



**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



# What HB 136 does not do

- HB 136 **does not** amend AS 42.40.420, the statute that enables the Alaska Railroad **to permit public projects** within the right of way

# 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



# Clear Intent of ARTA

DON YOUNG  
MAN FOR ALL ALASKA  
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RAYBURN BUILDING  
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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,

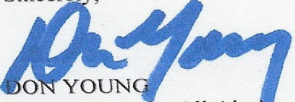
As the Alaska Representative to the U.S. Congress during the debate and passage of the Alaska Railroad Transfer Act of 1982 (ARTA), I am writing today to thank you for shining a spotlight on some troubling issues regarding the Act's implementation, as well as to provide some background regarding my understanding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



# 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

# 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 9<sup>th</sup> 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*

# 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





# Crossing Fees

- ▶ The State is forced to **pay the Railroad to access and maintain its own public roads.**
- ▶ In FY2025, DOT&PF paid over **\$453,000** to the Alaska Railroad in **annual signal crossing maintenance fees** for just 23 highway and pedestrian crossings.
- ▶ In FY2025, ARRC charged DOT&PF approx. **\$1.6 million** for **signal maintenance projects and crossing repair**, including steep overhead markups.
- ▶ A project repairing the **Parks Highway** Milepost 235 railroad crossing cost the state **\$931,230** in FY 2025, with **\$380,955** charged as overhead alone.

# Crossing Fees Cont'd

- ▶ The House Transportation Committee recognized that **ARRC's current fee practices resemble private-sector profiteering**, despite its status as a state-owned corporation.
- ▶ Private **landowners** subject to the railroad easement have faced **similar unreasonable fees**, with no statutory check on ARRC's discretionary authority.
- ▶ To protect Alaskans' property rights and prevent financial exploitation, the Committee amended the bill to require that crossing fees assessed against private landowners be revenue-neutral—**limited to actual cost recovery**.



# A matter of justice

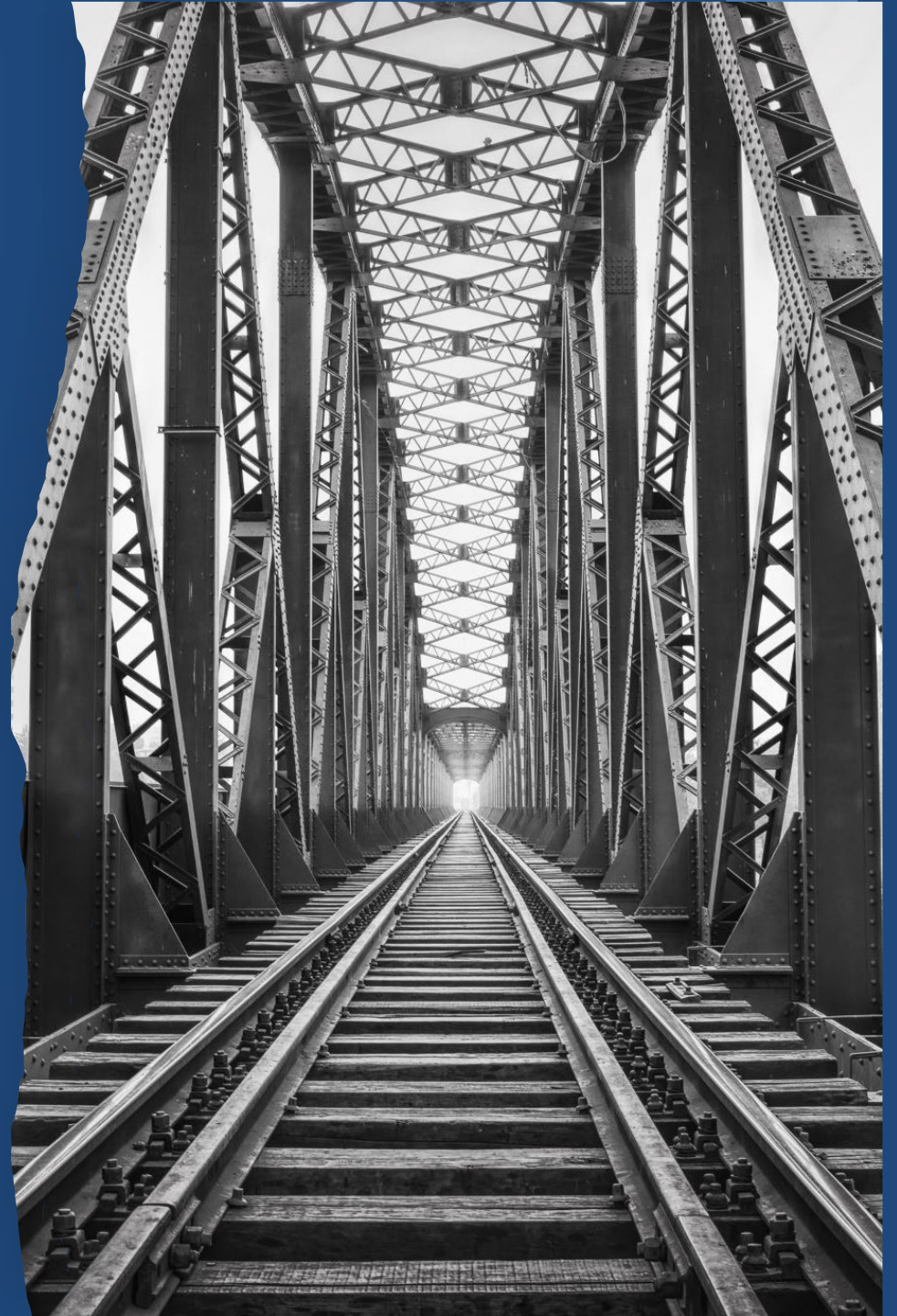
Under due process, the Government **cannot give or sell** the same parcel of property to **two different owners**.

*"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?