



**NO
TRESPASSING**

BY
ORDER OF
CHIEF OF SECURITY
**ALASKA RAILROAD
CORPORATION**

421 W. 1st AVE. Anchorage, AK 99501
PHONE: 265-2463

HB 136

AN ACT RELATING TO THE USE OF THE ALASKA RAILROAD EASEMENT

*“Government has no
other end, but the
preservation of
property.”
John Locke*

Purpose of HB 136

- **HB 136** affirms Alaska's right to **set management policies** for the Alaska Railroad Easement

How did we get here?

The General Railroad Right of Way Act of 1875: Specifies that railroad rights-of-way are mere easements and confer no fee simple interest.



1875

1914



The 1914 Railroad Act: Authorized the federal government to build and operate the Alaska Railroad and created a blanket right-of-way across all federal lands for "railroads, telegraph and telephone lines."

The Great Northern Railway Case (1942): The U.S. Supreme Court ruled that a right-of-way under the 1875 Act is an easement and not a fee interest in land.



1942



The Alaska Railroad Transfer Act of 1982: Transferred ownership of the Alaska Railroad from the federal government to the State of Alaska.

1982

How did we get here – cont'd

ALASKA RAILROAD IBLA CASE: Basing its decision on the 1942 Great Northern Railroad Case, the Interior Board of land appeals held that the 1914 Alaska Railroad Act Right of Way reservations were mere easements, the same property interest granted under the General Railroad Right of Way Act of 1875

1982

2014

2018

2020-2023

THE REEVES V. GODSPEED CASE The Alaska Supreme Court ruled that an easement over another landowner's property does not confer the right to exclude the underlying property owner from accessing or using the property burdened by the easement.

THE BRANDT TRUST CASE: The U.S. Supreme Court in Brandt Trust reaffirmed that the 1875 act conferred a mere easement, with no reversionary interest held for the U.S. Government and that it could be lost if abandoned

ALASKA RAILROAD CORPORATION V. FLYING CROWN HOMEOWNERS' ASSOCIATION

USRA REPORT CLEARS UP AMBIGUITY OF ARTA



United States Railway Association

VALUATION OF THE ALASKA RAILROAD

HE
2771
.A4
U67
1983

September 1983

Clear Intent of ARTA

DON YOUNG
MAN FOR ALL ALASKA
WASHINGTON OFFICE:
RAYBURN BUILDING
WASHINGTON, DC 20515
202-225-5765



Congress of the United States
House of Representatives
Washington, D.C. 20515

April 16, 2018

COMMITTEE ON
NATURAL RESOURCES
CHAIRMAN EMERITUS
COMMITTEE ON
TRANSPORTATION & INFRASTRUCTURE
REPUBLICAN
POLICY COMMITTEE
CANADA-U.S.
INTER-PARLIAMENTARY GROUP

The Honorable Chuck Kopp
Alaska State House of Representatives
State Capitol Room 13
Juneau, Alaska 99801

Dear Representative Kopp,

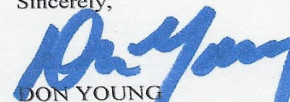
As the Alaska Representative to the U.S. Congress during the debate and passage of the Alaska Railroad Transfer Act of 1982 (ARTA), I am writing today to thank you for shining a spotlight on some troubling issues regarding the Act's implementation, as well as to provide some background regarding my understanding of what ARTA authorized.

House Joint Resolution 38 outlines what can only be described as a failure by the agencies to understand clear direction from Congress and to dutifully recognize basic tenets of due process, needlessly resulting in a cloud on title for both the Alaska Railroad and its neighbors along the right-of-way. There is no way a bill quietly annexing private property rights, especially without any notice or compensation, would have passed Congress in 1982. You only have to read the plain language of ARTA to know that – the transfer of “rail properties of the Alaska Railroad” over privately owned land only included the “Federal interest” in those lands. If the federal government did not own it, it was not included in the transfer. There is no canon of statutory construction, or even common sense reading, that could argue an unconstitutional taking of private property rights was the intent of Congress.

The intent was to transfer the federally owned Alaska Railroad's existing assets, which can be clearly noted throughout the Act itself and the record. Where the underlying estate was federally owned, as well, the issue became how much of an interest to pass along in the right-of-way over those lands, which is spelled out in the Act. The federal government obviously had sufficient proprietary interest in the transfer of rail properties – defined in ARTA as federally held rights, titles, and interests – which were directed to be transferred; but, nowhere in ARTA did Congress authorize the transfer of privately owned property interests, nor could it do so in such a cavalier and vague manner as is being suggested.

I am committed to working with my colleagues to see this situation resolved for all concerned. If you have any questions or require assistance in this effort, please do not hesitate to let me or my staff know.

Sincerely,


DON YOUNG
Congressman for All Alaska

VISIT OUR WEBSITE
[HTTP://DONYOUNG.HOUSE.GOV](http://donyoung.house.gov)

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What is a Railroad “right-of-way”?

- ▶ A right of passage through the public lands of the United States



What is an “easement”?

A non-possessory **right to use property** owned by another for **a specific purpose**

– *Marvin Brandt Revocable Trust v. United States*, 572 U.S. 93 (2014)

The Railroad **right of way becomes an easement** when it crosses another person or entity's private property i.e., Homestead patented lands

Homestead Land Patents

These are privately owned lands over which much of the Railroad easement crosses. *More than 142.34 miles of track in Alaska crosses lands that are patented to individuals**

These patents cite a reservation to the U.S. government of a ***right of way for rail, telegraph, and telephone lines***, the standard railroad property interest post-1875

**USRA Valuation of the Alaska Railroad Sep. 1983*

The Railroad right of way was reserved for *“railroad, telegraph, and telephone”*

Anchorage Townsite Land Patent

canals and ditches constructed by its authority, all in the manner prescribed and directed by the Act of Congress approved August 30, 1890 (26 Stat., 391). And there is also reserved to the United States a right of way for the construction of railroads, telegraph and telephone lines, in accordance with the Act of March 12, 1914 (38 Stat., 305).

Why does HB 136 matter?

The 9th Circuit's 2023 ruling in *Alaska Railroad Corporation v. Flying Crown* held the ARC possesses an "exclusive use" easement in the entire right of way, which **conflicts** with significant **U.S. Supreme Court and Alaska Supreme Court** rulings on the general nature of the property interest that railroads possess in their easement over private property



What's the harm?

- ▶ The **Alaska Railroad does not own the land** over which more than half of the railroad right of way traverses*
- ▶ The **Alaska Railroad wrongly asserts** a fee interest in the easement over these **private** lands
- ▶ This policy allows the **Alaska Railroad discretion to deny** safe, noninterfering **landowner uses** of land within the easement
- ▶ The **Alaska Railroad restricts access** via onerous fees, permits, and crossing restrictions to **property owners** whose land is bisected by the railroad easement

**USRA Valuation of the Alaska Railroad Sep. 1983*

Further concerns

- ▶ This allows the **Alaska Railroad**, a state public corporation, to **charge other state and local government entities** significant fees **for crossing or accessing the easement** for public road and utility purposes
- ▶ The **court did not specify** circumstances under which the **Alaska Railroad** can exercise exclusive use of the easement, leaving open the **harmful interpretation that the landowner can be excluded** for any or for no reason at all



Examples

- ← **Homestead** properties being **charged** for access to their own property, or **road access blocked**
- ← **Private property owners** being **charged** for utilities buried on their property
- ← **Business owners denied** the opportunity to use or develop their commercial properties
- ← **Municipalities denied** access to lands and **charged** large sums of money to maintain road crossings
- ← **Utility companies** charged **exorbitant fees** to access the right of way
- ← **Homeowner Associations** being **sued**
- ← **Outdoor recreationists** being **denied** access to public property



EXCLUSIVE USE

NO RIGHT
TO
EXCLUDE
ANYONE

For Railroad, Telegraph and Telephone only

THE RIGHT
TO
EXCLUDE
EVERYONE

- The right to **exclude** is the **essence of ownership**, conversely, to the extent one **does not have exclusion rights**, one does not have property
- **Exclusivity** has many meanings and applies to the easement holder, **not the landowner**
- An **easement** that permits the holder to **exclude the underlying landowner** is no longer an easement but is full ownership

It's Nothing New... Joint Legislative and Public Efforts



Via E-Mail

June 22, 2020

Governor Michael J. Dunleavy
3rd Floor, State Capitol
P.O. Box 110001
Juneau, Alaska 99811

Dear Governor Dunleavy,

We, the undersigned, represent a diverse group of Alaskan property owners, businesses, trade groups, utilities, elected officials, and local governments and we are writing to ask you to join us in urging the Alaska Railroad Corporation (ARC) to reform their right-of-way use policy to allow for fair treatment of underlying property owners and electric, gas, and telecom utilities co-located within the railroad easement.

As the sponsor of Senate Bill 68: AK Railroad Rights of Way when you were a member of the Alaska State Senate, we know that you are familiar with the history of the railroad right-of-way and the gamut of property issues created by the ARC's blanket claim of an "exclusive-use" easement throughout the Railbelt. Examples include the ARC barring public and private landowners from accessing their own property or instituting hefty user fees for access and charging natural gas, telecom, and electric utilities millions of dollars to use or cross the way—costs ultimately borne by tens of thousands of Alaskan ratepayers.

The ARC's continued claim of "exclusive use" has also negatively impacted private property values by placing a cloud on title for hundreds of land patents that underlie the Alaska Railroad easement. In many instances, these actions run counter to the intent of the Alaska Railroad Transfer Act of 1982 (see attached letter from Congressman Don Young, who served Congress during the debate and passage of ARTA) and may amount to an unconstitutional taking.

In 2018, in response to these and other railroad right-of-way issues, the Legislature passed Bill 119, which, in part, sought to limit the ARC's claim of "exclusive use" to on properties for which an exclusive-use easement was expressly transferred under (specifically where the railway passes through Denali National Park and on land unreserved Native corporation land claims). Despite this clear statutory mandate, the ARC continues to assert a blanket claim of "exclusive use" of the right-of-way through the railroad easement.

The ARC's disregard for the intent of HB 119 is illustrated by their recent sale of appraisal of the railroad right-of-way. The scope of work for that appraisal

COMMITTEES
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- HOUSE JUDICIARY
- HOUSE FINANCIALS
- HOUSE TRIBAL AFFAIRS
- HOUSE MILITARY & VETERANS AFFAIRS

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Gov. Dunleavy Re: ARC RoW

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has "exclusive use" of the entire right-of-way and that the right-of-way is owned in fee simple by the Railroad. This assumption of outright ownership not only runs counter to the intent of HB 119 but it also undermines the property rights of private and municipal landowners throughout the Railbelt and presents serious implications for the rights of utilities to operate within the right-of-way as well as their costs of doing so.

It is our understanding that the ARC Board of Directors is currently considering a change in management strategy for the right-of-way and that this may be a topic of discussion at the upcoming June 11th ARC Real Estate Committee and the June 24th ARC Board of Directors meetings. We believe that now is the time for you, along with Attorney General Kevin Clarkson and the Department of Law, to urge the ARC, as a corporation of the state, to settle these long-standing issues in a way that is fair, legal, and equitable to underlying landowners and utilities co-located within the railroad easement and that ensures the continued safe operation of the Alaska Railroad.

Your leadership and knowledge on this subject are greatly appreciated. We stand at the ready—individually or as a group—to discuss these matters further and we look forward to working with you, your administration, and the ARC to find fair and practical solutions to these ongoing issues.

Sincerely,

Rep. Chuck Kopp
House District 24
Alaska State Legislature

Hugh Ashlock
Owner
Diamond Center Holdings, LLC

Sen. Scott Kawasaki
Senate District A
Alaska State Legislature

Rep. Gabrielle LeDoux
House District 15
Alaska State Legislature

Christine O'Connor
Executive Director
Alaska Telecom Association

Larry Lau
President
Tantikil UNLIMITED, Inc.

Rep. Harriet Drummond
House District 18
Alaska State Legislature

Dave Hultquist
Owner
Hultquist Homes, Inc.

Fred Rosenberg
President
Red Robin Alaska, Inc.

John Waddleton
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Sen. Peter Miciciche
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Gov. Dunleavy Re: ARC RoW

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John Fletcher
Railroad Committee
Old Seward/Oceanview CC

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Senate District 1
Alaska State Legislature

Mark Carlson
President
Flying Crown HOA

Rep. Mike Prax
House District 3
Alaska State Legislature

Michael Garrett
President/CEO
Alaska Power & Telephone

Sen. John Coghill
Senate District B
Alaska State Legislature

Rep. Chris Tuck
House District 23
Alaska State Legislature

Bob Gastrock
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13151 Nora Drive

Ethan Berkowitz
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Municipality of Anchorage

Austin Quinn-Davidson
Assembly Member, District 3
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Rep. Bart LeBon
House District 1
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Rep. Bush
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Oceanview North Runway HOA

Anita Bates
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Felix Rivera
Assembly Member, District 4
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A matter of justice

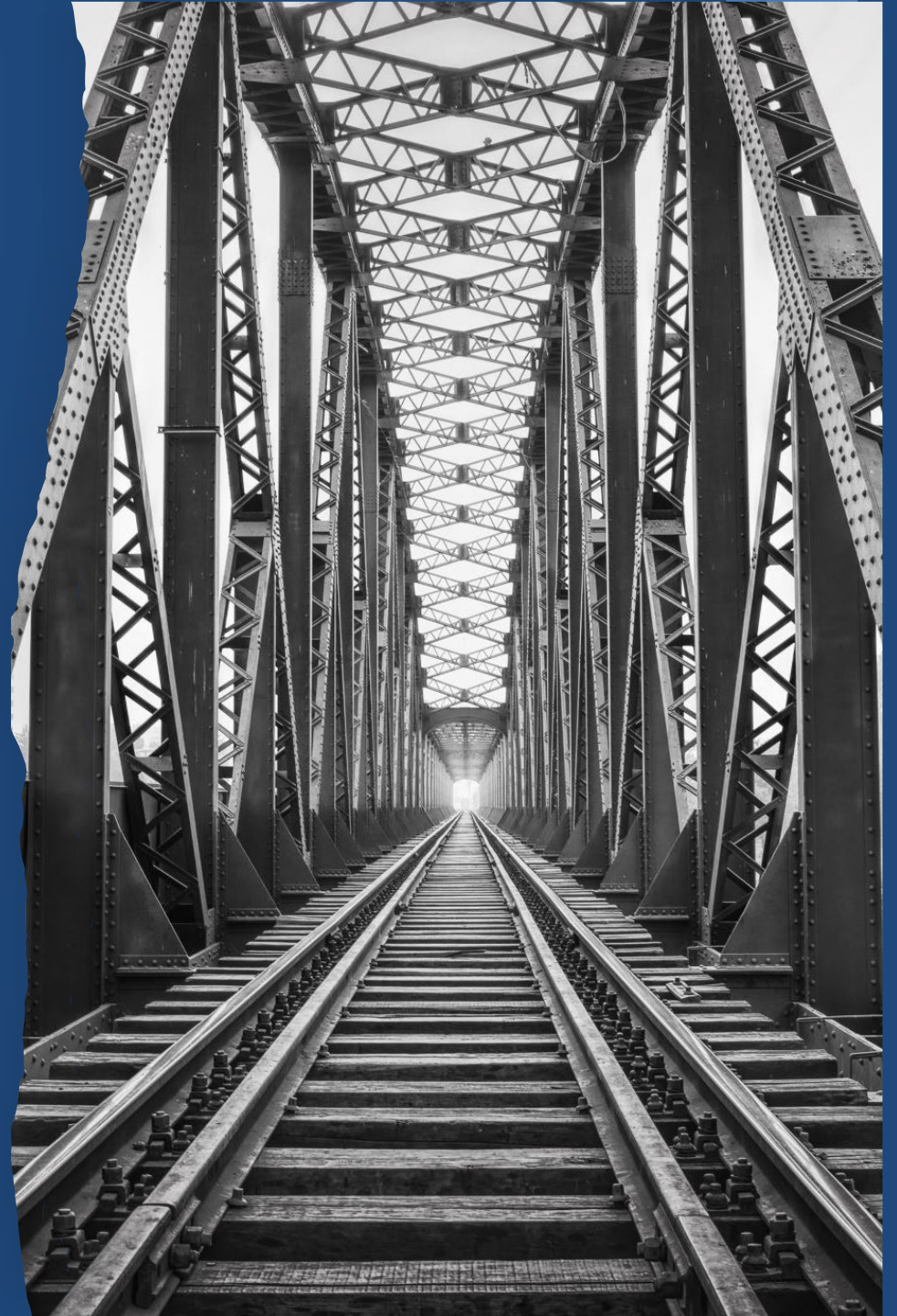
Under due process, the Government **cannot give or sell** the same parcel of property to **two different owners**.

"Unlawful acts, performed long enough and with sufficient vigor, are never enough to amend the law."

- Justice Gorsuch

-McGirt v. Oklahoma

U.S. Supreme Court July 9, 2020





HB 136 affirms the State's right to manage the **Alaska Railroad right of way** as a non-exclusive easement **where it crosses Homestead patent lands.**

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QUESTIONS?