

HOUSE BILL NO. 412

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - SECOND SESSION

BY REPRESENTATIVES COWDERY, Sanders, Ryan, Ivan, Hudson, Foster, Martin, Kohring

Introduced: 2/16/98

Referred: Transportation, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act providing for the transfer of certain land to the City of Whittier; and
2 providing for an effective date."

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

4 * **Section 1. FINDINGS.** The Alaska State Legislature finds that

5 (1) the state has undertaken the construction of a road to the City of Whittier
6 that is scheduled to be completed in the year 2000;

7 (2) the construction of the road to the City of Whittier is part of a statewide
8 program to provide the people of the state with road access to the western Prince William
9 Sound region to expand recreational opportunities available to the people of the state as well
10 as to facilitate the growth of tourism in the state;

11 (3) on completion of the road to the City of Whittier, the city will suffer severe
12 economic and social dislocation if the city is not provided resources to help the city cope with
13 the effects of road traffic and greatly increased pressure from recreational and commercial
14 users of the Prince William Sound area;

1 (4) the City of Whittier suffers from a severe shortage of land that is capable
2 of development; of the 211.6 acres that comprise the city's core area in its 1995
3 comprehensive plan, only 137.2 acres, or 64.8 percent, are suitable for development; of the
4 211.6 acres in the core area, more than half is owned by the Alaska Railroad Corporation;
5 much of this land is not needed for the operations of the railroad; in addition, the Alaska
6 Railroad Corporation owns or will otherwise receive other land within the City of Whittier
7 outside the core area that is not used or required for railroad operations; the city needs land
8 on which to establish the public facilities that will be necessary to handle the visitors both
9 from within the state and out of the state;

10 (5) the transfer to the City of Whittier of the lands owned by, or to be received
11 by, the Alaska Railroad Corporation from the federal government will enhance the ability of
12 the city to respond to the effects of the expansion of the state road system and to serve the
13 needs of the people and businesses that are and will be attracted to the city;

14 (6) the transfer of land under this Act is made subject to easements necessary
15 to ensure the continued successful operation of the Alaska Railroad Corporation in the City
16 of Whittier.

17 * **Sec. 2. TRANSFER OF LAND TO CITY OF WHITTIER.** (a) Real property of the
18 state-owned Alaska Railroad that is located within the corporate boundary of the City of
19 Whittier, including tide and submerged land, is transferred to the City of Whittier subject to
20 the provisions of this Act.

21 (b) The Department of Natural Resources shall receive title on behalf of the state to
22 real property of the state-owned Alaska Railroad within the corporate boundary of the City
23 of Whittier that is conveyed to the state by the federal government after the effective date of
24 this Act. Title to real property of the state-owned Alaska Railroad within the corporate
25 boundary of the City of Whittier acquired by the Alaska Railroad Corporation before the
26 effective date of this Act shall be conveyed to the Department of Natural Resources for
27 subsequent reconveyance to the City of Whittier under this Act. Subject to valid existing
28 rights and to the provisions of this Act, the commissioner of natural resources shall transfer
29 to the City of Whittier exactly the same right, title, and interest held by the state in and to the
30 real property described under (a) of this section. The commissioner of natural resources shall
31 approve transfers to the City of Whittier of real property subject to this Act that is owned by

1 the state or has been tentatively approved or patented to the state by the federal government
2 but may not issue patent to the City of Whittier until the real property has first been patented
3 or otherwise conveyed to the state. After approval of a transfer by the commissioner of
4 natural resources but before patent to the City of Whittier, the City of Whittier may execute
5 conditional leases and make conditional sales only with the consent of the commissioner.

6 (c) A perpetual easement to land within railroad rights-of-way received by the state
7 under 45 U.S.C. 1201 - 1241 that is within the corporate boundary of the City of Whittier is
8 reserved to the State of Alaska for transportation, communication, and transmission purposes.

9 (d) An exclusive-use easement to the railroad utility corridor within the corporate
10 boundary of the City of Whittier as the corridor exists on February 15, 1998, is reserved to
11 the state for the benefit of the state-owned Alaska Railroad. The easement is subject to valid
12 rights in existence on February 15, 1998.

13 (e) An exclusive license to use, occupy, and directly receive all benefit of rail land
14 and other real property of the state-owned Alaska Railroad physically occupied and actively
15 used by the railroad for railroad operations on February 15, 1998, within the corporate
16 boundary of the City of Whittier is reserved for the state-owned Alaska Railroad. The license
17 is subject to valid rights in existence on February 15, 1998. The rail land and other real
18 property of the state-owned Alaska Railroad that is subject to the exclusive license reserved
19 by this subsection is that portion of the city that is comprised of rail sidings, freight dock, and
20 Alaska Railroad Corporation occupied buildings that can be generally described as follows:
21 Starting at the bridge across Whittier Creek the northern boundary shall follow more or less,
22 the southern edge of the road commonly referred to as Harbor Street fronting the Whittier
23 small boat harbor until such boundary intersects with the boundary of ATS 879; then
24 following the boundary of ATS 879 southeasterly and then easterly until the ATS 879
25 boundary intersects the existing settlement line, then following the settlement line northeasterly
26 to the point where the settlement line intersects with the northern edge of the Depot Road;
27 then southwesterly following the northern edge of the Depot Road until the line intersects with
28 the northern boundary of USS 2559; then westerly along the northern boundary of USS 2559
29 and continuing along the line until the line intersects with the northern edge of Whittier Street;
30 then northwest along the northern edge of Whittier Street to the starting point at the bridge
31 across Whittier Creek.

1 (f) Conveyances of real property made under this Act are subject to AS 38.05.125 and
2 38.05.127.

3 (g) Tide or submerged land conveyed under this Act is subject to the public trust
4 doctrine that may be enforced by the state in a court of competent jurisdiction. The City of
5 Whittier shall ensure that reasonable access to public waters and tidelands is provided. The
6 City of Whittier may not lease tide or submerged land conveyed under this Act for shore
7 fisheries, but, after conveyance, the land may be leased by the state for shore fisheries under
8 AS 38.05.082 if the commissioner of natural resources determines that the lease is compatible
9 with the city's use of the land.

10 (h) If real property transferred under this Act to the City of Whittier is unsurveyed
11 on the effective date of this Act, the commissioner of natural resources shall survey, or may
12 approve the municipality's survey of, the exterior boundaries of the real property or a parcel
13 of the real property and shall issue patent in terms of the exterior boundary survey. The cost
14 of the survey shall be borne by the City of Whittier. If land transferred by this Act has been
15 surveyed on or before the effective date of this Act, the boundaries shall conform to the public
16 land subdivisions established by the approved survey. The boundaries of the areas subject to
17 an exclusive license under (e) of this section shall be surveyed and the survey may be by the
18 meter and bounds method.

19 (i) The Alaska Railroad Corporation shall indemnify, hold harmless, and defend the
20 City of Whittier from all losses and all claims, liabilities, judgments, damages, or expenses
21 arising out of the past or future operations of the railroad on property transferred to the city
22 under this Act including, without limitation, all claims and liabilities for environmental
23 damages, cleanup, or removal costs, and restoration costs arising out of the release, storage,
24 disposal of any oil or petroleum products, or any hazardous materials, or other material on the
25 property transferred to the city.

26 (j) This Act does not enlarge or diminish the general grant land entitlement of the City
27 of Whittier under AS 29.65, nor is a conveyance under this Act counted against the general
28 grant land entitlement of the City of Whittier.

29 (k) Title to land conveyed under this Act that is retained by the City of Whittier
30 reverts to the state upon the dissolution of the municipality without a successor municipal
31 government to assume title to the assets of the city.

1 (l) This Act supersedes conflicting provisions of AS 42.40.

2 (m) A sale, lease, or other disposition by the Alaska Railroad Corporation to a third
3 party of land subject to this Act executed after February 15, 1998, without the consent and
4 approval of the City of Whittier, will be revocable by the city at any time after the effective
5 date of this Act.

6 (n) In this Act,

7 (1) "exclusive-use easement" has the meaning given in 45 U.S.C. 1202;

8 (2) "rail land" means land of the Alaska Railroad Corporation outside a
9 railroad utility corridor;

10 (3) "railroad utility corridor" means railroad right-of-way;

11 (4) "real property of the state-owned Alaska Railroad" means land, interests
12 in land, buildings, and other improvements to land that the State of Alaska is entitled to
13 receive under the Alaska Railroad Transfer Act (45 U.S.C. 1201 - 1214) and land, interests
14 in land, buildings, and other improvements to land otherwise acquired before the effective date
15 of this Act by the state-owned Alaska Railroad.

16 * **Sec. 3.** This Act takes effect immediately under AS 01.10.070(c).