

**ALASKA STATE LEGISLATURE**  
**SENATE TRANSPORTATION STANDING COMMITTEE**

March 27, 2003

1:35 p.m.

**MEMBERS PRESENT**

Senator John Cowdery, Chair  
Senator Thomas Wagoner, Vice Chair  
Senator Gene Therriault  
Senator Georgianna Lincoln  
Senator Donny Olson

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

SENATE BILL NO. 31

"An Act relating to a railroad utility 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(TRA) OUT OF COMMITTEE

**PREVIOUS ACTION**

SB 31 - See Transportation minutes dated 2/11/03 and 3/11/03.

**WITNESS REGISTER**

Ms. Phyllis Johnson  
Chief General Counsel  
Alaska Railroad Corporation  
PO Box 107500  
Anchorage, AK 99510-7500

**POSITION STATEMENT:** Answered questions on proposed CSSB 31

Mr. Bob Loeffler  
Director of Land, Water and Mining  
Department of Natural Resources  
400 Willoughby Ave.  
Juneau, AK 99801-1724

**POSITION STATEMENT:** Answered questions on proposed CSSB 31

Ms. Wendy Lindskoog  
Director of External Affairs

Alaska Railroad Corporation  
PO Box 107500  
Anchorage, AK 99510-7500

**POSITION STATEMENT:** Answered questions on proposed CSSB 31

Senator Fred Dyson  
Alaska State Capitol  
Juneau, AK 99801-1182

**POSITION STATEMENT:** Suggested amendments to SB 31

Mr. Richard Schmitz  
Staff to Senator Cowdery  
Alaska State Capitol  
Juneau, AK 99801-1182

**POSITION STATEMENT:** Answered questions on proposed CSSB 31

#### **ACTION NARRATIVE**

#### **TAPE 03-11, SIDE A**

**CHAIR JOHN COWDERY** called the Senate Transportation Standing Committee meeting to order at 1:35 p.m. Senators Wagoner, Lincoln, Therriault and Chair Cowdery were present. Senator Olson arrived momentarily. He announced SB 31 to be up for consideration.

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

CHAIR COWDERY announced his intention to move SB 31 from committee and that a committee substitute, labeled version I, was prepared.

SENATOR WAGONER motioned to adopt version I as the working document. The motion carried with no objection.

CHAIR COWDERY informed members that he had distributed a list of bullet points to members and that Ms. Johnson would describe the changes.

MS. PHYLLIS JOHNSON, Vice President and General Counsel for the Alaska Railroad Corporation (ARRC), told members that she and staff from the Department of Natural Resources (DNR) and Wendy Lindskoog worked closely on the revisions. They used the basic structure of SB 31 and defined more steps in the process. They tried to set up a three-tier arrangement. ARRC still has the ability to delineate a proposed transportation corridor. The

proposed corridor would be 500 feet wide unless topographic obstacles or private land ownership patterns prevent that width. After ARRC proposes the 500-foot corridor with additional areas for maintenance, transfer facilities or other needs, DNR would reserve the corridor on the state record subject to valid, existing rights. DNR would continue to manage the land because even though the corridor was identified, ARRC would not begin construction until funding is established. DNR would have to consult with ARRC whenever it receives new applications for leases in the area and make sure that any uses it authorizes accommodate the railroad. ARRC and DNR would cooperate on an ongoing basis to identify the best locations for railroad crossings so that public access to resources and activities is reserved and safety concerns are addressed. Once ARRC receives funding to begin construction on some portion of the route, DNR would transfer the management of authority of that portion to ARRC, subject to valid existing rights and subject to DNR's continuing authority to identify potential crossings.

MS. JOHNSON said when construction is completed, ARRC would provide DNR with an as-built survey of the centerline and corridor and 100-feet either side of centerline for the traditional 200 foot right-of-way. That right-of-way would be conveyed to ARRC. The intention is to preserve the full 500 feet as a transportation corridor that could be used for other purposes. ARRC's 200-foot right-of-way would be a mini-corridor within the larger corridor. ARRC would have title and full authority to do what it chooses within the 200 feet. DNR would continue to manage the remainder of the 500-foot corridor. The bill also contains some fallback provisions so that if, at some point in time, ARRC notifies DNR that it would never build in a segment and that it is not needed as a transportation corridor, DNR could administer the entire corridor under its statutes.

MS. JOHNSON said that subsection (f) on page 4 is a special provision to address the event that construction of a natural gas pipeline becomes more likely. If DNR receives an application for construction of that pipeline, DNR would give ARRC notice. If able at that time, ARRC would choose its centerline. She described subsection (f) as a "speak now or hold your peace" provision for ARRC. If the centerline were delineated, DNR would not allow the pipeline to be constructed within that 200-foot corridor. If ARRC did not delineate the centerline at that time, DNR would still have to consult with ARRC to minimize the effects on the rail route when it authorizes construction of the natural gas line.

MS. JOHNSON told members the following subparagraph (g) reserves DNR's right to identify and permit the appropriate locations for future crossings. DNR would work closely with ARRC and get ARRC's concurrence, which is limited to safety and operating matters. She said the remaining changes are similar to the original bill and merely "clean up loose ends." For example, ARRC is directed to work with the federal government once it identifies the route to set aside and withdraw any federal lands that the route might cross. It requires ARRC to do an environmental impact statement (EIS) when it gets to the point of acquiring federal lands. If the chosen route contains privately owned land, ARRC would have to consider whether to exercise the power of eminent domain, negotiate, or change the route.

**1:45 p.m.**

CHAIR COWDERY asked where a gas line entity would apply for the right-of-way.

MS. JOHNSON replied if the gas line entity were ready to apply before the railroad is in the construction process, it would go to DNR because the corridor would be reserved and managed by DNR. She said the wrinkle is that DNR would be obligated to consult with ARRC and give it the opportunity to pinpoint where the rail line might be located within the 500-foot corridor.

SENATOR WAGONER noted that version I contains provisions that address construction of the pipeline prior to construction of the railroad. However, one reason cited as the need for this legislation is to enable construction of a rail link for shipping the pipe for the pipeline. He asked if that is still the case and if DNR or ARRC would get the revenue from the pipeline in the corridor.

CHAIR COWDERY said he believes the revenue would go to the state. He cited the need for the railroad to transport the pipe and acknowledged that decision would have to be made at the time.

MS. JOHNSON added that ARRC's designation of the 500-foot right-of-way would not entitle the railroad to any revenue from anything. The management authority and revenues from any contracts within that corridor would remain with DNR until the rail line is ready to be constructed and funding has been identified. A provision on page 3 [subsection (d)] says that DNR will give ARRC management authority for segments of the corridor

that are ready for construction for the construction time period. That includes the authority to allow permits to other parties. ARRC would step into DNR's shoes for that portion of the 500-foot right-of-way where construction is taking place. When ARRC has completed that construction and gives DNR the survey, DNR would transfer the full title to ARRC. ARRC would then continue to receive revenue from any contracts it has within its 200-foot right-of-way.

CHAIR COWDERY commented that a 200-foot right-of-way translates to 100-feet on either side of centerline, which is not adequate to build a pipeline.

MR. BOB LOEFFLER, Director of the Division of Land, Mining, and Water, Department of Natural Resources (DNR), told members:

We expect that portions of the right-of-way may overlap and it would provide an opportunity for the railroad to be constructed to provide transport for the right-of-way so those portions that do overlap - they would get the revenue for.

MS. WENDY LINDSKOOG, Director of External Affairs, ARRC, added that the intent was to recognize that if the railroad does not have the funds for construction of a rail line and the gas pipeline is ready to move forward, the route of the rail line would be much less flexible than the route of the gas line. This language allows ARRC to at least survey the centerline, taking into consideration its engineering requirements, and to identify the 100-feet on either side. If the gas line had to interface with the railroad route, a mechanism is set up in the bill to approach that discussion in cooperation with DNR.

CHAIR COWDERY announced that Senator Dyson had joined the committee.

SENATOR LINCOLN asked Mr. Loeffler who would receive the revenue from an overlap.

MR. LOEFFLER replied:

... you prorate them such that the portion within the railroad's land would go to the railroad and the portion outside of the railroad land would go to DNR. This is a very common occurrence, which we have all over the state and it's pretty straightforward.

SENATOR LINCOLN referred to subsection (f) on page 4 and read:

If the corporation provides a survey alignment to the department, the department may not authorize construction of a natural gas pipeline within a 200-foot [wide] corridor center...unless the department does not find a feasible and prudent alternative.

She expressed concern that the language would lead the state into court at some time. She said legislators support a natural gas pipeline and the likely route is well known, but this legislation puts the cart before the horse.

CHAIR COWDERY said the corridor that would be more of a "paper corridor." It would not be surveyed until the railroad needs to be built and would most likely be identified from satellite images.

**1:55 p.m.**

MS. JOHNSON added that ARRC envisions the corridor to be loosely defined at first. If the pipeline were proposed for construction, ARRC would consult with DNR about trying to design the pipeline route so that it would not be a problem for the railroad. She noted it is possible that ARRC would have the money to survey a centerline sooner. She repeated that the railroad grade is more sensitive than the grade for a pipeline. If ARRC can survey a centerline, DNR would try to establish a buffer from the gas line of at least 100 feet.

SENATOR LINCOLN noted that Ms. Johnson alluded to the fact that a paper survey could be done fairly soon. She said if that were the case, the provisions of subsection (g) would apply. She asked Mr. Loeffler if the state already has some information on the pipeline corridor so that it is not put into a position of having to negotiate out of it.

MR. LOEFFLER said when he discussed this with Ms. Johnson; their goal was to make sure the railroad does not become an impediment to a gas line. He stated:

That was what we tried to accomplish and what this language does is say where we know where the gas line is going to be - if, in fact - if they have a right-of-way, then they are a valid existing right. But, if we're considering giving them a right-of-way, and it turns out that they're taking the best place for a railroad, then we want to think about it. And if, in

fact, they can move without much cost, then we should move. But if they can't move without a lot of costs, then they should stay. But that thought process is what we want to do. We just want to be able to think about it.

Now the legal - since we had to put that into language - 'and thinking about it' - it seems sort of more ambiguous language, we used the language, 'feasible and prudent alternative.' And that's pretty standard language for DNR but it means, really, taking everything into account including practicality, safety and economics. If it's better to move the gas line because it doesn't cost that much then we should move the gas line. But if it's not better to move the gas line, then we shouldn't. And that's really what that language means. It means just think about it, taking into account alternatives, including economics and social and things like that. So that's what we use the language for and when we say think about it that's the legal standard we put in there. But it is a very common legal standard for DNR and so I don't, especially with another state agency such as the railroad, the court doesn't strike me as a very - it's unlikely - I hope that to be an unlikely event.

**2:00 p.m.**

MS. JOHNSON said she may have created a misimpression and clarified the survey of the centerline is the on-the-ground, true survey and is not what she expects ARRC to identify soon. She said what ARRC might be able to provide soon is referred to in Section 1 of the bill and that is the delineation of a proposed 500-foot corridor. ARRC is hoping to rely on aerial photographs and work that has already been done. That will not be a survey; it will be a broad-brush stroke. She said the survey of the centerline is not likely to happen very soon.

SENATOR LINCOLN asked Mr. Loeffler whether DNR has already begun to look at a corridor for a gas line.

MR. LOEFFLER said it has and has some general alignments.

SENATOR LINCOLN asked if it falls within the proposed railroad route.

MR. LOEFFLER said the railroad has not proposed a route yet.

CHAIR COWDERY said it is his understanding that the word "survey" does not mean an on the ground survey. It refers to a plot plan like one would get to build a house. Once the house is built, an as-built survey would be done. He envisions a paper survey from satellite photos.

SENATOR LINCOLN noted that Ms. Johnson said the survey alignment was on the ground.

MS. JOHNSON explained the informal survey that would rely on satellite imagery and existing data is the one she envisions ARRC would use to set aside the first description of the full 500-foot corridor. A more specific designation of the centerline would be necessary to coordinate with a pipeline route. If the gas line were ready to begin construction before the railroad, ARRC would need to define a specific corridor for the pipeline to stay out of. That would probably require a lot of work on the ground, but not to the point that markers would be set every few feet.

CHAIR COWDERY said witness posts would be required when a full-blown survey begins. He pointed out that DNR's fiscal note for the original bill was very expensive. He did not accept that fiscal note because this legislation is "too far in the preliminary stage to put a high fiscal note in."

SENATOR DYSON referred to subsection (b) on page 2 and noted that the Northern Hemisphere is undergoing significant changes in subsurface temperatures due to climate change, particularly in permafrost and ice-rich ground. He asked for comments on whether it would do any damage to version I to add another paragraph that said, "minimize the subsurface stability problems by avoiding, where possible, ice and permafrost rich ground." He noted that most of that ground has already been surveyed and is recorded in the literature so it should not be difficult to get that information. He added that he does not believe item (5), environmental concerns, would take that into consideration. He believes environmental concerns would focus on wildlife, grasses and fish while what he is referring to is a foundation and stability problem.

SENATOR DYSON said his other concern is that he would be meeting with his counterparts in Whitehorse, Yukon Territory, and they are very interested in this project because it can commercialize a lot of their mineral wealth. He suggested adding "and Yukon Territory's" to item (8) so that it would read:

...that could contribute significantly to the state's and Yukon Territory's economic development; and

He said his goal is to create a complementary process so that Alaska considers what works for the Yukon Territory economically as the route is determined. He asked for comments.

CHAIR COWDERY pointed out that SB 31 addresses the Alaska railroad portion, which would terminate at the border.

SENATOR DYSON said if it terminates at the border but there's a huge field of delicate permafrost right across the border, it is a dumb idea to not have looked across the border at the stability of the rail bed. He said it would be foolish to not take into account the railroad route over the border when designing Alaska's portion. If the route could be moved north or south to greatly facilitate Yukon's mineral development with very little difference in cost, the state would be foolish not to do so.

CHAIR COWDERY said everyone is in agreement that the object is to connect this railroad to Fort Nelson, British Columbia. He suggested changing "Yukon Territory" to "Canada."

SENATOR DYSON was agreeable.

SENATOR THERRIAULT referred to Section 42.40.465 on page 6, which addressed ARRC's ability to acquire an interest in land in Canada, and thought Senator Dyson's request about citing benefits to Canada should be placed in that section.

MS. JOHNSON said she agrees with Senator Therriault that it is more logical to add that consideration to the last paragraph that deals with Canada. She said Senator Dyson's request is a reasonable consideration to take into account. She said she did not catch all of Senator Dyson's concern about foundation and stability problems, but believes those are good thoughts that apply both within and outside of Alaska for rail line consideration. She said that could easily be added as a factor in subsection (b) on page 2. She pointed out it fleshes out environmental concerns, but also could be considered as a way to minimize construction costs.

CHAIR COWDERY asked Senator Dyson to work with his staff to prepare suggested language to propose as an amendment.

SENATOR OLSON expressed concern about including the Yukon Territory in this legislation because he understands there is opposition to the railroad in Canada and including that language could bring opposition to Alaska's portion of the rail line.

SENATOR DYSON said he would be visiting with Yukon Territory officials this weekend on that very issue. He said there are some political processes going on there. Some of the landowners along the way are not necessarily against the railroad, but are using it as a bargaining chip to accomplish other motives. He heard strong support for the rail line from the government officials and from the groups with mineral interests.

CHAIR COWDERY noted he wrote a letter to the editor that was published in the Whitehorse newspaper and he received very positive remarks. He said he has read that support is almost unanimous in the Yukon Territory. He asked Senator Dyson to report back to the committee after his meeting.

SENATOR WAGONER asked if there is any reason other than mineral development and possibly transporting the pipe to build the pipeline for the extension of the railroad. He noted that he contacted Linden Transport, which runs a barge from the Lower 48 to Alaska every week. They can't fill the barge and claim there is no need for rail freight. He expressed concern that the Legislature should be addressing the long-term benefits of extending the railroad and who would pay the cost. He said delineating a corridor is one thing but he wants to know whether the state would be saddled with the cost of building the rail line.

CHAIR COWDERY said he also spoke with Linden Transport. He said that many tourists would use the railroad, but that would be a small factor. He asked Mr. Schmitz to address the question.

MR. RICHARD SCHMITZ, staff to Senator Cowdery, said Mead Treadwell from the Northern Forum informed him that the largest freighters and oil tankers couldn't go through the Panama Canal so the companies that own the canal are trying to raise billions of dollars to rebuild it. He pointed out that because of ports like Seward, Anchorage, and Whittier that are much closer to Asia, a rail link from Alaska to Halifax could carry freight faster than if that freight was shipped through the Panama Canal. He noted that during its first ten years 90 percent of the first trans-continental railroad freight was made up of goods being shipped from Asia to Europe. In addition, cruise

ship companies are looking for a circular tour and trains are very popular.

CHAIR COWDERY said he gave a speech while in Russia a few years ago and the Russians are concerned that China owns all of the land on either side of the Panama Canal and that tariffs might be raised to the point of reducing competitiveness with the East Coast.

SENATOR THERRIAULT asked Chair Cowdery, since he intended to move the bill out of committee today, whether the committee could deal with the suggested amendments in a conceptual manner. He pointed out the bill has referrals to two more committees.

CHAIR COWDERY was agreeable.

SENATOR THERRIAULT said, regarding Senator Dyson's concern about consideration of soil stability, a provision could be added to item (5) or (7) on page 2. He suggested adding the following language to item (7), "minimization of probable construction costs including, but not limited to, steps to avoid areas of possible instability due to warming soil conditions." He asked Senator Dyson if that language would meet his concern.

SENATOR DYSON said he would specify, "warming frozen soil conditions."

**TAPE 03-11, SIDE B**

SENATOR THERRIAULT said he would move that as conceptual amendment #1 and restated it as:

On page 2, line 15, item (7) would read"

(7) minimization of probable construction costs including, but not limited to, steps to avoid areas of possible instability due to warming frozen soil conditions.

SENATOR THERRIAULT asked for unanimous consent.

CHAIR COWDERY announced that without objection, the motion carried.

SENATOR THERRIAULT said the second amendment would deal with the issue of showing the Canadians that Alaska is not just interested in extending the rail line to its border. He proposed

[copying] subsection (b), lines 4 through 9, to Sec. 42.40.465 so that it shows that Alaska is concerned about the same things in Canada. He suggested making the first part of Sec. 42.40.465 subsection (a).

SENATOR DYSON said that item (8), access to identify natural resources, is of huge interest to Canadians.

SENATOR THERRIAULT moved his second suggestion as a conceptual amendment and asked for unanimous consent.

SENATOR LINCOLN objected to ask a question. She noted the purpose of Sec. 42.40.465 is to authorize ARRC to continue to investigate an extension through Canada. She asked if the Legislature has to authorize the ARRC board to do that or whether the board could do that on its own.

CHAIR COWDERY said he believes the Legislature needs to grant authorization.

SENATOR LINCOLN asked if that is because the extension would go through Canada.

**2:27 p.m.**

SENATOR THERRIAULT pointed out that the second sentence says the corporation may acquire land so if ARRC actually moves to do that, this amendment would give ARRC the same instructions for consideration on that land.

SENATOR LINCOLN said she understands the suggested amendment but is questioning the entire section because she did not realize the Legislature has to give ARRC permission to acquire land. She pointed out that although the railroad is Alaska-owned the board is independent.

MS. JOHNSON said she was not sure whether ARRC needs legislative approval to acquire land outside of the United States and frankly, when rewriting the bill she left that section as it was. She said ARRC has broad powers as a corporation in its corporation act but she does not believe it addresses extra-territorial rights. She said she believes it does not hurt to include that section if the Legislature wants ARRC to have that authority. She said she has one question regarding Senator Therriault's proposed amendment and asked if the intention is to move all of subsection (b) on page 2 to page 6 or just to repeat subsection (b) on page 6.

SENATOR THERRIAULT clarified that his intention is to repeat that subsection.

SENATOR LINCOLN noted that SB 31 has a further referral to the Senate Resources Committee where her question could be addressed so she removed her objection.

SENATOR DYSON said he appreciated Senator Therriault's help on the amendments, but because Sec. 42.40.465 on page 6 contains the permissive word "may" instead of "shall" he still has concern. He believes that ARRC would take into account a route that would be most beneficial to both the Yukon Territory and British Columbia, but he would be more comfortable if the word "may" was changed to "shall." He then asked that the committee add the words "and Canada's" to item (8) on page 2 before the words "economic development" so that even if ARRC does not investigate an extension, it is still required to consider what might work best for our Canadian neighbors.

SENATOR THERRIAULT said the first amendment was a conceptual amendment and that subsection (b) on page 2 applies to Alaska. Subsection (b) on page 6 is directed at Canada. He expects the legal drafter to change Alaska to Canada.

SENATOR DYSON disagreed and said that because subsection (b) on page 6 is permissive, ARRC may consider it. He still wants ARRC, even if it only extends to the border, to consider a route that is beneficial to our Canadian neighbors if and when it gets extended. He said he does not want to see a corridor that dead-ends in Canada and does not consider what might happen if it extends beyond.

**2:33 p.m.**

CHAIR COWDERY asked, "What happens in this if we go to the Canadian border and stop and then the Canadian railroad decides to come and join ours? Are they living by our rules or? You know, we hope that would happen but...."

CHAIR COWDERY said what if ARRC gave no consideration to what is across the border and the railroads end up being 100 miles apart at the border. He wants ARRC and the Canadian railroad to have that conversation before.

SENATOR OLSON asked Ms. Johnson how much of the corridor ARRC anticipates having to declare eminent domain on to acquire land.

MS. JOHNSON said she has no idea at this point. ARRC does not have enough data about the potential route. She suggested that Mr. Loeffler might have more information on the land holdings in that area of the state.

[MR. LOEFFLER was no longer on-line.]

SENATOR OLSON said there is always a fair amount of controversy associated with eminent domain. He said he shares Senator Wagoner's concern about encumbering future generations, especially in light of the fact that this project will require a vast amount of real estate.

MS. LINDSKOOG told members it is important to note that a feasibility study has not been done for this project. She noted that when Governor Murkowski was a member of the U.S. Senate he had legislation enacted that authorized funding for a bi-lateral commission. The appointments for that commission have not yet been filled. That commission would look at a lot of the questions that members are asking, such as the project's economic viability and the land issues.

MS. JOHNSON added that ARRC has never exercised the right of eminent domain. Although it has the statutory power to do so, ARRC needs the Governor's approval first. She then pointed out that one of the changes made in Version I was the addition of language to line 10 on page 1, which says the corridor shall be at least 500-foot wide except where physical obstacles or private land ownership patterns make a narrower corridor appropriate. ARRC may well find a 200 or 300-foot corridor to be adequate where development has already occurred and land would have to be condemned.

SENATOR OLSON said the fact that ARRC has never exercised its power of eminent domain allays some of his fears. He noted eminent domain could be an abused authority.

SENATOR THERRIAULT referred to the language Ms. Johnson cited on page 1 and noted the corporation has discretion to use those exceptions. He asked if that discretion language is necessary.

MS. JOHNSON said she believes that ARRC needs to have a bit of flexibility. It is foreseeable that there would be places that ARRC would have to negotiate a sale. If federal funding were involved, there would be controls over those negotiations that are additional protections for the landowner she added. She said

that ARRC may have to take away some land and if it does not have the discretion to judge where that is, ARRC would have to come back to Juneau every time such a situation comes up.

SENATOR OLSON agreed that ARRC would need to have some discretion so he favors including that language.

SENATOR LINCOLN noted that Senator Torgerson was on record as being very concerned about giving away the state's mineral rights. Because she shares his concern and believes that public access should be protected as well, she advised she would address those issues in the Senate Resources Committee.

SENATOR THERRIAULT moved CSSB 31(TRA) from committee with individual recommendations and zero fiscal note.

SENATOR LINCOLN objected to ask whether page 6 has been amended.

CHAIR COWDERY said it was.

SENATOR THERRIAULT suggested that he and Senator Dyson get a look at the committee substitute after it is drafted.

CHAIR COWDERY agreed.

SENATOR LINCOLN asked if the committee changed Senator Dyson's request to change page 2.

SENATOR THERRIAULT noted that Senator Dyson is a member of the Senate Resources Committee.

SENATOR LINCOLN removed her objection.

CHAIR COWDERY announced CSSB 31` (TRA) and attached zero fiscal note moved from committee with individual recommendations.

There being no further business to come before the committee, he adjourned the meeting at 2:43 p.m.