

Formal Legislative Testimony on HB 136 House Bill 136 – Use of Railroad Easements

Chair and Members of the Committee,

My name is Edward D. Martin Jr., Kenai, Alaska. Thank you for the opportunity to testify on HB 136.

I approach this bill from three principles that I believe should guide every legislative decision in this body:

1. Protection of private property rights
2. Protection of state-owned public assets
3. Protection of the public trust through sound fiduciary governance

HB 136 sits directly at the intersection of all three.

I. The Core Issue Before You

HB 136 seeks to clarify the State of Alaska’s authority to set management policy for easements held within the Alaska Railroad right-of-way, currently administered by the Alaska Railroad Corporation.

The sponsor statement argues that:

- The 1914 Act creating the Alaska Railroad did not expressly designate the right-of-way as exclusive.
- Federal land patents issued to homesteaders did not describe the easement as exclusive.
- The Alaska Railroad Transfer Act (ARTA) characterized the right-of-way as exclusive-use.
- A 2023 Ninth Circuit ruling interpreted those easements as exclusive but did not clearly define the scope of exclusion.
- ARRC has charged rent and imposed crossing fees beyond railroad necessity.

(See Sponsor Statement

HB 136 Sponsor Statement (ver. ...)

The bill proposes to:

- Affirm legislative authority over easement management policy.
- Allow landowners use of property within the ROW when it does not interfere with railroad operations.
- Require crossing fees to be revenue-neutral.

II. Property Rights Matter — Deeply

Alaska was settled under promises. Homesteaders received patents with reserved rights-of-way for railroad purposes. Those reservations were understood to allow railroad function — not to extinguish underlying ownership.

If ARRC’s management practices exceed what is reasonably necessary for railroad purposes, then legislative clarification may be appropriate.

Government — including a state-owned corporation — should not act beyond its legal authority. That principle protects both citizens and institutions.

III. But So Does Fiduciary Duty

The Alaska Railroad is not merely a regulatory agency. It is a state-owned corporation operating a critical transportation corridor. It carries freight, fuel, military support cargo, and commercial goods essential to Alaska’s economy.

The Legislature must carefully consider:

- Does this bill increase litigation exposure with respect to federal preemption?
- Does redefining exclusivity conflict with existing Ninth Circuit interpretation?
- Does mandating revenue-neutral crossing fees undermine ARRC’s financial independence?
- What are the insurance, safety, and bond-rating implications?

If operational control is diluted in a way that increases accident risk or financial liability, those costs ultimately fall on the people of Alaska.

Property rights and fiduciary duty are not enemies. They must be balanced.

IV. Federal Preemption & Legal Risk

The 2023 Ninth Circuit ruling affirmed exclusivity, though it did not define its full scope.

If the State now legislatively narrows that interpretation, the question becomes:

Will that action invite renewed federal litigation?

Before passage, I respectfully recommend:

1. A formal written Attorney General opinion on federal preemption risk.
2. A fiscal impact analysis addressing insurance, liability exposure, and bond rating considerations.
3. Clear statutory language defining “non-interference” standards to prevent ambiguity.

Clarity reduces lawsuits. Ambiguity invites them.

V. Legislative Authority

The sponsor is correct on one important structural point:

ARRC is a state-owned corporation. It does not stand above legislative policy. The State of Alaska retains sovereign authority to define management standards — within federal constraints.

But that authority must be exercised carefully, deliberately, and with full awareness of downstream financial consequences.

VI. Recommendation

I support the goal of protecting private property rights and preventing overreach.

However, I urge the Legislature to:

- Strengthen the bill with explicit safety protections.
- Obtain a formal preemption analysis.
- Clarify liability allocation.
- Ensure that revenue-neutral crossing requirements do not shift hidden costs to taxpayers.

This is not a simple property bill. It is a structural governance decision affecting a strategic transportation asset.

Alaska’s Constitution speaks of resources being managed for the “maximum benefit of the people.” That benefit includes both private landowners and the long-term integrity of public infrastructure.

HB 136 can achieve balance — but only if crafted with precision.

Thank you for your time and your service.

Respectfully submitted,



Edward D. Martin, Jr.




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