

SB

395

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

DATE: 5/1/04

FURTHER:

REPORTED OUT
MAY 15 2004
SENATE FINANCE
COMMITTEE

DATE TURNED IN TO OFFICE: 5 May 2004

Finance Committee considered

SENATE BILL NO. 395

SB 395 MUNICIPAL LAND USE REGULATION

"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."

and recommends:

- be replaced with _____ CS SB 395 (FIN)
- adopt previous _____ CS CS forthcoming (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

Senate Bill:
 Same Title
 New Title

House Bill:
 Same Title
 Technical Title Change
 New Title w/ SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero.	FN#
DCEd	5/1/04	✓		✓	

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>[Signature]</i>			✓	
<i>[Signature]</i>			✓	
<i>[Signature]</i>			✓	
<i>[Signature]</i>			✓	
<i>[Signature]</i>	X			
COCHAIR: <i>[Signature]</i>			✓	
COCHAIR: <i>[Signature]</i>			✓	

MAY 05 2004

SENATE FINANCE
COMMITTEE

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: CSSB395(TRA)
() Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: DCED
Title Municipal Land Use Regulation RDU Alaska Railroad Corporation
Component _____
Sponsor Senate Rules Component No. _____
Requester Senate Finance

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures		500,000.0				
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	500,000.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Revenue Bond Proceeds		500,000.0				
TOTAL	0.0	500,000.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2003) cost: 0.0
Check this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

The Alaska Railroad Corporation (ARRC) is a public corporation supported by revenues generated through its freight, passenger and real estate services. ARRC does not receive state subsidies for operations or capital improvements.

While SB 395 will not create a current fiscal impact for the State, failure to pass the bill could subject the Alaska Railroad to costly legal challenges with regard to protection of its operations and interstate commerce. It could also subject the Railroad to unreasonable delays and add

next page

Prepared by: Wendy Lindskoog, Director of External Affairs Phone (907) 265-2498
Division: Alaska Railroad Corporation Date/Time 5/3/04 9:51 AM
Approved by: Angar Blatchford, Commissioner Date 5/3/2004
Agency: Department of Community & Economic Development

FISCAL NOTE

**STATE OF ALASKA
2004 LEGISLATIVE SESSION**

BILL NO. CSSB 395(TRA)

ANALYSIS CONTINUATION

continued.

significant cost to efforts to improve the transportation infrastructure of the State through upgrades of existing track and facilities and expand in new directions including to Ft. Greely or to Canada.

The recent planning and zoning litigation involving the Eklutna Quarry has resulted in over \$63.0 of legal fees to date. In addition, compliance with the various local planning, zoning and land use laws would increase project costs, sometimes substantially. Construction of the Railroad's new Anchorage Operations Center, a new building in the middle of ARRC's Anchorage Yard, has been delayed due to local planning and zoning review now required by the recent Supreme Court case. As a result of the delay, this project's cost has now increased by an estimated \$100.0 and possibly more, if accelerated construction is necessary before winter.

In addition to clarifying legislative language with regard to local planning and zoning regulation, SB 395 authorizes the Railroad to issue up to \$500 million in revenue bonds to finance the acquisition, construction, improvement, maintenance, equipping, and operation of a rail line and related facilities from its existing railroad corridor to Ft. Greely, Alaska.

The costs of issuing the bonds will be paid with bond proceeds at closing. Anticipated professional services include those related to financial advisors, attorney's fees (bond counsel, underwriter's counsel, tax counsel, negotiating with prospective customers), rating agencies, underwriters, printing, travel, public notices, and the feasibility consultant. ARRC will front certain minor necessary reimbursable costs from corporation revenues.

ADOPTED

SENATE FINANCE
COMMITTEE #1

Amendment Number: #1
Bill Number: SB 395
Sponsor: B. Stevens Date: 5/4/04
Logged In By: Mindy

SENATE FINANCE COMMITTEE

AMENDMENT No. #1

By Sen. B. Stevens

To: _____ SENATE BILL No. SB 395

To: _____ SENATE BILL No. _____

Pg 2 - line 31:
delete "an"
insert "a binding"

Pg 3 - line 1:
delete "Will"
insert "shall"
delete "in the judgement of the corporation"
delete "consideration"
insert "revenue"

SB395

SENATE FINANCE COMMITTEE

AMENDMENT No. ± 1

By B. Stevens

To: _____ SENATE BILL No. 395

To: _____ SENATE BILL No. _____

Page 2 -

Line 3: delete "An"

Insert "a binding"

Page 3 -

Line 1 = Delete "will", insert "shall"

Delete "in the judgment of the Corporation,
the Corporation,"

Delete "Consideration",

Insert "Revenue"

SENATE FINANCE COMMITTEE
5 / 4 / 2004 COMMITTEE ACTION

Bill Number	SB 395		
Amendment	#1		
Motion	to adopt		
<u>Motion by</u>	Stevens		
<u>Objection by</u>	Stevens		
<u>Removed</u>	✓		
<u>Second Objection by</u>			
<u>Committee Member</u>	Y	<u>Vote</u>	N
Senator Dyson			
Senator Hoffman			
Senator Olson			
Senator Stevens			
Senator Bunde			
Co-Chair Green			
Co-Chair Wilken			
<u>Tally</u>			
Yea			
Nay			
Absent			
<u>MOTION</u>			

Sheila -

did I get
it?

We need to keep the
legislative appts in with
per diem -

Gary said he wanted the
intent of the leg known
that no money be spent
on the other members.

- 1 (J) Kenai Peninsula Borough;
- 2 (K) Matanuska-Susitna Borough;
- 3 (L) City of Whittier;
- 4 (M) City of Seward.

5 (b) The members of the task force appointed under (a)(1) and (2) of this section shall
 6 serve as co-chairs of the task force. The task force shall meet as frequently as its members
 7 determine necessary and may meet during sessions or during the interim. The task force may
 8 meet and vote by teleconference.

9 (c) The members of the task force appointed under (a) ^{(3) and} ~~(A) and~~ (4) of this section are
 10 not eligible for compensation ^{or} ~~but~~ are entitled to per diem and travel expenses authorized for
 11 boards and commissions under AS 39.20.180.

don't
← change
← change

12 (d) The task force shall consider and make recommendation to the legislature on
 13 whether and to what extent municipal planning, platting, and land use regulations should
 14 apply to interests in land owed by the Alaska Railroad Corporation. The task force shall
 15 submit a written report of its findings and recommendations on or before the first day of the
 16 First Regular Session of the Twenty-Fourth Alaska State Legislature.

17 * Sec. 6. Section 5 of this Act is repealed on the second day of the First Regular Session of
 18 the Twenty-Fourth Alaska State Legislature.

19 * Sec. 7. AS 42.40.390(b) is repealed on July 1, 2005.

20 * Sec. 8. This Act takes effect immediately under AS 01.10.070(c).

Note: If this language change eliminates
 the necessity ~~for~~ of the provisions of
 Sec. 5 in statute, delete Sec. 5

Conceptual

SENATE FINANCE COMMITTEE
5/5/2004 COMMITTEE ACTION

Bill Number	SB 395		
Amendment	# 2		
Motion	adopt		
<u>Motion by</u>			
<u>Objection by</u>	none		
<u>Removed</u>			
<u>Second Objection by</u>			
<u>Committee Member</u>	Y	<u>Vote</u>	N
Senator Hoffman			
Senator Olson			
Senator Stevens			
Senator Bunde			
Senator Dyson			
Co-Chair Green			
Co-Chair Wilken			
<u>Tally</u>			
Yea			
Nay			
Absent			
<u>MOTION</u>	Pass		

Amendment #3
adopted

WORK DRAFT

WORK DRAFT

WORK DRAFT

23-LS1965\Q
Cook
5/4/04

CS FOR SENATE BILL NO. 395()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): SENATE RULES COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to application of municipal ordinances providing for planning,
2 platting, and land use regulation to interests in land owned by the Alaska Railroad
3 Corporation; authorizing the Alaska Railroad Corporation to extend its rail line to Fort
4 Greely, Alaska; authorizing the Alaska Railroad Corporation to issue bonds to finance
5 the cost of the extension and necessary facilities and equipment; and providing for an
6 effective date."

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

8 * Section 1. AS 42.40.390 is amended by adding a new subsection to read:

9 (b) Municipal ordinances providing for planning, platting, and land use
10 regulation adopted under AS 29.35.180 or other law do not apply to the land of the
11 corporation unless the land is leased to another person by the corporation and the
12 corporation has not retained a right to use the land during the term of the lease.

to the extent permitted under 49 U.S.C. § 701, the Interstate
Commerce
Commission
Act (ICCTA)

13 * Sec. 2. AS 42.40 is amended by adding a new section to read:

SENATE FINANCE COMMITTEE
5/15/2004 COMMITTEE ACTION

Bill Number	SB 395		
Amendment	# 3		
Motion			
<u>Motion by</u>	Wilken		
<u>Objection by</u>	Wilken		
<u>Removed</u>	✓		
<u>Second Objection by</u>			
<u>Committee Member</u>	<u>Y</u>	<u>Vote</u>	<u>N</u>
Senator Dyson			
Senator Hoffman			
Senator Olson			
Senator Stevens			
Senator Bunde			
Co-Chair Green			
Co-Chair Wilken			
<u>Tally</u>			
Yea			
Nay			
Absent			
<u>MOTION</u>	Pass		

pg 1 line 11 following corporation
 insert:

Amendment #4
adopted

(supersedes by #5)

AS 42.40.390 is amended to read:

~~Sec. 42.40.390. Land use rules. (a) 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.~~

~~(b) Pursuant to 49 U.S.C. 10501(b), Municipal ordinances providing for planning, platting, and land use regulation adopted under AS 29.35.180 or other law do not apply to the practices, routes, services and rail facilities of the corporation and the construction, acquisition, operation, abandonment or discontinuance of spur, industrial, team, switching, or side tracks or other rail facilities on land of the corporation unless the land is leased to another person by the corporation and the corporation has not retained a right to use the land during the term of the lease. For the purposes of this section, the term "rail facilities" includes tracks, rail yards, repair shops and maintenance buildings, freight and passenger terminals, rail car loading and unloading structures, operation centers, supply warehouses, communication structures and other facilities directly related to railroad operations. Notwithstanding the foregoing, the term "rail facilities" does not include rock quarries or gravel pits.~~

(c) By January 10 of each year, the corporation shall provide notice to municipalities of any new land use proposed for that year by the corporation within municipal boundaries. The corporation shall provide amended notice if a proposed land use is changed or an additional land use is proposed during the course of the year. Except in the event of an emergency, an affected municipality shall have at least 30 days after its receipt of the notice to provide advisory comment to the corporation. In the event of an emergency, the corporation will provide notice to an affected municipality promptly after the event.

SENATE FINANCE COMMITTEE
5/5/2004 COMMITTEE ACTION

Bill Number	SB 395		
Amendment	=#4-		
Motion	adopt		
<u>Motion by</u>	Green		
<u>Objection by</u>			
<u>Removed</u>			
<u>Second Objection by</u>			
<u>Committee Member</u>	Y	<u>Vote</u>	N
Senator Olson			
Senator Stevens			
Senator Bunde			
Senator Dyson			
Senator Hoffman			
Co-Chair Green			
Co-Chair Wilken			
<u>Tally</u>			
Yea			
Nay			
Absent			
<u>MOTION</u>	Pass		

Sec. 1

AS 42.40.390 is amended to read:

~~Sec. 42.40.390. Land use rules. (a) 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.~~

(b) Pursuant to 49 U.S.C. 10501(b), Municipal ordinances providing for planning, platting, and land use regulation adopted under AS 29.35.180 or other law do not apply to the practices, routes, services and rail facilities of the corporation and the construction, acquisition, operation, abandonment or discontinuance of spur, industrial, team, switching, or side tracks or other rail facilities on land of the corporation unless the land is leased to another person by the corporation and the corporation has not retained a right to use the land during the term of the lease. For the purposes of this section, the term "rail facilities" includes tracks, rail yards, repair shops and maintenance buildings, freight and passenger terminals, rail car loading and unloading structures, operation centers, supply warehouses, communication structures and other facilities directly related to railroad operations. Notwithstanding the foregoing, the term "rail facilities" does not include rock quarries or gravel pits.

(c) By January 10 of each year, the corporation shall provide notice to municipalities of any new land use proposed for that year by the corporation within municipal boundaries. The corporation shall provide amended notice if a proposed land use is changed or an additional land use is proposed during the course of the year. Except in the event of an emergency, an affected municipality shall have at least 30 days after its receipt of the notice to provide advisory comment to the corporation. In the event of an emergency, the corporation will provide notice to an affected municipality promptly after the event.

Incorporate with changes from Amendment #3

SENATE FINANCE COMMITTEE
5/5/2004 COMMITTEE ACTION

Bill Number	SB 395		
Amendment	#5		
Motion	adpt		
<u>Motion by</u>	Green		
<u>Objection by</u>	Wilken		
<u>Removed</u>	✓		
<u>Second Objection by</u>			
<u>Committee Member</u>	<u>Y</u>	<u>Vote</u>	<u>N</u>
Senator Stevens			
Senator Bunde			
Senator Dyson			
Senator Hoffman			
Senator Olson			
Co-Chair Green			
Co-Chair Wilken			
<u>Tally</u>			
Yea			
Nay			
Absent			
<u>MOTION</u>	Pass		



Official Business

Alaska State Senate

Senate Finance Committee

Mail Stop 3100
State Capitol
Juneau, Alaska 99801-1182

RUSH

FAX COVER SHEET

calandered
for 11:00am
Senate.

DATE: 5 May 2004 TIME: 10:25am

TO: Legal Services

NUMBER OF PAGES, INCLUDING COVER SHEET: 4

FROM: MINDY ROWLAND
SENATE FINANCE COMMITTEE SECRETARY
PHONE: 465-4935
FAX: 465-2187

NOTES: Final Please

CS SB 395 (FIN)

23-LS 1965 \ Q Cook 5/4/04

Plus 3 amendments - attached

Conceptual

The
Mundy

23-LS1965\U
Cook
5/5/04

CS FOR SENATE BILL NO. 395(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY THE SENATE FINANCE COMMITTEE

Offered:

Referred:

Sponsor(s): SENATE RULES COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to application of municipal ordinances providing for planning,
 2 platting, and land use regulation to interests in land owned by the Alaska Railroad
 3 Corporation; authorizing the Alaska Railroad Corporation to extend its rail line to Fort
 4 Greely, Alaska; authorizing the Alaska Railroad Corporation to issue bonds to finance
 5 the cost of the extension and necessary facilities and equipment; and providing for an
 6 effective date."

7 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

8 * Section 1. AS 42.40.390 is amended by adding new subsections to read:

9 (b) Notwithstanding (a) of the section, municipal ordinances providing for
 10 planning, platting, and land use regulation adopted under AS 29.35.180 or other law
 11 apply to the land of the corporation to the extent permitted under federal law. / Under
 12 49 U.S.C. 10501(b), municipal ordinances providing for planning, platting, and land
 13 use regulation adopted under AS 29.35.180 or other law do not apply to the practices,

*Amend
#3
#5*

1 routes, services, and rail facilities of the corporation and the construction, acquisition,
2 operation, abandonment, or discontinuance of spur, industrial, team, switching, or side
3 tracks or other rail facilities on land of the corporation unless the land is leased to
4 another person by the corporation and the corporation has not retained a right to use
5 the land during the term of the lease. For the purposes of this subsection, "rail
6 facilities" includes tracks, rail yards, repair shops, and maintenance buildings, freight
7 and passenger terminals, rail car loading and unloading structures, operation centers,
8 supply warehouses, communication structures, and other facilities directly related to
9 railroad operations, but does not include rock quarries or gravel pits.

10 (c) By January 10 of each year, the corporation shall provide notice to
11 municipalities of any new land use proposed for that year by the corporation within
12 municipal boundaries. The corporation shall provide amended notice if a proposed
13 land use is changed or an additional land use is proposed during the course of the year.
14 Except in the event of an emergency, an affected municipality shall have at least 30
15 days after its receipt of the notice to provide advisory comments to the corporation. In
16 the event of an emergency, the corporation shall provide notice to an affected
17 municipality promptly after the event.

18 * Sec. 2. AS 42.40 is amended by adding a new section to read:

19 **Article 6A. Specific Projects.**

20 **Sec. 42.40.550. Extension of railroad to Fort Greely.** The corporation may
21 acquire a transportation corridor between the existing railroad corridor and Fort
22 Greely, Alaska, and construct a rail line within the corridor to provide rail service to
23 the Fort Greely area and points between. The transportation corridor may be
24 designated for a use identified under AS 42.40.350(b) and other transportation and
25 utility uses. The corporation may also acquire land along the corridor for use as rail
26 land that can be developed for terminal, station, and maintenance facilities, switching
27 yards, and any other purposes associated with the railroad utility corridor. The
28 corporation may provide financing for the acquisition, construction, improvement,
29 maintenance, equipping, and operation of the rail line and related facilities between
30 the existing railroad corridor and Fort Greely, Alaska.

31 * Sec. 3. AS 42.40.695 is amended to read:

#5

1 **Sec. 42.40.695. Public purpose of bonds.** Bonds of the corporation issued to
2 finance facilities described in AS 42.40.250(31) and bonds of the corporation issued
3 to finance facilities described in AS 42.40.550 are issued by a public corporation and
4 an instrumentality of the state for an essential public and governmental purpose.

5 * **Sec. 4.** The uncodified law of the State of Alaska is amended by adding a new section to
6 read:

7 **LEGISLATIVE AUTHORIZATION AND APPROVAL.** (a) The Alaska Railroad
8 Corporation is authorized to issue bonds under the power granted to it in AS 42.40.550, added
9 by sec. 2 of this Act, to finance the acquisition, construction, improvement, maintenance,
10 equipping, and operation of a rail line and related facilities from its existing railroad corridor
11 to Fort Greely, Alaska. The maximum principal amount of bonds that the Alaska Railroad
12 Corporation may issue under this section is \$500,000,000. The Alaska Railroad Corporation
13 may issue the bonds in a single issuance or in several issuances, without limitation as to
14 number of issuances or timing, and as the Alaska Railroad Corporation determines best
15 furthers the purpose of financing the rail line extension to Fort Greely and the related
16 facilities.

17 (b) Before issuing bonds to provide the financing described in this section, the Alaska
18 Railroad Corporation shall enter into a binding agreement with the United States government
19 that will provide sufficient revenue to

20 (1) pay the principal of and interest on the bonds as they become due;

21 (2) create and maintain the reserves for the bond payments that the
22 corporation considers necessary or desirable; and

23 (3) pay all costs necessary to service or additionally secure the bonds,
24 including trustee's fees and bond insurance premiums, unless those costs are to be paid by a
25 party other than the corporation.

26 (c) This section constitutes the approval required by AS 42.40.285 for the issuance of
27 the bonds and rail line extension described in this section.

28 * **Sec. 5.** The uncodified law of the State of Alaska is amended by adding a new section to
29 read:

30 **RAILROAD PLANNING, PLATTING, AND LAND USE REGULATION TASK**
31 **FORCE.** (a) There is established in the legislative branch of state government the Railroad

1 Planning, Platting, and Land Use Regulation Task Force. The task force consists of the
2 following members:

- 3 (1) one senator appointed by the president of the senate;
4 (2) one representative appointed by the speaker of the house of
5 representatives;
6 (3) one person representing the Alaska Railroad Corporation jointly appointed
7 by the president of the senate and the speaker of the house of representatives;
8 (4) one municipal official from each of the following municipalities appointed
9 jointly by the president of the senate and the speaker of the house of representatives:

- 10 (A) Fairbanks North Star Borough;
11 (B) City of Fairbanks;
12 (C) City of Nenana;
13 (D) City of Houston;
14 (E) City of North Pole;
15 (F) City of Wasilla;
16 (G) City of Palmer;
17 (H) Municipality of Anchorage;
18 (I) Denali Borough;
19 (J) Kenai Peninsula Borough;
20 (K) Matanuska-Susitna Borough;
21 (L) City of Whittier;
22 (M) City of Seward.

23 (b) The members of the task force appointed under (a)(1) and (2) of this section shall
24 serve as co-chairs of the task force. The task force shall meet as frequently as its members
25 determine necessary and may meet during sessions or during the interim. The task force may
26 meet and vote by teleconference.

27 (c) The members of the task force appointed under (a)(3) and (4) of this section are
28 not eligible for compensation or entitled to per diem and travel expenses authorized for boards
29 and commissions under AS 59.20.180.

30 (d) The task force shall consider and make recommendation to the legislature on
31 whether and to what extent municipal planning, platting, and land use regulations should

1 apply to interests in land owed by the Alaska Railroad Corporation. The task force shall
2 submit a written report of its findings and recommendations on or before the first day of the
3 First Regular Session of the Twenty-Fourth Alaska State Legislature.

4 * Sec. 6. Section 5 of this Act is repealed on the second day of the First Regular Session of
5 the Twenty-Fourth Alaska State Legislature.

6 * Sec. 7. AS 42.40.390(b) is repealed on July 1, 2005.

7 * Sec. 8. This Act takes effect immediately under AS 01.10.070(c).

Adopted

WORK DRAFT

WORK DRAFT

WORK DRAFT

23-LS1965\Q
Cook
5/4/04

CS FOR SENATE BILL NO. 395()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - SECOND SESSION

By

Offered:
Referred:

Sponsor(s): SENATE RULES COMMITTEE

A BILL
FOR AN ACT ENTITLED

1 "An Act relating to application of municipal ordinances providing for planning,
2 platting, and land use regulation to interests in land owned by the Alaska Railroad
3 Corporation; authorizing the Alaska Railroad Corporation to extend its rail line to Fort
4 Greely, Alaska; authorizing the Alaska Railroad Corporation to issue bonds to finance
5 the cost of the extension and necessary facilities and equipment; and providing for an
6 effective date."

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

8 * Section 1. AS 42.40.390 is amended by adding a new subsection to read:
9 (b) Municipal ordinances providing for planning, platting, and land use
10 regulation adopted under AS 29.35.180 or other law do not apply to the land of the
11 corporation unless the land is leased to another person by the corporation and the
12 corporation has not retained a right to use the land during the term of the lease.

13 * Sec. 2. AS 42.40 is amended by adding a new section to read:

L

Article 6A. Specific Projects.

1
2 Sec. 42.40.550. Extension of railroad to Fort Greely. The corporation may
3 acquire a transportation corridor between the existing railroad corridor and Fort
4 Greely, Alaska, and construct a rail line within the corridor to provide rail service to
5 the Fort Greely area and points between. The transportation corridor may be
6 designated for a use identified under AS 42.40.350(b) and other transportation and
7 utility uses. The corporation may also acquire land along the corridor for use as rail
8 land that can be developed for terminal, station, and maintenance facilities, switching
9 yards, and any other purposes associated with the railroad utility corridor. The
10 corporation may provide financing for the acquisition, construction, improvement,
11 maintenance, equipping, and operation of the rail line and related facilities between
12 the existing railroad corridor and Fort Greely, Alaska.

13 * Sec. 3. AS 42.40.695 is amended to read:

14 Sec. 42.40.695. Public purpose of bonds. Bonds of the corporation issued to
15 finance facilities described in AS 42.40.250(31) and bonds of the corporation issued
16 to finance facilities described in AS 42.40.550 are issued by a public corporation and
17 an instrumentality of the state for an essential public and governmental purpose.

18 * Sec. 4. The uncodified law of the State of Alaska is amended by adding a new section to
19 read:

20 LEGISLATIVE AUTHORIZATION AND APPROVAL. (a) The Alaska Railroad
21 Corporation is authorized to issue bonds under the power granted to it in AS 42.40.550, added
22 by sec. 2 of this Act, to finance the acquisition, construction, improvement, maintenance,
23 equipping, and operation of a rail line and related facilities from its existing railroad corridor
24 to Fort Greely, Alaska. The maximum principal amount of bonds that the Alaska Railroad
25 Corporation may issue under this section is \$500,000,000. The Alaska Railroad Corporation
26 may issue the bonds in a single issuance or in several issuances, without limitation as to
27 number of issuances or timing, and as the Alaska Railroad Corporation determines best
28 furthers the purpose of financing the rail line extension to Fort Greely and the related
29 facilities.

30 (b) Before issuing bonds to provide the financing described in this section, the Alaska
31 Railroad Corporation shall enter into a binding agreement with the United States government

1 that will provide sufficient revenue to

2 (1) pay the principal of and interest on the bonds as they become due;

3 (2) create and maintain the reserves for the bond payments that the
4 corporation considers necessary or desirable; and

5 (3) pay all costs necessary to service or additionally secure the bonds,
6 including trustee's fees and bond insurance premiums, unless those costs are to be paid by a
7 party other than the corporation.

8 (c) This section constitutes the approval required by AS 42.40.285 for the issuance of
9 the bonds and rail line extension described in this section.

10 * Sec. 5. The uncodified law of the State of Alaska is amended by adding a new section to
11 read:

12 RAILROAD PLANNING, PLATTING, AND LAND USE REGULATION TASK
13 FORCE. (a) There is established in the legislative branch of state government the Railroad
14 Planning, Platting, and Land Use Regulation Task Force. The task force consists of the
15 following members:

16 (1) one senator appointed by the president of the senate;

17 (2) one representative appointed by the speaker of the house of
18 representatives;

19 (3) one person representing the Alaska Railroad Corporation jointly appointed
20 by the president of the senate and the speaker of the house of representatives;

21 (4) one municipal official from each of the following municipalities appointed
22 jointly by the president of the senate and the speaker of the house of representatives:

23 (A) Fairbanks North Star Borough;

24 (B) City of Fairbanks;

25 (C) City of Nenana;

26 (D) City of Houston;

27 (E) City of North Pole;

28 (F) City of Wasilla;

29 (G) City of Palmer;

30 (H) Municipality of Anchorage;

31 (I) Denali Borough;

- 1 (J) Kenai Peninsula Borough;
2 (K) Matanuska-Susitna Borough;
3 (L) City of Whittier;
4 (M) City of Seward.

5 (b) The members of the task force appointed under (a)(1) and (2) of this section shall
6 serve as co-chairs of the task force. The task force shall meet as frequently as its members
7 determine necessary and may meet during sessions or during the interim. The task force may
8 meet and vote by teleconference.

9 (c) The members of the task force appointed under (a)(3) and (4) of this section are
10 not eligible for compensation but are entitled to per diem and travel expenses authorized for
11 boards and commissions under AS 39.20.180.

12 (d) The task force shall consider and make recommendation to the legislature on
13 whether and to what extent municipal planning, platting, and land use regulations should
14 apply to interests in land owed by the Alaska Railroad Corporation. The task force shall
15 submit a written report of its findings and recommendations on or before the first day of the
16 First Regular Session of the Twenty-Fourth Alaska State Legislature.

17 * Sec. 6. Section 5 of this Act is repealed on the second day of the First Regular Session of
18 the Twenty-Fourth Alaska State Legislature.

19 * Sec. 7. AS 42.40.390(b) is repealed on July 1, 2005.

20 * Sec. 8. This Act takes effect immediately under AS 01.10.070(c).

Not Offered
attached to CS"Q"
distributed

23-LS1965\H.1
Cook
5/4/04

A M E N D M E N T

OFFERED IN THE SENATE
TO: CSSB 395(TRA)

BY SENATOR THERRIAULT

1 Page 1, line 3, following the first occurrence of "Corporation":

2 Insert "and to notices of proposed land uses by the corporation"

3

4 Page 1, line 8:

5 Delete "a new subsection"

6 Insert "new subsections"

7

8 Page 1, following line 12:

9 Insert a new subsection to read:

10 "(c) By January 10 of each year, the corporation shall provide a notice to each
11 municipality of all new land uses the corporation proposes to begin that year within
12 the municipal boundaries. The corporation shall provide a supplemental notice during
13 the year if a previously proposed land use is changed or an additional land use is
14 proposed to begin. After receipt of a notice or supplemental notice, the municipality
15 shall have at least 30 days to provide advisory comments to the corporation before the
16 corporation begins operations under the proposed land use. However, the corporation
17 may immediately begin operations under a new land use that is necessary to address
18 an emergency situation without providing prior notice to the municipality. The
19 corporation shall provide notice of that emergency land use to the municipality
20 promptly after beginning operations."

THE
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DOCUMENT(S)
ARE
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**KENAI PENINSULA BOROUGH**

144 N. BINKLEY • SOLDOTNA, ALASKA • 99669-7599
BUSINESS (907) 262-4441 FAX (907) 262-1892

BOROUGH ASSEMBLY

May 5, 2004

The Honorable Gary Wilken, Co-Chair
Senate Finance Committee
State Capitol, Room 518
Juneau, AK 99801

Dear Senator Wilken:

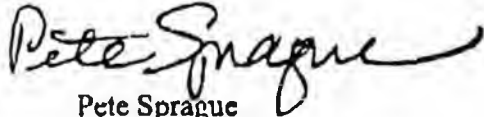
The Kenai Peninsula Borough Assembly respectfully requests that SB 395 be amended so that local municipal planning authority applies to the development of the Alaska Railroad Corporation's real estate assets. In addition, we urge the Senate to postpone any action on Section 1 of this bill until next session in order to allow sufficient time for a full review and assessment of the impacts the bill in its current form are likely to have on railbelt communities.

The Assembly recognizes and understands the Alaska Railroad's need to operate its rail system in an efficient and safe manner across jurisdictional boundaries without undue interference. The ability of the railroad to do so is guaranteed under the Interstate Commerce Commission Termination Act which prohibits state or local economic regulation that would significantly interfere with rail operations. Thus, the railroad's claim that it needs a blanket exemption from local zoning in order to operate is simply not true. The Alaska Supreme Court recently ruled that the Alaska Railroad must comply with local planning rules and regulations. SB 395 as currently written would exempt the railroad from municipal zoning and grant the railroad rights not enjoyed by any other state agency. We ask that your committee recognize the legitimate interests of local governments in the development of real estate within its boundaries.

The Alaska Railroad owns a considerable amount of real estate within the Kenai Peninsula Borough that is not essential for its rail transportation operations. Mandating compliance with local planning, platting and land use authority would minimize potential negative local impacts while allowing development of railroad real estate assets consistent with the local community's adopted goals and plans. In addition, following the normal public process would give both the citizens of the community and the local governing body an opportunity for input, assuring a greater chance of public support for the planned development.

Finally, we urge you to consider the creation of a constituent and stakeholder task force from within the railbelt to develop mutually acceptable legislation for consideration early in the next legislative session.

Sincerely,

A handwritten signature in black ink that reads "Pete Sprague". The signature is written in a cursive style with a long, sweeping underline.

Pete Sprague
Assembly President

SB 395

Adopted: 05/04/04

**MATANUSKA-SUSITNA BOROUGH
RESOLUTION SERIAL NO. 04-072**

A RESOLUTION OF THE MATANUSKA-SUSITNA BOROUGH ASSEMBLY RECOMMENDING THAT THE ALASKA STATE LEGISLATURE AMEND PROPOSED LEGISLATION TO ALLOW AFFECTED RAILBELT MUNICIPALITIES AND THE ALASKA RAILROAD THE ABILITY TO DEVELOP MUTUALLY AGREEABLE LEGISLATION REGARDING LOCAL PLANNING AUTHORITY.

WHEREAS, the Alaska Supreme Court recently ruled that the Alaska Railroad must comply with local planning authority; and

WHEREAS, the Alaska Railroad has a significant amount of real estate holdings within the Matanuska-Susitna Borough and other railbelt communities; and

WHEREAS, the Matanuska-Susitna Borough understands the Alaska Railroad's need to operate its rail system in an efficient and safe manner; and

WHEREAS, the manner in which the Alaska Railroad develops its real estate assets has impacts on the borough's and other municipalities' economic development efforts, road systems, and infrastructure; and

WHEREAS, members of the communities along the railbelt should have the opportunity to comment on the proposed legislation; and

WHEREAS, the Alaska Railroad should work cooperatively with local communities and local governments to achieve the best development projects having the least negative impacts.

NOW, THEREFORE, BE IT RESOLVED, that the Matanuska-Susitna Borough Assembly respectfully requests the Alaska State Legislature


distributed by Sen. Green

to amend House Bill 560 and Senate Bill 395 to remove the exemption of local planning authority; and

BE IT FURTHER RESOLVED, that a task force be created comprised of representatives from railbelt municipalities, members of the public, and the Alaska Railroad to develop legislation that addresses the needs of each party; and

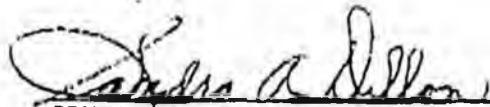
BE IT FURTHER RESOLVED, that local municipal planning authority should apply to development of the Alaska Railroad's real estate assets.

ADOPTED by the Matanuska-Susitna Borough Assembly this 4th day of May, 2004.



TIMOTHY L. ANDERSON, Borough Mayor

ATTEST:



SANDRA A. DILLON, CMC, Borough Clerk

(SEAL)

PASSED UNANIMOUSLY: Bush, Allen, Colberg, Kvalheim, Simpson, Colver, and Vehre

ALASKA STATE LEGISLATURE

CHAIR
Senator John Cowdery
Capitol Room 101
(907) 465-3879



MEMBERS
Senator Gene Theriault
Senator Ben Stevens
Senator Johnny Ellis
Senator Gretchen Guess

Senate Rules Committee

Sponsor Statement for SB 395

Senate Bill 395 contains two provisions relating to the Alaska Railroad Corporation and its role as a State transportation and economic development agent.

SB 395 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 secured by 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, SB 395 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. 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 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.

**Alaska Railroad Corporation
Regulatory Oversight and Public Involvement requirements**

Activities of the Alaska Railroad Corporation (ARRC) are well-regulated and responsive to the views of Alaska's citizens. Through federal and state law, ARRC provides the general public and local communities with a variety of public involvement opportunities with regard to its projects and land use proposals. It is also the Railroad's public involvement policy to coordinate planning, project and real estate activities with railbelt communities in order to reflect community planning efforts and needs.

Specifically, the Railroad's comprehensive public involvement process includes:

- Board of Director meetings that are open to the public
- Direct mail correspondence to potentially impacted citizens
- Stakeholder meetings and briefings
- Agency and local government briefings
- Focus groups and surveys
- Newsletters distributed to government, business and civic leaders statewide
- Public notice advertisements
- Production of public information materials, including fact sheets, display boards and frequently asked questions
- Up-to-date information published on the ARRC web site
- News releases and other media relations efforts designed to inform the public
- Open house events
- Presentations at community council meetings and other community organization forums
- A dedicated public involvement e-mail address
- Public comment hotlines
- Timely responses to public comment

The Railroad also supports local regional transportation planning and serves on a number of planning groups including AMATS, FMATS, the Wasilla Intermodal Planning Steering Committee, Regional Transportation Planning Organization (MOA & Mat-Su), Anchorage's TransVision, the Port Commission, and the Fairbanks-North Star Borough Rail Task Force.

Following is a list of regulatory oversight, including public involvement requirements, with regard to Railroad projects and development:

National Environmental Policy Act (NEPA): Approximately 80% of the Railroad's capital program is funded with federal dollars and therefore is subject to NEPA regulations, which often includes public notice and opportunity to comment.

Local, State, and Federal Permits: Depending on the project, a variety of local, state, and federal permits are required, some of which provide opportunities for public and community input. These include but are not limited to:

- U.S. Army Corps of Engineers Nationwide or Section 404 permits
- U.S. Coast Guard - Bridge Permits

Provide by Wendy Lindskoog, ARR

Alaska Department of Natural Resources (ADNR), Office of Project Management and Permitting - Coastal Zone Consistency Approvals
ADNR, Office of Habitat Management and Permitting - Fish Habitat Permits
ADNR, Office of History and Archeology - National Historic Preservation Act Section 106 Concurrence
City or Borough - Flood Hazard Permits

FTA/FHWA transportation planning requirements:

Because so much of the Railroad's Capital program includes the use of federal funds, the Railroad is required to participate in the development of the Statewide Transportation Plan and other Transportation Improvement Plans required for Metropolitan Planning Organizations (MPO's) including AMATS and FMATS.

Legislative Approval of Significant Railroad Activities: The Railroad's statute, AS 42.40.285, required legislative approval before the Railroad can fully dispose of its land, issue bonds, extend the rail line, lease land for longer than 55 years, or even apply for a grant of federal land within municipal boundaries. Under AS 42.40.280, the Railroad must provide the legislature and the governor with an oversight report before making a significant and permanent change in services.

Local building codes: The Railroad is required by its statute, AS 42.40.935, to comply with local building and safety codes and state occupational safety and health guidelines.

Railroad Lessees subject to Public Notice and local Planning and Zoning regulation: Of the 36,000 acres of land owned by the Alaska Railroad, about half is dedicated to operational purposes. The other half is available to lease. Railroad lessees are required to comply with local planning, zoning, platting and land use regulations. The Railroad must give public notice before entering into a lease, and also for permits that involve significant investments and are not likely to be terminated at will.

Pesticide Use:

The Railroad's statute, AS 42.40.440, states that vegetation control involving the use of pesticides or herbicides on land owned or managed by the corporation may be conducted only in compliance with state requirements applicable to other state pesticide or herbicide use. The state's permit process requires the Railroad to issue a number of public notices and provide opportunities for public hearings and meetings.

Alaska Railroad Board of Directors – A Public Process:

The Railroad's statute provides for public participation in Board meetings. AS 42.40.150 states that (a) The chairman of the board shall call meetings of the board at least once every three months... (b) Except for executive sessions, the meetings of the board are public. The board shall provide by rule for a method of providing reasonable notice to the public of its meetings. (c) The board shall keep minutes of each meeting.

Among other management powers, the Alaska Railroad Board of Directors must adopt annual operating and capital budgets and must approve all capital projects that will cost more than \$500,000 or will take more than one year to complete. The Board and the Governor must approve the use of eminent domain authority.

Train Operations and Interstate Commerce Protections:

Federal law protects interstate commerce from unreasonable burdens, which arguably prevents local governments from restricting railroad hours of transportation, speeds, loading requirements, routes, types of packaging, etc. Through the rail barge operations between Seattle and Whittier, the Alaska Railroad is considered an interstate commerce carrier and noted as such in the Alaska Railroad Transfer Act (P.L. 97-468).

- 1) The Interstate Commerce Commission Termination Act contains an express and very broad preemption clause that essentially eliminates state and local regulatory authority over railroads. See 49 U.S.C 10501 (b) (2). Several courts have addressed ICCTA's preemptive effect and have held that ICCTA preempts local planning and zoning laws with regard to the construction and operation of facilities related to rail transportation.
- 2) Through the Clean Air Act, the federal government has specifically preempted state or local regulations concerning mobile sources of emissions (including locomotives).
- 3) The United States Department of Transportation has authority over hazmat transport. The USDOT's position states:
"One of the primary purposes of federal hazmat law is to assure national uniformity of regulations applicable to the transportation of hazardous materials in commerce. Thus, the preemption provision of federal hazmat law generally preclude non-federal governments from imposing requirements applicable to hazardous materials transportation."

Other Misc:

The Railroad's employees and directors are subject to the State Ethics Code, AS 42.40.710(a). The Railroad is required to have a procurement code substantially equivalent to that of the State, AS 42.40.920(b)(4). ARRC must notify the state attorney general before initiating legal action, AS 42.40.905.

BOARD RULE NO. 17

Adopted: November 23, 1993

Subject: Non-Transportation Activities of the Railroad

Purpose: The purpose of this policy is to set forth the position of the Board of Directors of the Alaska Railroad Corporation (ARRC) regarding the use of corporate assets to obtain an equity position in a non-transportation activity. Because of ARRC's status as a state-owned corporation, any investment in a non-transportation activity is a matter of substantial concern to members of the public and to the executive and legislative branches of state government. This policy is intended to express the general prohibition upon such investment and, at the same time, recognize that broad public support may, in extraordinary circumstances, exist for such investment.

Provided by Wendy Lindskoog, ARR

Adopted (As An Emergency Rule) April 15, 1993

RULE NO. 17

**NON-TRANSPORTATION ACTIVITIES
OF THE ALASKA RAILROAD**

It is the policy of the Alaska Railroad Corporation (ARRC) not to use its real estate or other corporate assets to obtain an equity position in a non-transportation activity. A "non-transportation activity" is any activity not related to the core business of transportation. For purposes of this Policy, the term is specifically deemed to include hotels and other lodging facilities.

The Board of Directors recognizes that extraordinary circumstances may arise from time to time which may generate a public consensus supporting investment in an otherwise proscribed activity. If a specific activity is proposed by third parties that (a) is in the public interest and (b) does not compete with a viable private enterprise, the Board may authorize such activity. However, the Board cannot act without at least thirty (30) days' written notice to the public, the governor and the legislature. Notice to the governor and legislature will contain the information required for oversight reports under AS 42.40.280(b).

This policy does not supersede any applicable public notice and other requirements contained in the corporation's Long Term Lease Policy. It may not be revoked or amended without public notice in accordance with AS 42.40.180.

Adopted: November 23, 1993

RULE NO. 17

**NON-TRANSPORTATION ACTIVITIES
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This policy does not supersede any applicable public notice and other requirements contained in the corporation's Long Term Lease Policy. It may not be revoked or amended without public notice in accordance with AS 42.40.180.

This involves a site directly adjacent to the Native Village of Eklutna. The site consists of two hills, which are the namesake of the Village and which have significant historical and cultural significance to the people of the Village and to Dena'ina Athabaskan in general. Approximately one-half of the largest of the two hills is located on land owned by the railroad. The other one-half is located on land previously owned by National Bank of Alaska, and now owned by Wells Fargo. The significance of the site is set out in an extensive report commissioned by the railroad itself, known as the Fall report. It was conducted by James Fall, an anthropologist who works for the State Department of Fish and Game. The railroad has never questioned the findings of the Fall Report, or the significance of the site.

Prior to 1995, the railroad's use of the site in question was quite sporadic and limited. NBA's use was virtually nonexistent. This changed when the railroad leased out the site to a private contractor to operate a gravel pit. At about the same time, NBA also decided it wanted to begin using its land as a gravel pit. These operations would have eventually caused the destruction of the hills for which the Village is named. These events prompted two lawsuits.

First, NBA sought a conditional use permit from the Municipality of Anchorage. Gravel pit operations are a conditional use in the zoning district in which the property is located. The Village appealed the grant of the permit, first to the Board of Adjustment and eventually to the Alaska Supreme Court. The Supreme Court reversed the Board, holding that the Board was required to, and had not, considered the cultural significance of the site in the permitting process. Native Village of Eklutna v. Bd. of Adjustment/National Bank of Alaska, 995 P.2d 641 (Alaska 2000). NBA has not since refiled to obtain a permit.

Second, at about the same time the Village also brought an action against the contractor operating the pit located on the railroad property. The contractor did not have a conditional use permit which, as indicated above, was a requirement of local zoning. The contractor brought the railroad into the case. First the superior court, and then the Alaska Supreme Court, held that the contractor's use of the site required a conditional use permit. Alaska R.R. Corp v. Native Village of Eklutna, 43 P.3d 588 (Alaska 2002). The contractor and the railroad did not apply for a permit. Instead, the arrangement between the contractor and the railroad was terminated and the contractor moved off the property.

The third lawsuit began in January of 2001 and resulted in the March 12, 2004 decision to which the railroad is currently responding. Native Village of Eklutna v. Alaska Railroad Corporation, Alaska Supreme Court Slip Opinion No. 5787 - March 12 2004. After the private contractor moved off the site, the railroad then decided to operate the site itself. The Village sued the railroad since the railroad also did not have a conditional use permit to operate a gravel pit. The railroad claimed it didn't need a permit because it was immune from zoning. The Village, and the Municipality of Anchorage which had eventually joined the lawsuit, stated that the railroad was not immune from zoning and needed a permit to operate. The Alaska Supreme Court held that the railroad was not automatically immune from zoning. It utilized the 'balancing of interests' test, adopted by the vast majority of courts who have addressed the issue of governmental immunity in the last twenty years. The system adopted by the Court is fair to everyone. It requires the railroad to comply with local zoning when it can do so without hardship. It permits the railroad to obtain immunity from local zoning when local zoning would interfere with its operations. It is not unlike the process established for other state agencies under Title 35 of the Alaska Statutes, including DOTPF, which operates across the state.

Historical Statement by Sara Heideman, (Hedland, Brennan,
+ Heideman)

Subject: SB395/HB560

Date: Mon, 03 May 2004 22:45:40 -0800

From: Pat Johnson/Anne Kilkenny <kiljohn@gci.net>

Senator,

Please vote against SB395/HB560. We do not need another entity like Evergreen exempt from local controls. Think about what you did last year to us in the Valley and in Homer by overriding local ordinances and our ability to formulate them. I'm all for economic growth, but not at all costs. Our communities have good land regulation and we need to keep it so.

Sincerely,

Patrick C. Johnson

Mat-Su Platting Board Member

TALKEETNA COMMUNITY COUNCIL, INC.
P. O. BOX 608
TALKEETNA, ALASKA 99676

RESOLUTION OPPOSING SB 395 AND HB 560

WHEREAS, the SB 395 and HB 560, both of which, using identical language, exempt the Alaska Railroad from local planning, platting, and land use regulation, have been introduced in the Alaska State Senate and Alaska State House of Representatives, respectively, and are proceeding to the floor of each body, and

WHEREAS, the Community of Talkeetna has recently developed a number of plans and regulations, and

WHEREAS, the Alaska Railroad has participated, as regards lands owned by them, in the public process as such plans and regulation were developed, and

WHEREAS, the Community of Talkeetna appreciates such participation, and

WHEREAS, the Community of Talkeetna believes that it is vital, in the face of dramatic growth, for the community to guide and influence its future, and

WHEREAS, the Community of Talkeetna believes that good policy decisions can only be made if all stakeholders meaningfully participate in such decisions, and

WHEREAS, these bills would be expected to undermine the ability of the Community of Talkeetna to guide and influence its future.

THEREFORE, BE IT RESOLVED, that the Talkeetna Community Council opposes SB 395 and HB 560 and urges members of the Alaska State Senate and Alaska State House of Representatives to vote against these bills.

Adopted unanimously by the Talkeetna Community Council, this 3rd day of May, 2004

/s/ Ruth Wood

Ruth Wood, Chair

The Native Village of Eklutna is writing to urge you to reject HB 560 and SB 395 (section 1), identical bills which would exempt the Alaska Railroad from municipal zoning, and treat it differently from any other state agency.

This blanket exemption is being pushed by the railroad in reaction to a March 12, 2004 ruling of the Alaska Supreme Court that occurred in a case between the railroad and the native village of Eklutna. The railroad is operating a gravel pit adjacent to the village. The village has been trying to get the railroad to comply with local zoning for years.

The railroad is claiming that it needs a blanket exemption from local zoning because otherwise it cannot operate. This is simply not true, for a number of reasons.

First, the Supreme Court's ruling would not in fact cause interference with essential railroad operations. The Supreme Court case adopts the balancing of interests test. It is the test which has been adopted by the vast majority of courts who have addressed the issue of government immunity in the last thirty years. It has been found to constitute good and enlightened public policy in the area of zoning.

The test adopted is fair for everyone. It would require that the railroad comply with local zoning when compliance would not create a hardship for it. It would immunize the railroad from local zoning when compliance with local zoning would interfere with their operations. It is quite similar in fact to the requirements placed on DOTPF and other state agencies under Title 35 of the Alaska Statutes. DOTPF operates throughout the entire state, is generally required to comply with local zoning but can be immune from such zoning in appropriate cases. In short, the recent Supreme Court decision does not create the adverse impacts suggested by the railroad. Under the system, the public and local officials get to have input, but the essential operations of the railroad are not hindered. SB 395 would on the other hand eliminate all public input, all input from local governments, and eliminate any need for the railroad to consider any legitimate public or local interest.

Second, under the Interstate Commerce Commission Termination Act (ICCTA), 49 U.S.C. §701, State or local economic regulation which would significantly interfere with rail operations is prohibited in any event. In other words, if a State or municipal government was attempting to prevent a railroad from constructing or operating or discontinuing a rail line, that regulation would be prohibited by the federal law. Thus, the railroad doesn't need a blanket exemption from local zoning to protect it from regulation which would be preempted by federal law in any event.

Third, a railroad doesn't need wholesale governmental immunity from local zoning to operate. Most railroads are owned by private companies, not government agencies. Seven railroads operate the vast majority of rail freight operations in the United State - all seven are privately owned, all seven lack governmental immunity from local zoning, and yet all seven continue to operate and grow. Union Pacific is the largest, and operates in some 23 different states, without the kind of blanket immunity which the railroad here is claiming is mandatory.

In short, the railroad's suggestion that it needs protection is false. It already has substantial protections against local economic regulatory interference, under the balancing test adopted by the Supreme Court and under ICCTA, both of which protect the railroad from application of local zoning which would interfere with necessary rail operations.

Summary provided by Sara Heideman (Hedland,
Brennan + Heideman)

4376-6180



Fairbanks North Star Borough

Office of the Mayor

809 Pioneer Road

P.O. Box 71267

Fairbanks, Alaska 99707-1267

907/459-1300

Fax 907/459-1102

Email mayor@co.fairbanks.ak.us

May 3, 2004

Via Facsimile – 465-4714

RECEIVED
MAY 03 2004

The Honorable Gary Wilken
Member – Senate Finance Committee
State Capitol
Juneau, AK 99801

Dear Senator Wilken:

SB 395 proposes to explicitly exempt the Alaska Railroad Corporation from Municipal ordinances that provide for planning, platting and land use regulation. In its present form the proposal removes the local public process for local scrutiny and citizen input on land use.

In its present form, the administration of the Fairbanks North Star Borough opposes the legislation. However, after consultation with counsel for the ARRC, it appears reasonable to adopt the following amendment to the bill:

AS 42.40.390

- (c) By January 10 of each year, the corporation shall provide notice to municipalities of any new land use proposed for that year by the corporation within municipal boundaries. The corporation shall provide amended notice if a proposed land use is changed or an additional land use is proposed during the course of the year. Except in the event of an emergency, an affected municipality shall have at least 30 days after its receipt of the notice to provide advisory comment to the corporation. In the event of an emergency, the corporation will provide notice to an affected municipality promptly after the event.

It is our opinion that this approach meets the needs of the Alaska Railroad Corporation and the Fairbanks North Star Borough. Given that the ARRC disagrees, it is appropriate that a legislative sub-committee / municipal task force be appointed to study the issue for as long as is necessary to come to a reasonable conclusion.

Sincerely,

Jim Whitaker, Mayor

**SENATE COMMITTEE REPORT
First Committee of Referral**

DATE: 04/27/04

FURTHER: Rules

Date of 5-Day Notice: 24 hour
(in accordance with Uniform Rule 23)

DATE TURNED
IN TO OFFICE: 4/29/04

Transportation Committee considered SENATE BILL NO. 395

SB 395 MUNICIPAL LAND USE REGULATION

"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."

and recommends:

- be replaced with _____ CS SB 395 (TRA)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

Senate Bill:	
<input type="checkbox"/>	Same Title
<input checked="" type="checkbox"/>	New Title
House Bill:	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	Technical Title Change
<input type="checkbox"/>	New Title w/ SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#
DCED	4/28			✓	1

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>Therriault</i> 			✓	
<i>Wagner</i> CO-CHAIR:	✓			
<i>Cowdrey</i> CO-CHAIR:	✓			