

**ALASKA STATE LEGISLATURE
HOUSE TRANSPORTATION STANDING COMMITTEE**

May 7, 2004

9:58 a.m.

MEMBERS PRESENT

Representative Jim Holm, Chair
Representative Beverly Masek
Representative Vic Kohring
Representative Dan Ogg
Representative Nick Stepovich

MEMBERS ABSENT

Representative Mary Kapsner
Representative Albert Kookesh

OTHER LEGISLATORS PRESENT

Senator Tom Wagoner

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. 382(CRA) am

"An Act relating to replat approval; relating to the platting of right-of-way acquired through eminent domain proceedings; and providing for an effective date."

- MOVED CSSB 382(CRA) am OUT OF COMMITTEE

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) Bills Previously Heard/Scheduled
05/07/04 (H) TRA AT 8:00 AM CAPITOL 17

BILL: SB 382

SHORT TITLE: EMINENT DOMAIN/REPLAT OF BOUNDARY CHANGES

SPONSOR(S): TRANSPORTATION

03/31/04 (S) READ THE FIRST TIME - REFERRALS
03/31/04 (S) TRA, CRA
04/01/04 (H) TRA AT 1:30 PM CAPITOL 17
04/01/04 (H) -- Meeting Postponed to Fri, 4/2/04 --
04/02/04 (S) TRA RPT CS 3DP 2NR SAME TITLE
04/02/04 (S) DP: WAGONER, COWDERY, THERRIAULT;
04/02/04 (S) NR: LINCOLN, OLSON
04/14/04 (S) CRA AT 1:30 PM FAHRENKAMP 203
04/14/04 (S) Moved CSSB 382(CRA) Out of Committee
04/14/04 (S) MINUTE(CRA)
04/15/04 (S) CRA RPT CS 2DP 2NR SAME TITLE
04/15/04 (S) DP: STEDMAN, WAGONER;
04/15/04 (S) NR: LINCOLN, ELTON
04/21/04 (S) BEFORE THE SENATE IN THIRD READING
04/22/04 (S) TRANSMITTED TO (H)
04/22/04 (S) VERSION: CSSB 382(CRA) AM
04/30/04 (H) READ THE FIRST TIME - REFERRALS
04/30/04 (H) CRA, TRA
05/01/04 (H) CRA AT 2:00 PM CAPITOL 124
05/01/04 (H) Scheduled But Not Heard
05/03/04 (H) CRA AT 8:00 AM CAPITOL 124
05/03/04 (H) Scheduled But Not Heard
05/05/04 (H) CRA AT 9:00 AM CAPITOL 124
05/05/04 (H) Moved Out of Committee
05/05/04 (H) MINUTE(CRA)
05/06/04 (H) CRA RPT 2DP 1DNP 1NR
05/06/04 (H) DP: KOTT, MORGAN; DNP: WOLF; NR: CISSNA
05/07/04 (H) TRA AT 8:00 AM CAPITOL 17

WITNESS REGISTER

WENDY LINDSKOOG, Director
External Affairs
Alaska Railroad Corporation (ARRC)

Juneau, Alaska

POSITION STATEMENT: Explained the changes encompassed in Version Q of HB 560.

MARY JACKSON, Staff
to Senator Tom Wagoner
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented CSSB 382(CRA) am on behalf of Senate Transportation Standing Committee.

PETER PUTZIER, Senior Assistant Attorney General
Transportation Section
Civil Division (Juneau)
Department of Law
Juneau, Alaska

POSITION STATEMENT: Testified that CSSB 382(CRA) am merely clarifies the intent of the legislature in 1975 and provides municipalities the right to control how the replat process is conducted.

ACTION NARRATIVE

TAPE 04-18, SIDE A

Number 0001

CHAIR JIM HOLM called the House Transportation Standing Committee meeting to order at 9:58 a.m. Representatives Holm, Stepovich, Kohring, and Ogg were present at the call to order. Representative Masek arrived as the meeting was in progress.

HB 560-MUNICIPAL LAND USE REGULATION

CHAIR HOLM announced that the first 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 0064

REPRESENTATIVE OGG moved to adopt CSHB 560, Version 23-LS1959\Q, Cook, 5/6/04, as the working document. There being no objection, Version Q was before the committee.

CHAIR HOLM informed the committee that Version Q deletes what was Section 1 in Version I.

Number 0141

WENDY LINDSKOOG, Director, External Affairs, Alaska Railroad Corporation (ARRC), explained that Section 1, the provision pertaining to planning and zoning exemptions for ARRC, was removed. The bond sections remain the same. However, Version Q includes a task force to be formed with members from the municipalities along the Railbelt, the ARRC, and a member from the House and the Senate to be appointed by their respective leaderships. The task force will meet during the interim and return with a report and recommendations to the legislature with regard to the planning and zoning for ARRC.

CHAIR HOLM informed the committee that there are 13 municipalities through which ARRC passes, and therefore each of those has a representative on the task force.

Number 0229

REPRESENTATIVE STEPOVICH noted that if the railroad continues to Greely, there will be a couple of more communities to [add to the task force].

CHAIR HOLM said that the size of the task force could be changed when that occurs. In further response to Representative Stepovich, Chair Holm agreed that it would merely be a formality to add communities as the railroad is extended through them.

MS. LINDSKOOG pointed out that the task force will sunset July 1, 2005, and is being implemented merely to help develop recommendations.

CHAIR HOLM said that the task force could be reauthorized as necessary.

Number 0404

REPRESENTATIVE MASEK moved to report CSHB 560, Version 23-LS1959\Q, Cook, 5/6/04, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 560(TRA) was reported from the House Transportation Standing Committee.

SB 382-EMINENT DOMAIN/REPLAT OF BOUNDARY CHANGES

CHAIR HOLM announced that the final order of business would be CS FOR SENATE BILL NO. 382(CRA) am, "An Act relating to replat approval; relating to the platting of right-of-way acquired through eminent domain proceedings; and providing for an effective date."

REPRESENTATIVE OGG moved to adopt CSSB 382(CRA) am as the working document. There being no objection, it was before the committee.

Number 0463

MARY JACKSON, Staff to Senator Tom Wagoner, Alaska State Legislature, presented CSSB 382(CRA) am on behalf of the Senate Transportation Standing Committee. Ms. Jackson informed the committee that this legislation was introduced upon the request of the commissioner of the Department of Transportation & Public Facilities (DOT&PF). The legislation answers an immediate legal issue for a project on the Kenai peninsula and a project in Anchorage.

REPRESENTATIVE STEPOVICH asked if Ms. Jackson was familiar with any of the concerns Representative Wolf had regarding how this legislation would impact his district.

MS. JACKSON replied yes, and related that Representative Wolf just discussed his concerns with the representative from the Department of Law who provided some clarity on the issue. She acknowledged that Representative Wolf voted against this legislation in its prior committee of referral.

Number 0583

PETER PUTZIER, Senior Assistant Attorney General, Transportation Section, Civil Division (Juneau), Department of Law, remarked that CSSB 382(CRA) am is very narrow. The primary effect of this legislation is to change one sentence of AS 09.55.275. He explained that there were two back-to-back challenges to AS 09.55.275 in the Anchorage Superior Court. The statute, AS 09.55.275, refers to replat approval, which he explained is DOT&PF providing notification to a municipality regarding boundary changes that might occur in the context of a highway. Municipalities also have to follow this statute, and therefore have to provide notice and obtain proper approval. The argument being made and trying to be changed by this legislation is in relation to the last sentence of AS 09.55.275, which says: "The platting authority shall treat applications for replat made by

state or local governmental agencies in the same manner as replat petitions originated by private landowners." Mr. Putzier noted that some of the more sophisticated entities, such as Anchorage, have specific processes for analyzing replat approval or petitions because it's a unique procedure. However, the argument being made in court is that the entire process is rendered improper based on the mere fact that the entity has a unique procedure. Mr. Putzier opined that he didn't believe that was the intent back when the statute was passed in 1975, rather the intent was for DOT&PF to provide notice, not to tell municipalities how to analyze replat petitions. This legislation merely clarifies the intent of the legislature in 1975 and provide municipalities the right to control how the replat process is conducted.

CHAIR HOLM turned attention to the second to the last sentence of AS 09.55.275, which read: "However, if a state agency clearly demonstrates an overriding state interest, a waiver to the approval requirements of this section may be granted by the governor." He asked if the governor can override the court challenge.

MR. PUTZIER answered that theoretically, it's possible. He noted the difficulties with the term "overriding state interest." He said that, to his knowledge, the provision hasn't been used and it isn't clear what would happen if there was an attempt to use it.

Number 0830

CHAIR HOLM noted that a series of things occur before eminent domain occurs and the property is actually taken. He related his understanding that once [the property is actually to be taken], this [court challenge] came into play.

MR. PUTZIER agreed.

REPRESENTATIVE STEPOVICH agreed with Chair Holm that the statute specifies that the governor could make a decision in this case. He acknowledged Mr. Putzier's comment regarding a possible challenge, and pointed out that anything can be challenged.

MR. PUTZIER said that the state couldn't realistically rely on the waiver as a means to proceed with public projects. There is some question, he noted, regarding whether the governor can exercise his authority once there is already a problem. Arguably, the governor has to make a decision before there is a

problem. Therefore, every municipal and state project would have to be brought to the governor's attention in order to obtain a waiver. Mr. Putzier opined that such wouldn't be a good policy.

CHAIR HOLM suspected that this would limit the "political changing" of eminent domain.

MR. PUTZIER agreed.

Number 0966

REPRESENTATIVE MASEK moved to report CSSB 382(CRA) am out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, it was so ordered.

ADJOURNMENT

The House Transportation Standing Committee meeting was recessed to the call of the chair at 10:14 a.m.