

# HB136: Railroad Utility Corridors

## House Judiciary Committee

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**ALASKA**  
RAILROAD

# Alaska Railroad: Structure and Mission

**STRUCTURE:** The Alaska Railroad (ARRC) is an independent corporation owned by State of Alaska. Mandated to operate without state funds; responsible for financial and legal obligations.

**MISSION:** Through excellent customer service and sound business management practices, provide safe, efficient and economical transportation and real estate services that support and grow economic development opportunities for the State of Alaska.



Photo courtesy: Dillon Goble



# Railroad Utility Corridor: Property Interests & Management

## **ARRC:**

- Federal law grants ARRC not less than an exclusive use easement in ROW, extending 100 ft from either side of center of track
- In some areas, ARRC holds full fee title; in others, there is an underlying property owner. Regardless, exclusive use easement grants ARRC full control of surface and subsurface of ROW
- Enabling statute mandates ARRC to preserve the integrity of railroad utility corridor for transportation, communication and transmission purposes
- ARRC manages utility permits in corridor
- ARRC does not charge fees for usage determined by ARRC to be safe, non-interfering, residential uses of outer ROW by adjacent homeowners
- ARRC maintains revenue-neutral fee structure for road crossings

## **Underlying Property Owners:**

- Following cessation of all railroad utility corridor uses, full property rights may revert to the State or underlying land owner
- Courts have not found right to usage of land within ROW while railroad and utility uses remain operational
- To ARRC's knowledge, property taxes are not assessed for privately owned land underlying the exclusive use easement



## Proposed bill language:

- (a) Except as provided in (b) of this section, the corporation **may not charge a fee or require a permit** for an owner of real property subject to an easement in favor of the corporation to use the property in a manner that **does not unreasonably interfere with the corporation's use of the property.**
  
- (a) The corporation may require the owner of real property subject to an easement in favor of the corporation to **obtain a permit from the corporation to construct a railroad crossing** within the easement and may charge the owner a **revenue-neutral fee** associated with issuing the permit and developing and maintaining the crossing.

# Exclusive Use Easement

**1982 Alaska Railroad Transfer Act:** *“the Congress finds that exclusive control over the right-of-way by the Alaska Railroad has been and continues to be necessary to afford sufficient protection for safe and economic operation of the railroad.”*

**Congress is unambiguous in reserving and defining exclusive use easement in ARTA:**

ARTA specifies that the federal government must grant the State an easement that is "not less than an exclusive-use easement"

**ARTA Definition:** *"exclusive-use easement" means an easement which affords to the easement holder the following:*

*(A) the exclusive right to use, possess, and enjoy the surface estate of the land subject to this easement for transportation, communication, and transmission purposes and for support functions associated with such purposes;*

*(B) the right to use so much of the subsurface estate of the lands subject to this easement as is necessary for the transportation, communication, and transmission purposes and associated support functions for which the surface of such lands is used;*

*(C) subjacent and lateral support of the lands subject to the easement; and*

*(D) the right (in the easement holder's discretion) to fence all or part of the lands subject to this easement and to affix track, fixtures, and structures to such lands and to exclude other persons from all or part of such lands;*

# *Alaska R.R. Corp V. Flying Crown Subdivision*

District Court and Ninth Circuit found fully in favor of ARRC, upholding the exclusive use easement as defined in ARTA. The Supreme Court declined to hear the case.

## **Excerpt from the Ninth Circuit opinion:**

*Safe and efficient operation requires railroads to have the ability to exclude anyone, including the servient estate owner, at any time.*

*Railroad rights-of-way are necessarily different than traditional easements because of the purpose of the easement.*

*Logically, the scope of an easement intended to facilitate the passage of large, fast-moving machinery differs from, say, an easement to walk across a neighbor's land to access the beach.*

*The purpose of the 1914 Act—to provide a railroad for the territory of Alaska—is best served by an exclusive-use easement.*

# HB136 - Concerns

- **Ambiguity:** Who determines what counts as “unreasonable interference” with “the corporation’s use of the property?”
- **Liability:** If State preempts ARRC’s ability to exercise control of the ROW, would State be liable for incidents in ROW?
- **Uncertainty for Current Homeowners:** How does HB136 impact scenarios when underlying property owner is not current homeowner?
- **Tax Considerations:** If state law asserts new access rights for underlying property owners, would property now be subject to taxation?
- **Commercial Use:** If bill language is interpreted to allow underlying property owner to monetize ROW, what does that mean for continuous utility corridor?
- **Corridor Integrity:** Is it the intent of the State to elevate private property uses over statutorily defined railroad utility corridor purposes?

# Policy Management Decision: Preserve or Privatize Corridor?

- The continuous railroad utility corridor is an incredibly valuable, irreplaceable asset for the State of Alaska
- ARRC is charged in enabling statute to preserve the integrity of the railroad utility corridor for transportation, communication, and transmission purposes
- HB136 Sectional Analysis proposes “ARRC’s authority to lease or grant easements is subject to limitations” ensuring “ARRC must allow landowners to use their property as long as it does not interfere with railroad operations”
- The corridor is a finite resource: some lawn encroachments may not present safety or operational concerns to operating trains, but pose conflicts with other uses of corridor ARRC is mandated to preserve



# HB136 – Final Thoughts

- Undermining ARRC's exclusive use easement would represent a clear departure from established legal precedent, federal intent, longstanding state policy, and railroad industry standards
- Promoting private usage and development along ROW will inhibit future utility corridor uses ARRC is statutorily mandated to protect for benefit of Alaskans
- Existing ARRC management practices meet the plain reading of HB136: allowing free residential use of the ROW by adjacent homeowners that does not interfere with the purpose of the utility corridor, and maintaining a revenue-neutral fee structure for road crossing facilities

# ➤ Thank You

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Photo courtesy: Ray Bulson

