

HB

560



**House Transportation Committee**  
State Capitol, Room 17  
465-4858



**Rep Jim Holm, Chair**

*Members:*

*Rep Mary Kapsner, Vic Kohring, Rep Albert Kookesh, Rep Bev Masek, Rep Dan Ogg, Rep Nick Stepovich*

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Sponsor Statement

HB 560

House Bill 560 contains two provisions relating to the Alaska Railroad Corporation and its role as a State transportation and economic development agent.

HB 560 authorizes the Railroad to issue up to \$500 million in tax-free revenue bonds to pay for extending a rail line to Delta Junction and Ft. Greely. The proposal would have the bonds secured through federal funds from the Department of Defense. Depending upon negotiations with the Department, the Railroad could issue the bonds as early as 2005.

The new main line would extend from Moose Creek near the City of North Pole to Fort Greely, approximately 80 miles. A line extension could efficiently provide transportation services for military training support, freight, and commuter service between Fairbanks and the Ft. Greely missile site.

In addition, HB 560 addresses a recent Alaska Supreme Court decision that has called into question the Railroad's exemption from local planning and zoning ordinances provided in AS 42.40. The decision jeopardizes a mode of operation that has been in place since the Railroad was transferred to the State 18 years ago.

So that legislative intent can be clarified in law, this bill creates a task force to provide recommendations to the legislature in 2005 on whether and to what extent municipal planning, platting and land use regulations should apply to interests in land owned by the Alaska Railroad. The task force will be comprised of one senator, one house member, a member from each railbelt municipality, and a railroad representative. Members will be appointed by the president of the senate and speaker of the house of representatives. The task force will be required to submit a written report of its findings and recommendations on or before the first day of the First Regular Session of the Twenty-Fourth Alaska State Legislature.

The Alaska Railroad Corporation is both an interstate common carrier and an instrumentality of the State of Alaska. Its statutory mission is to provide transportation services to residents, businesses, visitors and military installations in the State, and foster and promote long term economic growth and development, particularly of the State's land and natural resources. The Railroad's ability to operate safely, efficiently and effectively is due in great part to the singular nature of its corridor ROW. The Railroad's current track alignment passes through 13 recognized municipal (city and borough) governments between Seward and North Pole. It is important to protect the Railroad's ability to use its

lands for operational purposes in service to the broader state interest without facing different, and potentially conflicting, planning and zoning scenarios among so many municipalities.

Without this protection, local communities could separately dictate planning and zoning restrictions that would negatively impact the Railroad's ability to offer safe, efficient, economical and reliable service to its freight and passenger customers. For example, communities could prohibit train operations or noise levels during certain hours (e.g., evenings and early morning) or on certain days (e.g. Sundays) and the hours of operation could vary from community to community. This type of restriction would increase the cost of operations, impact train movements, customer schedules, contract commitments, and the amount of business the Railroad can accommodate each year due to decreased or varied hours of operation. More importantly, in situations where the Railroad and a municipality are in agreement on a planning and zoning issue, an individual or environmental group could still file a lawsuit seeking to overturn the municipality's decision, which would further delay or possibly eliminate a project.

There are other adverse impacts that can arise if the Railroad is subject to local planning and zoning. Inconsistent regulation would also decrease the value of the State's considerable investment in purchasing the Railroad. Finally, it could unreasonably delay and add significant cost to the Railroad's efforts to improve the transportation infrastructure of the State through upgrades of existing track and facilities and expand in new directions (for example to Fort Greely or to Canada).

While federal law arguably protects interstate commerce from some of these restrictions, the issue as it now stands after the Supreme Court decision invites litigation, which is not only costly to the Railroad and municipalities, but could result in inconsistent holdings among various jurisdictions. The bottom line is that, because the Railroad is an essential part of the State's transportation network and serves an important State mission, the State should be the entity that controls the Railroad's use of its land, not the 13 Railbelt municipalities and boroughs.



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Sectional Analysis

**House Bill 560**

ALASKA RAILROAD: EXTENSION/ TASK FORCE  
by the House Transportation Committee  
5/7/4

**Section 1** allows the Alaska Railroad Corporation to extend its existing line to Fort Greely, Alaska, and to acquire land along the corridor for associated facilities.

**Sections 2 and 3** authorize the Alaska Railroad Corporation to issue bonds for up to \$500,000,000 for this extension.

Before issuing the bonds, the Railroad must enter into a binding agreement with the United States government that will provide sufficient revenue to pay principal, interest, and other costs for the bonds.

**Section 4** creates a Railroad Planning, Platting, and Land Use Regulation Task Force, to make recommendations to the Legislature regarding the extent to which local regulations should apply to Railroad land.

Members of the Task Force, appointed jointly by the President of the Senate and the Speaker of the House of Representatives, will include a municipal official from each of the thirteen governing bodies through which the rail line currently passes.

**Section 5** sunsets the Task Force on the second day of the 2005 legislative session.

**Section 6** makes HB 560 effective immediately upon passage.



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**House Bill 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."*

**Sponsor Statement**

A recent Alaska Supreme Court decision has called into question the Railroad's exemption from local planning and zoning ordinances provided in AS 42.40 ("Alaska Railroad Corporation"). This bill would clarify the Legislature's intent that such local regulations do not apply to the Railroad's land unless it is leased to another person without retaining a railroad right of use.

The Alaska Railroad Corporation is both an interstate common carrier and an instrumentality of the State of Alaska. Its statutory mission is to provide transportation services to residents, businesses, visitors and military installations in the State, and foster and promote long term economic growth and development, particularly of the State's land and natural resources. The Railroad's ability to operate safely, efficiently and effectively is due in great part to the singular nature of its corridor Right-Of-Way. The Railroad's current track alignment passes through 13 recognized municipal (city and borough) governments between Seward and North Pole. It is important to protect the Railroad's ability to use its lands for operational purposes in service to the broader state interest without facing different, and potentially conflicting, planning and zoning scenarios among so many municipalities.

Without this protection, local communities could separately dictate planning and zoning restrictions that would negatively impact the Railroad's ability to offer safe, efficient, economical and reliable service to its freight and passenger customers. For example, communities could prohibit train operations or noise levels during certain

hours of operation could vary from community to community. This type of restriction would increase the cost of operations, impact train movements, customer schedules, contract commitments, and the amount of business the Railroad can accommodate each year due to decreased or varied hours of operation. More importantly, in situations where the Railroad and a municipality are in agreement on a planning and zoning issue, an individual or environmental group could still file a lawsuit seeking to overturn the municipality's decision, which would further delay or possibly eliminate a project.

There are other adverse impacts that can arise if the Railroad is subject to local planning and zoning. Inconsistent regulation would also decrease the value of the State's considerable investment in purchasing the Railroad. Finally, it could unreasonably delay and add significant cost to the Railroad's efforts to improve the transportation infrastructure of the State through upgrades of existing track and facilities and expand in new directions (for example to Fort Greely or to Canada).

While federal law arguably protects interstate commerce from some of these restrictions, the issue as it now stands after the Supreme Court decision invites litigation, which is not only costly to the Railroad and municipalities, but could result in inconsistent holdings among various jurisdictions. The bottom line is that, because the Railroad is an essential part of the State's transportation network and serves an important State mission, the State should be the entity that controls the Railroad's use of its land, not the 13 Railbelt municipalities and boroughs.

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**Sec. 42.40.380. Use of state land.** When emergency conditions require that track or other right-of-way fixtures of the corporation be moved from the existing location and relocated on state land adjacent to or in the vicinity of the existing right-of-way and the chief executive officer determines that relocation is necessary to maintain safe and adequate rail operations, the corporation may effect the relocation and notify the Department of Natural Resources. The relocation must affect only the amount of state land necessary to adequately restore or continue safe rail operations at a normal level. (§ 2 ch 153 SLA 1984)

#### NOTES TO DECISIONS

Cited in *Laverty v. Alaska R.R. Corp.*, 13 P.3d 725 (Alaska 2000).

**Sec. 42.40.385. Eminent domain.** (a) The corporation may exercise the power of eminent domain under AS 09.55.240 — 09.55.460 to acquire land for railroad transportation purposes consistent with this chapter. Notwithstanding AS 09.55.250, the corporation may acquire a fee simple title whenever, in the judgment of the board, ownership of a fee simple title is necessary to carry out the purposes of this chapter.

(b) The corporation may file a declaration of taking in the manner provided for the state under AS 09.55.420.

(c) The power of eminent domain conferred under this section includes the power to obtain clay, gravel, sand, timber, rock, or other material for the operation of the railroad, the land necessary to obtain the material, and access to the land and material.

(d) The exercise of the power of eminent domain requires the prior approval of the governor. (§ 2 ch 153 SLA 1984)

→ **Sec. 42.40.390. Land use rules.** The board may adopt exclusive rules governing land use by parties having interests in or permits for land owned or managed by the corporation. The power conferred by this section is exercised for the common health, safety, and welfare of the public and to the extent constitutionally permissible, may not be limited by the terms and conditions of leases, contracts, or other transactions. (§ 2 ch 153 SLA 1984)

**Sec. 42.40.400. Vacation of easements.** The corporation may vacate an easement acquired under this chapter by executing and filing a deed in the appropriate recording district. If the easement was acquired by the corporation under 45 U.S.C. 1201 — 1214 (Alaska Railroad Transfer Act of 1982), the state shall acquire the easement for use in conformity with those laws. (§ 2 ch 153 SLA 1984)

**Sec. 42.40.410. Federal land.** Except as provided in AS 42.40.285(5), the corporation may submit applications on its own behalf as an instrumentality of the state for acquisition of federal land available under federal law that will enhance the operations of the corporation if it is available under a federal law other than the Alaska Statehood Act of 1958 (P.L. 85 — 508, 72 Stat. 339), as amended. The corporation may receive in its own name conveyances of all interests in federal land. (§ 2 ch 153 SLA 1984; am § 5 ch 59 SLA 1999)

**Effect of amendments.** — The 1999 amendment, effective September 8, 1999, added the exception at the beginning and made a related stylistic change.

**Sec. 42.40.420. Public use of railroad land.** Upon request of a municipality or the state, the corporation may authorize use of railroad land for public purposes. Subject to AS 42.40.350(b), the corporation shall authorize a walkway or a trail if the board first