most common [challenge] is regarding whistle blowing. The federal law specifies that the whistles must be blown, although the communities are challenging that. Because of so many cases, the courts have been very successful in pressuring the railroads to try to use technology to address the problem.

REPRESENTATIVE KOOKESH asked if the federal exemption is for the railway on which the trains traverse or does it speak specifically to the areas within a municipality where ARRC has its train stations and storage yards.

MR. GAMBLE said that the state language refers to all of the areas [mentioned by Representative Kookesh]. However, he wasn't sure to what the federal protection referred.

REPRESENTATIVE KOOKESH requested clarification on the federal protection.

Number 1824

CHAIR HOLM announced that HB 560 will be set aside.  
[HB 560 was taken up again later in the meeting.]

SB 316-SEAT BELT VIOLATION AS PRIMARY OFFENSE



CHAIR HOLM announced that the next order of business would be SENATE BILL NO. 316, "An Act relating to motor vehicle safety belt violations."

CHAIR HOLM reminded the committee that testimony has been closed on SB 316.

Number 1775

REPRESENTATIVE KOOKESH moved that the committee adopt Amendment 1, which read:

Page 1, line 3:

Delete all material and insert:

"\* **Section 1.** AS 28.05.095(e) is amended to read:

(e) Notwithstanding any other provision of law, a peace officer may not stop or detain a motor vehicle not being operated on a highway to determine compliance with (a) of this section, or issue a citation for a violation of (a) of this section, unless the peace officer has probable cause to stop or detain the motor vehicle other than for a violation of (a) of this section."

CHAIR HOLM objected for discussion purposes.

REPRESENTATIVE KOOKESH pointed out that seat belt laws apply throughout the state, even in locations off the road system where there are no highways. Representative Kookesh opined that he didn't want this [proposed law] to be used as the only reason to stop a vehicle in rural Alaska.

LAUREN WICKERSHAM, Staff to Senator Con Bunde, Alaska State Legislature, spoke on behalf of the sponsor of SB 316, Senator Bunde. Ms. Wickersham confirmed that SB 316 primarily [targets] urban areas. She related that Senator Bunde wanted there to be as much freedom for off-road activities in rural areas as possible.

CHAIR HOLM inquired as to why it would be any less dangerous for an individual to be thrown out of a vehicle in urban Alaska versus rural Alaska.

MS. WICKERSHAM said, "It isn't necessarily less dangerous, the point of the bill is ... in urban areas ... individuals that are not involved, necessarily in car crashes, are paying for the

costs of the car crashes." She related that in the rural areas, a lot of times individuals are not insured plus accidents occurring in an off-road situation wouldn't necessarily involve other individuals because off-road activities are probably more of a private activity than driving on public roads.

CHAIR HOLM suggested that Ms. Wickersham is arguing against the legislation because he understood that people would use their seat belt if this legislation is implemented.

REPRESENTATIVE KOOKESH related the situation in rural Alaska. For instance, in Angoon the speed limit is 15 miles per hour. He reiterated that he didn't want this legislation to be the impetus for law enforcement to stop vehicles in rural Alaska just to determine whether seat belts are being used.

REPRESENTATIVE STEPOVICH said that Representative Kookesh's argument is the same reason he doesn't want this legislation to be implemented in urban Alaska. What's good for [urban] Alaska should be good for [rural] Alaska, he opined.

Number 1629

CHAIR HOLM maintained his objection to Amendment 1.

A roll call vote was taken. Representatives Kohring, Ogg, Kapsner, and Kookesh voted in favor of Amendment 1. Representatives Stepovich, Masek, and Holm voted against it. Therefore, Amendment 1 was adopted by a vote of 4-3.

CHAIR HOLM, in response to Representative Kookesh, stated that the next committee of referral for SB 316 is the House Judiciary Standing Committee.

REPRESENTATIVE STEPOVICH related similar concerns as Representative Kookesh regarding law enforcement being able to stop an individual merely to determine if he or she is wearing his or her seat belt.

REPRESENTATIVE MASEK echoed the same concerns as Representative Stepovich.

CHAIR HOLM, in response to Representative Stepovich, confirmed that SB 316 has two indeterminate fiscal notes.

Number 1489

REPRESENTATIVE MASEK moved to report SB 316, as amended, out of committee with individual recommendations and the accompanying fiscal notes.

REPRESENTATIVES STEPOVICH and MASEK objected.

A roll call vote was taken. Representatives Kohring, Ogg, Kapsner, and Kookesh voted in favor of reporting SB 316, as amended, from committee. Representatives Stepovich, Masek, and Holm voted against it. Therefore, HCS SB 316(TRA) was reported out of the House Transportation Standing Committee by a vote of 4-3.

#### HB 560-MUNICIPAL LAND USE REGULATION

CHAIR HOLM returned the committee's attention to 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."

CHAIR HOLM announced that he didn't intend to report HB 560 from committee today, although he wanted to take the testimony from those present.

Number 1414

KATHY WELLS, Executive Director, Friends of Mat-Su, informed the committee that Friends of Mat-Su is a local land use planning organization. She related that Friends of Mat-Su is opposed to HB 560, which would exempt Alaska Railroad Corporation (ARRC) from local and municipal zoning. She further related that residents in the 13 Railbelt communities aren't aware that this legislation is being considered. Furthermore, ARRC has been operating for 18 years without this exemption and already has protections against local economic regulatory interference. The recent Supreme Court ruling wouldn't cause interference with essential operations. Ms. Wells expressed the need for local communities to have the opportunity to comment through an adequate public process on this legislation. A railroad doesn't need wholesale governmental immunity from local zoning in order to operate. As mentioned by Representative Masek, seven railroads that are privately owned operate by abiding by local zoning. Those seven railroads operate and continue to grow. The recent proposed committee substitute (CS) has added the extension of Fort Greely and describes the public purpose of bonds for this project, which confuses the issues that generated

HB 560, which is this exemption. Therefore, Ms. Wells suggested that Section 1 of Version I be removed. She questioned the need to rush with this legislation, and expressed the need to educate the public about the necessity for this exemption.

Number 1295

MARC LAMOREAUX, Eklutna Tribe, began by recalling Mr. Gamble's earlier testimony that ARRC wouldn't place a gravel pit next to a nice neighborhood and questioned whether ARRC didn't believe the Native Village of Eklutna is a nice neighborhood. Mr. Lamoreaux urged the committee to reject HB 560. He opined that many of the arguments regarding why the railroad doesn't need the exemption, such as the Interstate Commerce Commission Termination Act. He further opined that the recent Supreme Court decision wouldn't interfere with essential railroad operations. The Supreme Court case adopts the balancing of interest test, which has been adopted by the vast majority of courts that have addressed the issue of government immunity in the last 30 years. [The balancing of interest test] has been found to constitute good and enlightened public policy in the area of zoning because the test requires the railroad to comply with local zoning when it doesn't create a hardship for [the railroad]. Furthermore, the test would immunize the railroad from local zoning when compliance with local zoning would interfere with the railroad's operations. He likened [the balancing of interest test] to the requirements placed on the Department of Transportation & Public Facilities (DOT&PF) and other state agencies under Title 35. Under the recent Alaska Supreme Court decision, local and public officials are allowed to have input while the essential operations of the railroad aren't hindered. However, this legislation would eliminate all public input and that from local government. Mr. Lamoreaux noted that his written testimony, which he agreed to fax, reviews the history of the situation in Native Village of Eklutna. He mentioned that the Alaska Supreme Court noted that the site [in the Native Village of Eklutna] is historically/culturally significant, which should be considered during the conditional use permitting process.

Number 1024

SARA HEIDEMAN, Attorney, Native Village of Eklutna, reiterated that the land being destroyed by ARRC is of historical and cultural significance, which was confirmed by an ARRC study. She recalled Mr. Gamble's testimony that the rock being taken from the site at Eklutna is superior quality, "proven by the

fact that they've been taking ballast out of that pit for 80 years." However, that's not true because ARRC's testimony at the trial was that ARRC only recently started using the rock at the Eklutna site for ballast. There are other comparable and available sites that have, obviously, been used for decades. "So, it's just a fortuity that they own it and now want to use, that this issue is coming up," she related.

MS. HEIDEMAN then turned to the Interstate Commerce Commission Termination Act, which was passed in 1995. This Act abolished the Interstate Commerce Commission (ICC), placed restrictions on state and local regulation of railroads, and created the Surface Transportation Board. Under this federal law, state and local regulation that significantly interferes with core railroad operations is prohibited and those core railroad functions are regulated by the Surface Transportation Board. Ms. Heideman pointed out that only after passing the federal law would one enter the balancing test adopted by the Supreme Court last month. The only reason Mr. Gamble specified for the need for ARRC to have a blanket exemption is because "it would encumber progress." However, she reiterated earlier testimony highlighting that DOT&PF is required to comply with zoning generally, while it can be exempt from it in appropriate cases. The aforementioned is what the balancing test would do with ARRC.

MS. HEIDEMAN recalled Mr. Gamble saying that if this [balancing test] applied to ARRC, and ARRC obtained the necessary permits from a municipality, an objecting third party could cause ARRC to stop and deal with it. However, that's not the case. She said that if ARRC obtains a conditional use permit from the municipality and a third party objected, that objection could occur through the standard planning and zoning appeal processes. However, it wouldn't stop the effect of the permit during the appeal process unless the third party can show that it's likely to win the appeal and can put up a bond. The bonding requirements, she noted, prevent most members of the public from stopping the effect of a permit. In the last three years of the litigation between ARRC and the Native Village of Eklutna, ARRC has operated the gravel pit because the village didn't have the financial ability to pay a bond to stop operations during the appeal process. Ms. Heideman recalled that Mr. Gamble indicated that the private rail companies that operate [in the Lower 48] are exempt from land use regulations, but disagreed and noted that those companies are subject to the provisions of the federal law. Other than the federal law there is no other blanket immunity from land use regulations.

Number 0702

VERA JAMES, Alaska Native Health Board (ANHB), informed the committee that ANHB advocates on behalf of 229 federally recognized tribes, including Eklutna, in relation to health care and other issues. She related that ANHB believes that passage of HB 560 would be detrimental to adjacent residential landowners and the public. Should the proposed exemption encompassed in HB 560 be granted, she understood that ARRC intends to blow up the Eklutna site and turn it into a gravel pit. Therefore, ANHB urges the legislature not to pass HB 560 because it fails to take into account the voices and interests of residents [of Eklutna] and the public.

Number 0621

SUSANNE DiPIETRO informed the committee that she is a resident of Government Hill in Anchorage. She related her opposition to Section 1 [of Version I]. She further related that there are plenty of public and private businesses and state entities that comply with zoning in doing business statewide. Ms. DiPietro turned to the unfairness of this proposed exemption because, for instance, a private business that happened to own a quarry and wanted to mine would have to obtain a conditional use permit for which a public process is attached. The aforementioned is a cost of business. However, with this exemption ARRC wouldn't have to incur that cost. She emphasized the need to seriously consider why one would set up such an unfair situation when there is no showing that having to comply with local zoning would unduly burden ARRC. Therefore, she suggested deleting Section 1 and passing the remainder of the legislation. If ARRC, operating without the exemption, is having troubles, then it can document those and return to the legislature with specific problems necessitating the exemption.

Number 0440

KEVIN RITCHIE, Executive Director, Alaska Municipal League (AML), informed the committee that the committee packet should include a letter from AML. The 2004 policy statement AML adopted states: "The League feels strongly that local planning and zoning laws and review processes shall apply to state land use actions to allow for comprehensive local control of community development." However, AML acknowledges that in a statewide transportation system, there will be some number of issues that have to be regulated consistently between

communities, otherwise it will disrupt operations. He, too, highlighted that DOT&PF has found ways to work with local municipalities. He noted that two communities are going to meet this evening to consider the concept of doing some form of the proposal embodied in HB 560 with a sunset.

REPRESENTATIVE STEPOVICH inquired as to why [the municipalities] weren't involved sooner.

MR. RITCHIE said that the municipal policy has been in effect for some time. This particular legislation is in response to a recent lawsuit. Furthermore, the language is so broad that it takes the exemption from local control to a new level.

Number 0190

PAT GAMBLE, President & CEO, Alaska Railroad Corporation, Department of Community & Economic Development (DCED), in his closing remarks said that this process has made the case that when something is opened up broadly, there is a broad response. He related his understanding from the testimony today that the operational issues aren't really of concern while the land use issues are. He pointed out that at the federal level there is the unreasonably burdened interstate commerce test, which is a legal issue that has operational implications. The very nature of this issue begs for time in order to determine how and if the line [between interstate commerce and operational issues] will be clarified. Therefore, Mr. Gamble suggested that the proposal made in the Senate side to tackle this over a period of time in an attempt to draw the lines might be appropriate. However, maintaining the status quo with a sunset would address some of the current projects.

**TAPE 04-17, SIDE A**

MR. GAMBLE indicated ARRC's interest in participating in a task force to tackle this issue and report back to the legislature with the appropriate path forward.

CHAIR HOLM indicated that the legislation would be held until the possibilities are known.

Number 0092

REPRESENTATIVE STEPOVICH surmised that ARRC wants to work with the municipalities.

MR. GAMBLE agreed and related his desire to be part of a consensus and clarify the legislative language to the satisfaction of the court.

CHAIR HOLM agreed and noted that those at the end of the rail line know that whatever happens "upstream" on the railroad has consequences at the end of the line as well. He said, "It's apparent to me that it's very important that the 13 communities don't impact negatively the cost of transportation, the cost of our intrastate commerce, and ... put that price to bear on one end of the hose, if you will ...."

Number 0251

REPRESENTATIVE OGG inquired as to why the minimalist approach shouldn't be taken rather than the broad brush that's being proposed.

MR. GAMBLE characterized Representative Ogg's question as one to pose in the task force. If there's a way to go forward and define [the exemption] rather than an all or nothing approach or minimalist view, he expressed interest in working on that. "My original argument was an all or nothing based on the greater good as I see it, that's clearly not going to win the day ... and to continue that argument is simply ... fruitless for the railroad to pursue," he said.

REPRESENTATIVE OGG surmised that with the broad-brush approach, the law [under the Supreme Court's decision] would be the law. He questioned why ARRC [and everyone involved] wouldn't be in a better position asking for the federal law and then propose which specifics to Alaska zoning law should be overridden.

MR. GAMBLE answered that Representative Ogg's suggestion probably couldn't come together this session. Furthermore, the task force and the sunset clause could accomplish the same thing.

REPRESENTATIVE OGG said he begged to differ because the language would be shorter, such that it would read: "Municipal ordinances providing for planning, platting, and land use regulations adopted under Alaska statutes or other law do not apply to core railroad operations as defined in federal statute and regulations." He opined that the aforementioned is clear.

MR. GAMBLE pointed out that the language would require legal staff to define the "core railroad operations," which he



indicated could take some time. For instance, ARRC is building the Operations Center at Ship Creek. Although if the building isn't built the railroad can continue its operations, he would argue that the building is essential to operations if he moves everyone out of the current building. The question becomes whether the building is just that or is it core railroad operations. Currently, ARRC is in the process of obtaining a building permit for this building, which would normally not be the case except to let the municipality know that a nonmunicipal building is being built in the railroad area. The task force could draw the line to the satisfaction of all those on the Railbelt. Mr. Gamble said that he didn't have an objection to Representative Ogg's suggestion.

Number 0697

CHAIR HOLM announced that HB 560 would be heard again on Thursday, at which time he would reopen testimony. He closed public testimony for the day. Chair Holm inquired as to the relationship between interstate and intrastate commerce.

MR. GAMBLE specified that ARRC falls under the ICC.

REPRESENTATIVE STEPOVICH asked if the core railroad requirement is the Division of Operations.

MR. GAMBLE predicted that is an area where there will be debate because a core requirement for the railroad is to obtain ballast or gravel. He confirmed that core operations would include speed, whistle blowing, scheduling, et cetera. However, running a hotel isn't a core operation. Again, the question is where to draw the line for land use. In further response to Representative Stepovich, Mr. Gamble confirmed that ARRC does have a Division of Operations that doesn't fall under the core railroad requirement. He related that the 36,000 acres of ARRC real estate necessitates an entire division that is separate from operations. Mr. Gamble explained that ARRC has one division that addresses planning, construction, and financing up to the point of building [the rail]. If there is a facility, real estate development and management deals with it while track stays within the operations division. Once a facility, even if an operational building, is built, the real estate division owns the building.

MR. GAMBLE, in response to Chair Holm, explained that by law the Board of Directors of ARRC manages the railroad and delegates the authority to him to operate it on a daily basis as well as

certain management rights. Therefore, anything above a certain dollar amount has to be approved by the board, including all land use and real estate issues. He confirmed that the board members are appointed by the governor. The board is a seven-member board in which the positions are specified in law and the members serve at the pleasure of the governor. He noted that certain positions, such as the commissioners of DCED and DOT&PF, are always members of the board. The board also consists of a labor representative, regional representatives, and representatives with experience "outside train operations management." He indicated that there are at least four public members. In further response to Chair Holm, Mr. Gamble said that the board isn't terribly politicized and he has never seen a situation in which the activities promoted by the board would run counter to the municipalities [in which the railroad runs]. He opined that the independence of the board has been admirable.

[HB 560 was held over.]

#### **ADJOURNMENT**

There being no further business before the committee, the House Community and Regional Affairs Standing Committee meeting was adjourned at 3:34 p.m.