

SB

395

SENATOR
JOHN J. COWDERY
Anchorage

Committees
Chair: Rules
Chair: Transportation
Chair: World Trade &
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Legislative Council
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Alaska State Legislature

Senate

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SPONSOR STATEMENT FOR SB 395

(Senate Rules Committee)

"An Act relating to the application of municipal ordinances providing for planning, platting ... in land owned by the Alaska Railroad Corp; authorizing the Alaska Railroad Corp. to extend its rail line to Fort Greely ...; authorizing the Alaska Railroad Corp. to issue bonds ..."

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. 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.

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: SB 395
() Publish Date: _____

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

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						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2005 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. For example, 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.

Prepared by: Wendy Lindskoog, Director of External Affairs Phone 907-265-2498
Division Alaska Railroad Corporation Date/Time 4/28/04 4:52 PM
Approved by: Edgar Blatchford, Commissioner Date 4/28/2004
Agency Community and Economic Development

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Cook
4/29/04

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:

1 will, in the judgment of the corporation, provide sufficient consideration 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.** This Act takes effect immediately under AS 01.10.070(c).