

HOUSE JOINT RESOLUTION NO. 38

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTIETH LEGISLATURE - SECOND SESSION

BY REPRESENTATIVES KOPP, Tuck, Drummond, Birch, Wilson, Knopp, Rauscher, Ortiz, Stutes, Eastman, Kito, Saddler, Millett, Kawasaki

SENATORS von Imhof, Giessel, Micciche, Stevens, Begich

Introduced: 2/21/18

Referred: State Affairs, Judiciary

A RESOLUTION

1 **Relating to certain conveyances to the Alaska Railroad Corporation under the Alaska**
2 **Railroad Transfer Act of 1982.**

3 **BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 **WHEREAS** the Alaska Railroad was authorized by former 43 U.S.C. 975 et seq.
5 (Alaska Railroad Act, repealed January 5, 1985), which directly granted interests in federal
6 land for railroad rights-of-way for "the construction of railroads, telegraph and telephone
7 lines"; and

8 **WHEREAS** construction of the Alaska Railroad was substantially completed in 1923;
9 and

10 **WHEREAS**, before and after completion of the Alaska Railroad, the federal
11 government conveyed into private ownership land affected and burdened by the rights-of-way
12 under former 43 U.S.C. 161 et seq. (Homestead Act, repealed October 21, 1976) and similar
13 enactments; and

14 **WHEREAS** patents and other conveyance documents show a railroad right-of-way
15 reserved over that land; and

16 **WHEREAS** the federal government operated the Alaska Railroad from the time of

1 completion until January 14, 1983, and held as assets during that time the rights-of-way
2 reserved in land patents and other conveyance documents; and

3 **WHEREAS** the state acquired the Alaska Railroad from the federal government in
4 1983 and created the Alaska Railroad Corporation to oversee operations as an instrumentality
5 of the state operating under the former Department of Commerce and Economic
6 Development; and

7 **WHEREAS** 45 U.S.C. 1201 - 1214 (Alaska Railroad Transfer Act of 1982) provided
8 for the transfer from the federal government of "all rail properties of the Alaska Railroad to
9 the State," and 45 U.S.C. 1202(10) provided a definition of "rail properties of the Alaska
10 Railroad" to mean "all right, title, and interest of the United States" in those properties; and

11 **WHEREAS**, on January 14, 1983, the federal Alaska Railroad reserved and owned
12 right-of-way interests on private properties that were provided for in patents and other
13 conveyance documents; and

14 **WHEREAS**, if "all right, title, and interest of the United States" in the rights-of-way
15 did not include, at a minimum, an "exclusive-use easement" as defined in 45 U.S.C. 1202(6),
16 the easement could not have been included in the transfer under the plain language of the
17 Alaska Railroad Transfer Act of 1982; and

18 **WHEREAS**, during the transfer of rail properties under the Alaska Railroad Transfer
19 Act of 1982, the United States Department of the Interior erroneously issued, and the Alaska
20 Railroad Corporation accepted, an interim conveyance of interests in real property not owned
21 by the federal government, including "exclusive-use easements" as defined in 45 U.S.C.
22 1202(6); and

23 **WHEREAS** the interim or actual conveyance of any "right, title, and interest" in
24 property not held in federal ownership on January 14, 1983, is contrary to the Alaska Railroad
25 Transfer Act of 1982 and to privately held property rights recognized by common law; and

26 **WHEREAS** property owners of land burdened by an easement can continue to have a
27 substantial common law interest and remaining rights of use in the easement area; and

28 **WHEREAS** the claim or transfer of an "exclusive-use easement" over what is
29 otherwise reserved in patent and conveyance documents as a lesser property interest would
30 constitute an unauthorized taking of validly held property rights, creating enormous liability
31 for the state; and

1 **WHEREAS**, under AS 42.40.285, the Alaska Railroad Corporation must receive
2 legislative approval before applying for or receiving a grant of federal land within a
3 municipality, and the corporation has applied for and received transfers under the Alaska
4 Railroad Transfer Act within a municipality without the requisite legislative approval; and

5 **WHEREAS** the exception under AS 42.40.285(5)(C) for a conveyance of all rail
6 properties of the Alaska Railroad, as defined in 45 U.S.C 1202(10), would not apply to
7 transfers of property not conclusively owned by the federal government at the time of
8 transfer; and

9 **WHEREAS** the preservation of private property rights is secured by the Constitution
10 of the State of Alaska and the United States Constitution;

11 **BE IT RESOLVED** that the Alaska State Legislature believes, as it pertains to
12 privately held properties in the state that contain or are required to contain a reservation for
13 the purposes set out in the Alaska Railroad Act, all conveyances to the Alaska Railroad
14 Corporation under the Alaska Railroad Transfer Act of 1982 that purport to convey an
15 "exclusive-use easement" as defined in 45 U.S.C. 1202(6), in which associated rights, titles,
16 or interests were not conclusively owned by the federal government at the time of the transfer,
17 are contrary to law; and be it

18 **FURTHER RESOLVED** that the Alaska State Legislature believes that certain
19 conveyances to the Alaska Railroad Corporation under the Alaska Railroad Transfer Act of
20 1982 that were sought or obtained without the legislative approval required under
21 AS 42.40.285 are contrary to law; and be it

22 **FURTHER RESOLVED** that the Alaska State Legislature believes that any right,
23 title, or interest not conclusively owned by the federal government at the time of the Alaska
24 Railroad Transfer Act of 1982 that was erroneously conveyed to the Alaska Railroad
25 Corporation, and certain interests in land conveyed to the Alaska Railroad Corporation
26 without the legislative approval required under AS 42.40.285, should be disclaimed as a
27 matter of law; and be it

28 **FURTHER RESOLVED** that the Alaska State Legislature urges the Alaska
29 delegation in Congress to recognize the views of the Alaska State Legislature expressed in
30 this resolution and to take appropriate action to encourage the recognition of validly held
31 private property rights that were not conveyed under the Alaska Railroad Transfer Act of

1 1982.

2 **COPIES** of this resolution shall be sent to Jon Cook, Chair of the Board of Directors
3 of the Alaska Railroad Corporation; Sharon J. Walsh, Executive Administrator of the Alaska
4 Real Estate Commission; the Honorable Lisa Murkowski and the Honorable Dan Sullivan,
5 U.S. Senators, and the Honorable Don Young, U.S. Representative, members of the Alaska
6 delegation in Congress.