

Alaska State Legislature

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House Bill 136: Use of Railroad Easements Sponsor Statement, Version T

House Bill 136 affirms the right of the state of Alaska to set the management policy for Alaska Railroad Corporation (ARRC) easements.

An easement grants an entity the right to use real property for a specific purpose without owning it. Exclusive-use easements allow the holder to exclude others, including the underlying property owner, for purposes defined by law. Most private railroads in the U.S. operate under the 1875 General Railroad Right-of-Way Act, which courts have ruled **permits exclusion for railroad purposes only—not for general land control or commercial reasons. House Bill 136 bill ensures Alaska follows that standard.**

When the federal government established the Alaska Railroad in 1914, it owned nearly all the land in the territory. Anticipating it would one day transfer much of this land to homesteaders and other third parties, the US government reserved to itself a **right-of-way (ROW)**—a legal right to pass through land owned by another—**extending 100ft on either side of the tracks for railroad, telegraph, and telephone purposes.**

The ROW took on the legal character of an easement when the federal government issued homestead patents to private landowners living near the railroad. In doing so, the government transferred land title to such persons while retaining an easement based on the reserved ROW. **Because the 1914 Act never designated the ROW as exclusive, the ensuing land patents did not characterize the easements as exclusive.**

In the 1980s, the Alaska Railroad Transfer Act (ARTA) transferred the railroad and the federal government’s interest in the ROW to the State of Alaska. However, ARTA mistakenly characterized the entire ROW—and any easements within it—as exclusive-use, even though the 1914 Act did not designate the ROW as exclusionary and subsequent land patents never described it thusly. **This created legal uncertainty.**

In 2023, the 9th Circuit ruled that, even though the 1914 Act never used the term “exclusive use,” easements in the ROW should still be interpreted as exclusive. However, the court **did not specify the circumstances under which ARRC, the easement holder, may exclude underlying property owners.** The best available evidence—the regulation of private railroads under the 1875 Act and the 1914 Act itself—supports exclusion **only when necessary for railroad purposes.**

ARTA transferred the railroad and interests in the ROW to the State of Alaska—not to ARRC as an independent entity. **ARRC is a state-owned corporation, and its management of the ROW is subject to state policy.** Yet ARRC has repeatedly acted as though it owns the ROW outright—charging rent, blocking crossings, and imposing fees—practices that go far beyond railroad operations. Though ARRC abandoned its argument that it owns the ROW before the 9th Circuit, it continues to manage the ROW as if it does.

HB 136 affirms the right of the state to prescribe ARRC’s easement management policy, allowing property owners to use their land within the ROW when it does not interfere with railroad or utility operations, balancing both property rights and safe railroad operations. It also requires that crossing fees charged to private landowners be revenue-neutral.