

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

April 29, 2004

2:55 p.m.

**TAPE(S) 04-21**

**MEMBERS PRESENT**

Senator John Cowdery, Co-Chair  
Senator Thomas Wagoner, Co-Chair  
Senator Gene Therriault  
Senator Georgianna Lincoln

**MEMBERS ABSENT**

Senator Donny Olson

**COMMITTEE CALENDAR**

SENATE BILL NO. 395

"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 CSSB 395 (TRA) OUT OF COMMITTEE

**PREVIOUS COMMITTEE ACTION**

BILL: SB 395

SHORT TITLE: MUNICIPAL LAND USE REGULATION

SPONSOR(S): RULES

04/27/04	(S)	READ THE FIRST TIME - REFERRALS
04/27/04	(S)	TRA
04/29/04	(S)	TRA AT 2:45 PM BUTROVICH 205

**WITNESS REGISTER**

MR. PAT GAMBLE,  
President and CEO  
Alaska Railroad Corporation  
PO Box 107500  
Anchorage, AK 99510-7500

**POSITION STATEMENT:** Provided information on SB 395.

**ACTION NARRATIVE**

**TAPE 04-21, SIDE A**

**CO-CHAIR JOHN COWDERY** called the Senate Transportation Standing Committee meeting to order at 2:55 p.m. Present at the call to order were Senators Therriault, Wagoner, Lincoln, and Co-Chair Cowdery.

**^#SB395 SB 395-MUNICIPAL LAND USE REGULATION**

The committee took up SB 395.

CO-CHAIR COWDERY announced that a committee substitute (CS), labeled version D, had been prepared.

CO-CHAIR WAGONER moved to adopt the CS for discussion purposes.

MR. PAT GAMBLE, President and CEO of the Alaska Railroad Corporation (ARRC), summarized that SB 395 redresses some confusing language recently cited in an Alaska Supreme Court decision regarding the intent of prior state legislation to exempt the railroad from planning and zoning requirements.

He explained that under federal law, railroads are exempt from planning and zoning for interstate commerce purposes. When writing the state railroad transfer act 18 years ago, the legislature looked at the federal exemption and attempted to mirror it in the legislation. ARRC operated under that exemption for 18 years until it was recently challenged in court. The supreme court recently overturned a lower court ruling that favored the railroad's exemption and, in a hotly contested 3:2 split decision, said that the language of the legislature was sufficiently unclear as to be convincing as to its intent. The tone of that decision suggested that if the legislature intended to exempt the railroad, it should clear the language up. That's what SB 395 attempts to do. In its decision, the court opened up a very complex situation.

MR. GAMBLE stated that as of the March 12 court decision, the railroad, as well as any other state entity, is no longer exempt from borough or municipal planning and zoning requirements. The railroad's 500 miles spans 13 municipalities and boroughs. The court said a test should be applied regarding planning and zoning issues whenever the railroad confronts a project that requires planning and zoning; that being to apply for a permit. If the permit is conditional, and the conditions are not favorable to the railroad, the railroad can litigate. The court

directed that differences be worked out in litigation on a case-by-case basis for every individual project.

The court further said that using a permit test and litigation [process] would presume to open up to the public, an individual, a public entity, or a group the opportunity to join in a public challenge to the permit. That could work in two ways. Number one, the group could join with a municipality or borough and challenge the railroad. Number two, if the municipality and the borough agree on a project and begin to go forward, an individual or public entity could challenge that agreement and permit and litigate.

MR. GAMBLE said in this new process, ARRC has not lost its federal exemption but ARRC's legal department believes the federal exemption is highly likely to be challenged repeatedly. To his knowledge, the federal exemption has never been challenged because both the state and federal exemption have been so airtight. The feeling now is that could happen. If ARRC won a few times, the federal exemption, as it applies directly to railroad operations, would probably remain intact. However, more litigation involving the periphery of railroad operations is likely, for example, real estate holdings, lease holdings, and real estate development.

3:00 p.m.

MR. GAMBLE said he was here to talk about the effect of the exemption on the railroad but noted that one must also consider the effect on interstate and intrastate commerce as the federal law was put into place for the same purpose. The exemption affects anything put on railroad rights-of-way, such as pipelines, fiber optic cable, gas lines, or anything involving the railroad as an agent for economic development in Alaska. This also includes linking to the Canadian railroad to move goods back and forth. The business of interstate and intrastate commerce via rail operates on some presumptions, for example the opportunity to condemn property, supported by plenty of federal and state precedents. The recent court decision opens up that issue here.

MR. GAMBLE illustrated the exemption problem with the example of a building in Ship Creek in Anchorage on fee-simple railroad property. It is a non-municipal building that has to meet all codes. ARRC has broken ground on the building but the project is at a dead stop. Normally, a city permit is routinely issued because of the railroad exemptions - the permit is a paperwork

transfer. However, the city stopped the process because it was not exactly sure how to handle the permit because of the court decision and is looking for guidance. Mr. Gamble noted that no one is "grandfathered in" under the existing law. So now, the permitting process for the Ship Creek building, from landscaping to other attributes, is being checked out. If anybody objects to the permit and wants to tie the project up, the court has laid out the process ARRC has to go through.

In the Eklutna quarry issue [Native village of Eklutna vs. Alaska Railroad], which started this whole case, a bank attempted to get a permit in 1990 to mine granite on property that neighbored ARRC property on which granite has been mined since the '40s. The bank applied for a conditional use permit from the city but, after five years, the bank gave up because the permit was not issued. Nothing has been done with that property since; it's in limbo.

MR. GAMBLE said he wasn't arguing on anyone's behalf in that situation, but described it as typical of what can happen when a permit application gets tied up in legal matters. ARRC would face that possibility on every project across the entire 500-mile length of rail. Those kinds of delays are unacceptable when the state is trying to develop itself economically.

MR. GAMBLE pointed out that in the last few weeks the railroad expansion project has gained new vitality. He recently talked to individual legislators, military officials, and the National Guard, which will run the operation at the missile site, about the possibility of extending the rail line from Fairbanks to Greeley. On Tuesday he spoke to the strategic defense missile commander in Washington, D.C. and told him that ARRC can bond the entire extension project using its tax-free bonding capability, thereby avoiding the need for government appropriations. The debt service would be paid from the annual operating and maintenance (O&M) payments from Ft. Wainwright for access to the range area, and from the missile field folks in payment for commuter service provided by ARRC. The numbers look very attractive compared to what the military was going to spend as an alternative, both in appropriations and in O&M. The military housing and support needs in Greeley would cost many millions of dollars - the same military personnel could live in Fairbanks, contribute to the economy and have a lifestyle of choices while commuting to their jobs at Ft. Greeley.

MR. GAMBLE repeated if the legislature does not redress the language in the Alaska Supreme Court decision, any project along

the railway line could be challenged by anyone, which would hold the extension up. So, even if all agree that the railroad extension is good for Alaska, ARRC won't have the exemption without passage of SB 395. ARRC can't guarantee that it can move forward and acquire federal funds, construction materials, and hire people for a four or five year period to complete the project because it could be stopped at any time. ARRC would be unable to go forward with this or any other projects that might go through the same railroad right-of-way.

MR. GAMBLE said while he is arguing on behalf of ARRC's specific interests, it's very difficult to narrowly define its interests without talking about the greater development interests of the state and some of the projects the railroad has been asked to contribute to, such as the gas pipeline and other projects like the rail line extension to Canada.

CO-CHAIR COWDERY asked about permitting for the [Ted Stevens] International Airport.

MR. GAMBLE said the airport falls within the same jurisdiction under the court ruling. He said he would rather defer to the Department of Transportation and Public Facilities (DOTPF) to talk about the details.

SENATOR THERRIAULT asked Mr. Gamble about his contact with municipalities. He referred to Section 1, and asked if the Legislature would basically be enshrining the status quo regarding the way the railroad has been operating and interacting with municipalities since it was built and transferred to the state by saying the Legislature intended to mirror the federal exemptions.

MR. GAMBLE said that is exactly right.

SENATOR THERRIAULT asked what contacts he has had with mayors along the rail line extension route.

MR. GAMBLE said this all happened very recently. When the Alaska Supreme Court decision was issued on March 12<sup>th</sup>, the decision was dissected and the ARRC board spent time determining its immediate impacts. ARRC thought it was too late in the game to redress the matter this legislative session yet the railroad has a number of very important issues coming up this summer. However, when the possibility that legislation could be addressed this session surfaced, ARRC went into high gear to try to see what could be done. About two weeks ago he contacted the

Alaska Municipal League in an effort to convey the issue and ARRC's position to the communities and boroughs. He did not contact the mayors of the municipalities and boroughs personally and acknowledged that personal contact would have been better. From what he's heard today in the building, he believes many misconceptions about what ARRC is attempting to do are floating around, which ARRC needs to overcome. He said he plans to talk to several mayors, and has already made efforts to contact the mayors of Fairbanks, Wasilla, and North Pole.

SENATOR THERRIAULT referred to Section 1, the new language that deals with legislative authorization for the railroad to bond the extension, and asked Mr. Gamble to review the provisions that make it clear that the railroad would not be putting assets at risk, and that the bonds would be backed by long-term contracts with the federal government for the repayment of debt.

MR. GAMBLE responded that earlier talk about the line extension centered around getting some sort of annual appropriations on a large scale. As a result of educational sessions with bonding experts, the railroad learned in recent weeks of the possibility of using bonding authority for this particular railroad extension. He ran preliminary numbers to determine the amount necessary to do the entire extension and the advantage to the military and the railroad. The numbers were prepared by an underwriting firm and are preliminary and hypothetical and make assumptions that would need to be worked out.

MR. GAMBLE said the numbers assume that ARRC would bond for the entire project, obviating the need to get large annual [congressional] appropriations. Additionally, the U.S. Army would not have to get appropriations to build the bridge over the Tanana River and support facilities in Greeley, or renovate the housing that's been sitting empty since approximately '93. The ARRC proposal would be to bond for the entire project at a cost of approximately \$450 - \$500 million. The debt service would be paid by a "you call/we haul" contract to provide freight and passenger service to the Department of the Army and the missile command along the 80-mile extension to and from Fairbanks. He added, "...you call, we haul down to the training ranges, for the army to move their new striker brigade out into approximately 1 million acres of training grounds which would now become available to them as a result of the railroad extension that they currently do not have access to year round, only when the river is frozen deep enough to cross with other vehicles."

3:20 p.m.

MR. GAMBLE noted that 60,000 square miles of airspace sits atop the training ground, so that space would become the single largest and finest joint military training area in the U.S., offering a high possibility that Lower 48 units will train there as it is very difficult to do large-scale training in the Lower 48. This arrangement is very attractive to the Army; it has expressed support, as has Senator Ted Stevens, through his appropriations staff. His first indication of interest in this proposal occurred while talking with the missile commander in Washington who asked if the [military] went with this proposal, could [Mr. Gamble] guarantee that the bonds could be sold. He said he would have to get approval from the ARRC board and the legislature. They asked what the likelihood of that happening was. He said he thought this was a very positive project and that he would find out, which is one reason he's here.

MR. GAMBLE told members he walked into a "buzz storm" today because these two issues are separate but very much related. He said he questioned his ability to guarantee that if the legislature approves the bonding, as proposed here, with a trigger that says that if the army can't make the debt service, the deal is off, the project could move forward. The problem is, even if it is approved [by the Legislature], agreed upon and moves forward, the project could get stopped somewhere in the middle because of the permit exemption change. That would be a disaster, not only for the state, but it could jeopardize the whole project for DOD.

SENATOR THERRIALT asked Mr. Gamble to discuss the language beginning on page 2, line 31, about issuing bonds and what kind of commitment the state would get from the federal government. His concern springs from a conversation with Ms. Lindskoog about wanting to assure the general public that the railroad's assets are not going to be on the line for the repayment of the bonds. The [Legislature] cannot go forward unless the contracts have been signed.

MR. GAMBLE said the underwriters would buy the bonds, only if they are assured, and turn around and sell them. The government has a natural AAA rating, which would result in a very favorable interest rate. In combination with ARRC's tax-free capability, that package becomes a very attractive bond issuance. The preliminary word he has gotten from those who do large bond deals is that this bond sale will go very favorably. He noted that Senator Therriault made an excellent point: unless ARRC

gets a guarantee that the debt service is committed for the life of the bond issuance, there will be no deal. The difference is that this is not a guarantee based on an annual appropriation. The funds would come out of O&M to pay the freight to a military base every single year, similar to paying your light bill. He brought attention to the housing project at Elmendorf as another example of a long-term state/federal agreement that is a 50-year commitment for a privatization partnership.

SENATOR THERRIAULT commented that the military would pay for transport of the troops, equipment, and so forth. He asked if the railroad would be dependent on the military actually transporting enough freight to make the payment, or would the military basically commit to a minimum payment of ARRC's annual obligation for the bond.

MR. GAMBLE said the latter. It would make a level payment on an annual basis and commit for the life of the bond issuance. That's a negotiable item, depending on whether ARRC wants a 15, 20 or 30-year bond.

CO-CHAIR COWDERY said authorizing ARRC to go forward doesn't guarantee anything other than the legislature's authorization.

MR. GAMBLE said it authorizes him to go forward and give the [military] assurance that after all agreements have been made and they've committed in their budget cycle, the legislature won't step up, change its mind, and say no.

CO-CHAIR COWDERY said that was his point.

MR. GAMBLE said this pre-authorizes with a trigger as discussed, which says that if [the debt] is not payable, then the deal doesn't happen.

SENATOR WAGONER asked if \$500 million is the total cost.

MR. GAMBLE said it is all-inclusive.

SENATOR WAGONER asked if the railroad's right-of-way is 200-feet along the entire length except in locations where a storage yard or other support facilities are needed.

MR. GAMBLE said it has the standard railroad right-of-way.

SENATOR WAGONER asked if any portion of the rail bed has been put down yet.

MR. GAMBLE indicated that it hasn't.

SENATOR WAGONER said in Canada the railroad extended some portion of [its bed].

MR. GAMBLE said the [Canadian railroad] built a bed but no rails are on it.

SENATOR THERRIAULT asked Mr. Gamble to walk the committee through the right-of-way acquisition process.

MR. GAMBLE responded that on the plus side, most of the right-of-way is on government land. On the minus side, there is some private right-of-way land. The closer you get to Fairbanks, the more that becomes an issue. ARRC is trying to create a 79 mph rail line, so avoiding curves and switchbacks, which the rail line was traditionally made of, would be desirable. ARRC wants to build the line for high speed and as straight as possible, and wants to get toward the river, away from agricultural, private, or potential land use issues. It would cross the river at the bridge and extend down the far side of the river to Delta, then come back across the river and go into Ft. Greeley. He said he has not looked at every foot of this route but the vast majority of the land is government property.

CO-CHAIR COWDERY asked if he was referring to state or federal government property.

MR. GAMBLE said both, and he could get more information on that.

SENATOR THERRIAULT said he represents part of the district just south of Eielson Air Force base, and the community of Salcha where the river comes in close to the hills and everything is "squeezed together." He said there would be some concern about how the rights-of-way are secured through that area. That area has had problems with river erosion and flooding, and he can see the potential for the rail bed to act as a bit of a dike to help with some of the flooding problems. He expects to hear concerns from the citizens there.

MR. GAMBLE said the next level of engineering design, which will come with an appropriation from Senator Ted Stevens in 2005, will include the preliminary design and engineering. ARRC is interested in looking at putting the rail bed on a dike as part of the flood control project. This would also get it off of private land and kill two birds with one stone.

SENATOR LINCOLN referred to the language on page 2, line 7, that says the corporation may also acquire land along the corridor that can be developed for terminal station maintenance facilities, switchyards, and any other purposes associated with the railroad corridor. She asked about acquiring land beyond the 200-foot corridor, how much land is being considered, and what the other purposes would be.

MR. GAMBLE said the best example is the opportunity to buy land to use for gravel pits, the materials that would form the basis of the rail bed itself, mine the gravel on those sites, and reduce the transportation cost to the line itself.

SENATOR LINCOLN asked, regarding the EIS being more stringent when crossing waterways, if there is any time/date when the EIS might be completed and how this might affect what's being attempted.

MR. GAMBLE replied that for a project like this it's safe to say it might be a yearlong process that would involve public input. It's not an unfamiliar piece of land in terms of previous studies, which the environmental impact statement (EIS) could take advantage of to move the process along. He didn't know if an (environmental assessment) EA or an EIS will be required, but guessed an EIS will.

SENATOR LINCOLN said in talking about the various municipalities that he has not yet talked with, he didn't mention Delta. She asked if Delta is an important entity on his list.

3:34 p.m.

MR. GAMBLE confirmed Delta is at the other end of this extension and is a major stakeholder. He said he needed to talk to Delta officials because, if they hear about it inaccurately, they could get the idea that Delta will lose something. In this proposal Delta becomes just as big a winner by bringing rail into the town, so a number of things will improve automatically. A missile field is a very fragile thing and anybody in the business, particularly in the strategic defense business, knows that you're one treaty away, one signature on a piece of paper away from the whole thing ending. That's the nature of the business. You deal with another country and you say as a part of the negotiations, "Okay, we'll take our field down and if you promise not to launch your missiles, we'll take our missile.

It's all treaty, diplomatic, and politics, and so on." The bubble could pop and Delta will be left exactly where it was.

If ARRC extends the rail line, Delta will have an opportunity for a lot of business. The railroad will bring in fiber optic communications, which Delta doesn't have. The military will bring in technical support people and put headquarters in Delta, with big dish antennas as it does at other ranges in the Lower 48. Tourism will come - hunters, fishermen, and miners. Typical of any railroad town is that it will grow. That is the promise to Delta.

SENATOR LINCOLN referred to the 79-mile area, and asked if any Native corporations, village and/or regional, will be involved in any segment of that 79-miles.

MR. GAMBLE said he couldn't talk to specifics, but the answer is yes. He said this is still a concept that is being put together, and part of the homework of taking it from the concept to the proposal level would be to look at exactly that.

SENATOR LINCOLN asked if it was necessary to put the Greeley-specific segment in the bill rather than use broad language. She asked if that language was needed in [Washington] D.C.

SENATOR LINCOLN clarified that she was referring to the language on page 2, lines 2 through 12. She asked if that language must be included to secure the bond.

MR. GAMBLE replied that "Ft. Greeley" is appropriate because it is at the end of the extension. Delta is a little bit short of the end. For physical purposes, a description to Ft. Greeley is appropriate. Second, by including it, this document could be taken forward to the missile defense command people as proof that the Legislature's specific intent is to improve the bond capacity for the purpose of extending the rail line to Ft. Greeley.

SENATOR THERRIAULT asked if it is envisioned that the track would extend from the southern portion of the track on Eielson Air Force Base or start in the Moose Creek area.

MR. GAMBLE replied at Moose Creek. He said that Eielson would remain as a spur for purposes of coal to the power plant. The defined piece would be Moose Creek to Greeley.

SENATOR THERRIAULT said he was asking because of the agriculture area west of Eielson, where a possible rail right-of-way was platted through many of those farms. He asked if that right-of-way was already secured by the railroad.

MR. GAMBLE said to his knowledge there are no secured properties other than the right-of-way upon which the spur goes into the power plant.

SENATOR THERRIAULT anticipated some sensitivity [of residents] because the line might bisect some fields; he cautioned the railroad would need to proceed with some caution.

MR. GAMBLE said ARRC engages in a very involved public dialogue when a project is done. Typically, even at the concept stage, the project gets local very fast. After approval, the next step would be community outreach, taking input, and maneuvering if needed. That process would be important in this case. He acknowledged that he is presenting a concept because it's late in the game and two budget cycles are out-of-synch, so he is asking for pre-approval. He repeated the public involvement process is lengthy, involved, and very detailed.

SENATOR THERRIAULT asked if ARRC has had any discussions with Tech-Pogo regarding the benefits the rail line would extend to the mine.

MR. GAMBLE said no, and he looks forward to it. That's the kind of thing that rail line extensions do, regarding the opening up of opportunities.

SENATOR WAGONER said early on Mr. Gamble mentioned that instead of the military having to build quarters for housing, military personnel could live in Fairbanks. He asked if the train commute would be about an hour from Fairbanks to Ft. Greeley.

MR. GAMBLE replied that it would be about 75 to 90 minutes.

SENATOR WAGONER asked if the military would be comfortable having its personnel that far removed from Ft. Greeley.

MR. GAMBLE replied that the project was born originally because ARRC had always thought the idea was to use freight cars to support the missile field to move the missiles and so forth. But ARRC was really asking the wrong question. The question was, "Where is everybody going to live?" It turns out there is quite a difference of opinion right now amongst different

organizations within the Department of Defense; however, the Alaska National Guard is in agreement on that question. Craig Campbell was with him at the meeting on Tuesday and is adamant about wanting Alaska guardsmen to live in Fairbanks and North Pole, where they would have choices about health care, schools, jobs for spouses, and so forth. He said if this question were turned around, and it was assumed that military personnel would live on base in Delta or Ft. Greeley, the scenario is that of the young housewife with a few kids who has to drive a two-lane road at 50 below zero to take the kids to the dentist. General Campbell doesn't want to subject guardsmen to that. He doesn't think he could recruit and retain people in that area, even with the amount of money the [U.S.] Army is willing to put into the fort itself.

SENATOR WAGONER asked if the National Guard would be in charge of missile defense.

MR. GAMBLE said it would. Once the project is tested and is declared operational, it will be turned over to the National Guard. The first battalion commander to take command at Ft. Greeley will be a National Guard commander.

SENATOR THERRIAULT said he understood the National Guard's concern. He said there is a long-term benefit to Delta, and he doesn't want this to be perceived as the pipeline that would be taking everybody and their paychecks north. He expressed skepticism that a high-speed commuter rail would transport everybody north in the evening.

MR. GAMBLE said the military is more likely to have shift work where personnel would spend three days on and three days off. However, the rail line is capable of running several cycles a day. He said ARRC wants to open up commuter service to anybody. The military would probably have a smart car to swipe because of the contract nature of the agreement with them. Anybody else who wants to go from Fairbanks to Delta would have the same rights and privileges to ride the railroad. He said it is important to convince Delta that steady and long-term economic growth is substantive and would endure as opposed to relying on a short-term bubble. That's the nature of the business, and even their commander admitted to that.

SENATOR WAGONER said he has very good friends who work in military situations, and the jobs aren't 8 - 5 for the most part when they're in silos, switching centers or computer message centers.

**TAPE 04-21, SIDE B**

SENATOR THERRIAULT said with the addition of the bonding component, he would have to add a Senate Finance Committee referral to the bill. That referral will give ARRC more time to work with some of the communities and assess their concerns, and to see what can be done to allay any fears that they have before the bill comes up on the floor.

SENATOR THERRIAULT moved to report CSSB 395(TRA) from committee with individual recommendations, and said it is his intent to add a Senate Finance Committee referral to the bill.

MR. GAMBLE said he had one more point to express. He said that normally, for a project like this, ARRC would begin with the communities first. A community outreach process would be in the preliminary stages. However, because of the nature of the Army's own budget process, the short time remaining, and the idea that an entire year could be saved on this project if it found favor in Juneau, ARRC put the cart before the horse. It clearly has upset some people, rightfully so, and he apologized for that. It is a concept, and ARRC thinks it has value. As a result of being out-of-synch with the normal process, ARRC has subverted its own process and is paying a price for that with misperceptions. He said he appreciated the committee's consideration given the circumstances.

CO-CHAIR COWDERY announced, "Hearing no objection, the bill passes to the next committee of referral." There being no further business to come before the committee, he adjourned the meeting at 3:50 p.m.

#