

**NO
TRESPASSING**

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

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HB 136

AN ACT RELATING TO THE USE OF THE ALASKA RAILROAD EASEMENT

February 2026

*“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

Clear Intent of ARTA

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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

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[HTTP://DDNYOUNG.HOUSE.GOV](http://DDNYOUNG.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*

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

**Recent testimony from AKRRC shows progress in fee simple interest assertions

Examples

- ← **Homestead** properties being **charged** for access to their own property, or **road access blocked**
 - + **Updated Fall 2025:** Goose Creek landowners blocked from accessing homes, berms built to block Mat-Su Borough easements
- ← **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

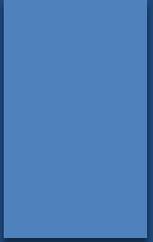


Crossing Fees

- ▶ The State is forced to **pay the Railroad to access and maintain its own public roads**. This is not receipt authority, but rather State GF dollars going to the Railroad's internal funds.
- ▶ 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**.



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.**



QUESTIONS?