

**ALASKA STATE LEGISLATURE
HOUSE STATE AFFAIRS STANDING COMMITTEE**

March 1, 2018

3:18 p.m.

MEMBERS PRESENT

Representative Gabrielle LeDoux, Vice Chair
Representative Chris Tuck
Representative Adam Wool
Representative Chris Birch
Representative DeLena Johnson
Representative Gary Knopp

MEMBERS ABSENT

Representative Jonathan Kreiss-Tomkins, Chair
Representative Andy Josephson (alternate)
Representative Chuck Kopp (alternate)

COMMITTEE CALENDAR

HOUSE BILL NO. 400

"An Act relating to the collection of fees by the Department of Public Safety for fire and explosion prevention and safety services."

- HEARD & HELD

HOUSE CONCURRENT RESOLUTION NO. 22

Proclaiming April 2018 as Sexual Assault Awareness Month.

- MOVED HCR 22 OUT OF COMMITTEE

HOUSE JOINT RESOLUTION NO. 38

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

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 400

SHORT TITLE: FEES FOR FIRE PREVENTION MEASURES

SPONSOR(S): STATE AFFAIRS

02/28/18 (H) READ THE FIRST TIME - REFERRALS

02/28/18 (H) STA, FIN
03/01/18 (H) STA AT 3:15 PM GRUENBERG 120

BILL: HCR 22

SHORT TITLE: APRIL 2018:SEXUAL ASSAULT AWARENESS MONTH
SPONSOR(s): MILLETT

02/19/18 (H) READ THE FIRST TIME - REFERRALS
02/19/18 (H) STA, HSS
02/27/18 (H) STA AT 3:15 PM GRUENBERG 120
02/27/18 (H) Heard & Held
02/27/18 (H) MINUTE(STA)
03/01/18 (H) STA AT 3:15 PM GRUENBERG 120

BILL: HJR 38

SHORT TITLE: AK RAILROAD TRANSFER ACT; CONVEYANCES
SPONSOR(s): KOPP

02/21/18 (H) READ THE FIRST TIME - REFERRALS
02/21/18 (H) STA, JUD
02/27/18 (H) STA AT 3:15 PM GRUENBERG 120
02/27/18 (H) Heard & Held
02/27/18 (H) MINUTE(STA)
03/01/18 (H) STA AT 3:15 PM GRUENBERG 120

WITNESS REGISTER

CATHY SCHLINGHEYDE, Staff

Representative Jonathan Kreiss-Tomkins
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HB 400 on behalf of the House
State Affairs Standing Committee, prime sponsor.

DAVID TYLER, Director State Fire Marshal
Division of Fire and Life Safety (DFLS)
Department of Public Safety (DPS)
Anchorage, Alaska

POSITION STATEMENT: Answered questions during the hearing on HB
400.

CARMEN LOWRY, Executive Director
Alaska Network on Domestic Violence and Sexual Assault (ANDVSA)
Juneau, Alaska

POSITION STATEMENT: Testified in support of HCR 22.

GRACE ABBOTT, Staff

Representative Charisse Millett
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Answered questions during the hearing on HCR 22, on behalf of Representative Millett, prime sponsor.

JOHN PLETCHER
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HJR 38.

JACK BROWN
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HJR 38.

FRED ROSENBERG
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HJR 38.

HUGH ASHLOCK, Owner
Dimond Center
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HJR 38.

TOM MEACHAM
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HJR 38.

BILL O'LEARY, Chief Executive Officer
Alaska Railroad Corporation (ARRC)

POSITION STATEMENT: Testified in opposition to HJR 38.

ANDY BEHREND, Chief Counsel
Alaska Railroad Corporation
Anchorage, Alaska

POSITION STATEMENT: Answered questions during the hearing of HJR 38.

ACTION NARRATIVE

[3:18:11 PM](#)

VICE CHAIR LeDoux called the House State Affairs Standing Committee meeting to order at 3:18 p.m. Representatives Wool, Birch, Johnson, Knopp, and LeDoux were present at the call to order. Representative Tuck arrived as the meeting was in progress.

HB 400-FEES FOR FIRE PREVENTION MEASURES

[3:19:19 PM](#)

VICE CHAIR LEDOUX announced that the first order of business would be HOUSE BILL NO. 400, "An Act relating to the collection of fees by the Department of Public Safety for fire and explosion prevention and safety services."

[3:19:40 PM](#)

CATHY SCHLINGHEYDE, Staff, Representative Jonathan Kreiss-Tomkins, Alaska State Legislature, relayed that the proposed legislation relates to fees for fire prevention measures. She explained that currently the Division of Fire and Life Safety (DFLS) [Department of Public Safety (DPS)] can collect fees for building plan checks but not for fire inspections or for the permit programs for installing fire systems or fire extinguishers. The proposed legislation would allow regulations to be drafted for the collection of those fees.

MS. SCHLINGHEYDE relayed that Section 1 of HB 400 [page 1, lines 5-9] would give DFLS the authority to collect the fees; Section 2 [page 1, lines 11-13] would include the collection of fees in the DFLS budget receipt authority.

MS. SCHLINGHEYDE explained that the fiscal note for HB 400 was received just prior to the committee meeting; it would be distributed to committee members after the meeting. It is an indeterminate fiscal note; it is estimated that the program will bring in \$84,000 per year.

[3:21:05 PM](#)

REPRESENTATIVE KNOPP requested and received clarification that the fiscal note would be forthcoming.

[3:21:33 PM](#)

REPRESENTATIVE WOOL asked whether the fees would apply only to commercial buildings.

[3:21:55 PM](#)

DAVID TYLER, Director State Fire Marshal, Division of Fire and Life Safety (DFLS), Department of Public Safety (DPS), answered that the proposed legislation would apply to commercial

buildings - assemblies, industrial, educational, hospitals, and such.

REPRESENTATIVE WOOL mentioned that he has a commercial building, which is occasionally inspected by the fire marshall. He asked whether under HB 400, he would be charged a fee for the inspection in the future.

MR. TYLER replied yes.

REPRESENTATIVE WOOL asked whether there would be other services associated with the fee under HB 400, and what the costs would be for the services.

MR. TYLER answered that he does not know the costs yet; research is needed to ensure the fees are fair, equitable, and affordable. He said that the research will include the practices in cities like Fairbanks and Anchorage, as well as in other states.

MR. TYLER relayed that fees would include permitting for fire extinguisher technicians and fire systems technicians.

[3:23:55 PM](#)

REPRESENTATIVE KNOPP noted from the copy of the fiscal note circulated by Ms. Schlingheyde that the goal is 1,500 inspections per year but right now 500 is more likely. He asked whether DFLS is currently performing 500 inspections per year or if that is a goal.

MR. TYLER responded that currently DFLS is doing between 200 and 300 inspections per year. Just recently all the deputy fire marshal positions have been filled; therefore, DFLS will be capable of performing more inspections. He stated that what prompted the introduction of the proposed legislation was the need for travel funds to do inspections in rural areas. He maintained that the inspections should be done every two years; however, some have not been inspected for four to eight years and longer.

REPRESENTATIVE KNOPP offered that the inspections are required by statute and adopted regulations. He maintained that there are private fire service companies that charge extinguishers and prove them. He mentioned that DFLS also reviews plans for new construction and fire systems. He asked whether utilizing private companies [for inspections] would be a better process,

like how boiler system inspections are accomplished. He questioned why DPS must do it and mentioned that use of private companies provides the added benefit of the company servicing and repairing the equipment if needed.

MR. TYLER responded that DFLS does more than just fire sprinkler and fire alarm system inspections; the fire marshals check the egress for electrical hazards and verify whether the alarm systems and sprinklers are up to date.

REPRESENTATIVE KNOPP asked for confirmation that the DFLS process goes beyond checking the fire extinguisher systems and the fire suppression systems. He suggested that under HB 400 the fee-for-service inspection would be a broad range inspection. He stated that his misgiving was that the inspections would result only in citations to organizations.

MR. TYLER responded that DFLS performs the inspections as thoroughly as possible. He relayed that staff is looking at other systems and measures, which may help reduce the cost; DFLS is looking at shared databases with those who do maintenance on the alarm systems and suppression systems. He stated that the goal of DFLS staff is to keep the buildings safe while keeping in mind that the business owners need to stay in business. He maintained that what DFLS does is designed not to be onerous on the owners.

[3:28:28 PM](#)

REPRESENTATIVE TUCK expressed his understanding that the life safety plan checks are currently occurring, and no fees are being charged. He suggested that it appears that DFLS is currently allowed to set fees under statute.

MR. TYLER replied that DFLS may charge fees for plan reviews for new construction, new additions, and large-scale remodeling. He stated that it does not have authority to charge for the fire inspections, as it is a different operation entirely.

REPRESENTATIVE TUCK cited page 1, lines 5-7, of HB 400, which read, "The commissioner of public safety may establish by regulation, and the department may charge, reasonable fees for fire and life safety plan checks"; he asked if he was correct in his understanding that the statute refers to initial occupancy certification.

MR. TYLER answered, that's correct.

[3:29:48 PM](#)

REPRESENTATIVE BIRCH expressed his appreciation for the work done by DFLS.

[3:30:22 PM](#)

REPRESENTATIVE LEDOUX announced that HB 400 would be held over.

HCR 22-APRIL 2018:SEXUAL ASSAULT AWARENESS MONTH

[3:30:43 PM](#)

REPRESENTATIVE LEDOUX announced that the next order of business would be HOUSE CONCURRENT RESOLUTION NO. 22, Proclaiming April 2018 as Sexual Assault Awareness Month.

[3:31:10 PM](#)

REPRESENTATIVE LEDOUX opened public testimony on HCR 22.

[3:31:33 PM](#)

CARMEN LOWRY, Executive Director, Alaska Network on Domestic Violence and Sexual Assault (ANDVSA), testified that ANDVSA is a membership organization comprised of 19 organizations throughout the state providing lifesaving services to victims and survivors. She expressed gratitude to the sponsors of HCR 22 and SCR 17, recognizing April as Sexual Assault Awareness Month. She also expressed appreciation for work done by the legislature: moving forward to manage the sexual assault rape kits in a more efficient and affirming way; recognizing the value of and need for teen violence prevention programs in the schools; and supporting the (Alaska) Safe Children's Act [House Bill 44, Twenty-Ninth Alaska State Legislature, 2015-2016], also known as Bree's Law.

MS. LOWRY urged the full support of the committee. She thanked the committee members for their consideration of the proposed resolution and their belief that sexual violence can be ended.

REPRESENTATIVE TUCK referred to page 2, line 9, of HCR 22, which read, "in 2016, 16 communities--Anchorage, Barrow, Bethel, Cordova, Dillingham, Eielson Air Force Base, Fairbanks, Fort Wainwright, Juneau, Kodiak, Kotzebue, Nome, Palmer, Seward, Unalaska, and Valdez--had sexual assault response teams to

investigate more effectively crimes of sexual violence". He asked whether the response teams were new for those communities in 2016.

MS. LOWRY responded that she did not know but would provide that information.

REPRESENTATIVE TUCK asked if there has been any change since 2016.

MS. LOWRY answered that she did not have that information but would provide it to the committee.

[3:34:15 PM](#)

GRACE ABBOTT, Staff, Representative Charisse Millett, Alaska State Legislature, on behalf of Representative Millett, prime sponsor of HCR 22, stated that she was available for questions.

REPRESENTATIVE TUCK asked for the number of years that the legislature has proclaimed April as Sexual Assault Awareness Month.

MS. ABBOTT answered that the effort has been both on the national level and the state level. She relayed that she did not know how many years the state has recognized April as Sexual Assault Awareness Month; it has been an ongoing effort nationally for decades.

REPRESENTATIVE TUCK asked for clarification of the national effort that has occurred for decades: whether April has been proclaimed every year as Sexual Assault Awareness Month or whether under federal law, April is always proclaimed as Sexual Assault Awareness Month. He explained that such a resolution is introduced in the legislature every two years. He suggested that legislation be introduced to put the proclamation of April as Sexual Assault Awareness Month into statute.

MS. ABBOTT replied that the reason for not putting the proclamation into statute is the need for constant dialog about prevention efforts and victim and survivor support. She referred to the discussion on the Senate floor [3/1/18, SCR 17] on that point: Why not make the recognition of Sexual Assault Awareness Month "the law of the land?" She maintained that this issue needs to be a topic of conversation every year; and ANDVSA needs the opportunity to explain available community resources

critical to preventing and supporting victims of sexual violence.

REPRESENTATIVE TUCK asked if the proclamation was in law at the federal level.

MS. ABBOTT replied that she did not believe so; she believed it to be a continuous dialog and a reoccurring conversation every year. She offered that in this way, progress can be explained, Alaska victimization surveys can be consulted, and rates of sexual violence tracked. She added that it serves as a reminder that rates of sexual violence are still unacceptable, and more work needs to be done.

[3:37:21 PM](#)

REPRESENTATIVE BIRCH mentioned that April 2001 was the first observance of the national Sexual Assault Awareness Month; other public awareness efforts date back to the '80s.

[3:38:05 PM](#)

REPRESENTATIVE LEDOUX, after ascertaining that there was no one else who wished to testify, closed public testimony on HCR 22.

[3:38:20 PM](#)

REPRESENTATIVE WOOL moved to report HCR 22 out of committee with individual recommendations and the accompanying zero fiscal note. There being no objection, HCR 22 was reported from the House State Affairs Standing Committee.

HJR 38-AK RAILROAD TRANSFER ACT; CONVEYANCES

[3:38:43 PM](#)

REPRESENTATIVE LEDOUX announced that the final order of business would be HOUSE JOINT RESOLUTION NO. 38, Relating to certain conveyances to the Alaska Railroad Corporation under the Alaska Railroad Transfer Act of 1982.

[3:39:46 PM](#)

JOHN PLETCHER testified that he has a home next to Oceanview Park in South Anchorage and became aware of the Alaska Railroad (ARR) issue when the Residential Right-Of-Way Use Permit Program was initiated in 2012. He stated that his testimony is in

response to the safety issues raised by the Alaska Railroad Corporation (ARRC). He referred the committee to his written comments and photographs, included in the committee packet.

MR. PLETCHER stated that ARR's safety problems fall under two categories: 1) trespassers and 2) some landowners whose actions are inconsistent with railroad operations.

MR. PLETCHER referred to the photograph on page 2 of his written comments, which shows the Potter area, south of Anchorage. He stated that an Asian woman got onto the railroad tracks and was hit by a train. He relayed that trespassing is largely confined to the public areas; people get on the tracks at road crossings and then go off the highway. He maintained that this does not represent a private property issue, because most landowners are as interested in keeping trespassers off their property as is ARRC. He emphasized that the idea of "exclusive-use" being necessary to keep trespassers off the railroad is a "red-herring" argument.

MR. PLETCHER concluded by saying that the legislature could assist by providing more detail regarding what constitutes a "trespass" and by defining it through legislation.

[3:43:43 PM](#)

REPRESENTATIVE TUCK asked about the second concern that Mr. Pletcher mentioned: landowner property use being inconsistent with railroad operations.

MR. PLETCHER answered that there may be some instances in which landowners have caused problems, but if ARRC has a problem with a landowner, its recourse should be to go to court and get an injunction against the landowner. He maintained that the Alaska Supreme Court has stated that ARRC should not be engaging in "self-help." He stated that he has never been informed by ARRC that he is causing a problem and does not know of any neighbors causing problems except for one neighbor, who was parking trucks in an area that ARRC considered to be too close to the tracks; ARRC blocked the area off. He cited that incident as being an example of self-help that the Alaska Supreme Court discourages; instead the parties with the dispute should go to court.

[3:45:03 PM](#)

REPRESENTATIVE LEDOUX relayed that Representative Kopp made a very eloquent presentation on HJR 38 before the House State

Affairs Standing Committee [2/27/18 meeting]. She asked why the Alaska State Legislature is asking Congress to resolve the issue, which appears to be an issue of illegality, rather than taking the issue to court for resolution.

MR. PLETCHER responded that at this time he is asking for the legislature to address the issue; there are many ways to handle problems, and one way is legislatively. He maintained that not every situation requires court action; this situation is very simple and could be handled through the legislature. He added that litigation is extremely expensive.

[3:46:32 PM](#)

REPRESENTATIVE KNOPP relayed that Representative Kopp indicated that under the Alaska Railroad Transfer Act (ARTA) of 1982, ARR received surface easements for railroad operations; ARRC is arguing that it has "exclusive-use easements." Representative Knopp asked if his understanding is correct that this discrepancy represents the point of contention.

MR. PLETCHER replied that the point of contention is that ARRC [claims] property rights that the federal government did not own upon transfer of the railroad to the state.

REPRESENTATIVE KNOPP suggested that the resolution would ask Congress to clarify the nature of the easement. He agreed that litigation would be prohibitively expensive for a single landowner, and a class action suit would take a long time. He asked if clarification is what Mr. Pletcher is seeking from the Alaska congressional delegation.

MR. PLETCHER concurred that the delegation has maintained that it is a state issue and welcomes the legislature's input. He maintained that the proposed resolution would give both the governor and Congress the legislature's input, and that would help all three entities to help the landowners.

MR. PLETCHER stated that two years ago, Alaska Congressman Don Young told him that ARRC changed its property rights; the change was not intended by Congress; and in fact, a transfer changing existing property rights would not have passed Congress.

[3:49:28 PM](#)

JACK BROWN testified urging the committee members to study Section 1205 of ARTA, [U.S. Code Title 45, Chapter 21, included

in the committee packet], subparagraphs (a) and (b), to better understand and represent the "exclusive-use" issue. He also encouraged review of the Homestead Act [1862] ("homestead") patent. He stated that the homestead patent represented supreme title to the land and is not something that ARRC and the U.S. Department of the Interior (USDOI) should be able to disregard based on one line in ARTA, which has been taken out of context. He maintained that the intent of ARTA was not as ARRC interpreted it, and Alaska U.S. Congressman Don Young "literally pounded his fist on the table and came out of his chair, when he found out what the railroad had done with this."

MR. BROWN relayed that the law is clear that the General Railroad Right-of-Way Act of 1875 ("1875 Act") was created to prevent [the exclusive-use easement claim] from happening. He said the intent of the Act was to state that future railroads were to have a surface easement interest only; ARRC completely ignored the constitution and stole Alaskans' land, thereby putting them in a position of trying to sue the government "until they're all dead or broke." He maintained that ARRC "dumped this entire mess into the lap of just a very few of us in South Anchorage," because it was testing the waters of the Residential Right-Of-Way Use Permit Program. He offered that it has been "sucking the life out of us, and we're quite tired."

MR. BROWN maintained that it is time for ARRC to "come clean and take the high road." He commented, "The whole charade was based on deception and confusion and secrecy." He said the issue is now public and clear.

[3:53:12 PM](#)

FRED ROSENBERG testified that he is a property owner and sole shareholder of Dimond Capital Company, which owns commercial property on Dimond Boulevard in Anchorage. He stated that the property abuts ARR property; the lineage of the title indicates that the property is subject to a homestead patent. He explained that a land patent is an exclusive land grant made by a sovereign entity, which in this case was the federal government. Under a land patent, one is granted benefits that deed holders do not have. State constitutions and statutes are subordinate to federal land patents. He relayed that the U.S. Supreme Court has upheld the supremacy of the right of patents; those benefits exist for heirs and assigns forever. He mentioned that the U.S. Supreme Court case, Brandt Revocable Trust v. U.S., was a landmark case; it involved a railroad that wanted to benefit from land that it was not using anymore; the

U.S. Supreme Court ruled that the land reverted to the original patent holder.

MR. ROSENBERG continued by saying that ARRC issued an opposition to HJR 38; however, many of their legal arguments apply to village corporations, not private property owners. He stated that he has experienced an issue with ARRC regarding a two-and-a-half-acre piece of property with a Red Robin Restaurant on it. Without any notice or discussion, ARRC had contractors cut down all the landscaping along the property line and install a fence. He stated that ARRC trespassed and cut down landscaping that was not on the ARR easement but on private property. He reiterated that the property is subject to patents; the patents supersede ARTA and any subsequent patents or deeds that are issued; and it is important to note that ARRC does not have the rights it claims to have under ARTA, because the patent is superior and supersedes it.

[3:56:22 PM](#)

REPRESENTATIVE TUCK asked how long Dimond Capital has owned the property.

MR. ROSENBERG responded that he has owned the property through various entities since the early '90s. He added that even though he has the right to use the property if it doesn't interfere with the ARR, ARRC charged him rent to store snow on a limited portion of the property. He mentioned that at the time, he was not aware of the patent issues and how his rights were being abrogated.

REPRESENTATIVE TUCK asked Mr. Rosenberg whether he has been paying for snow storage since the early '90s.

MR. ROSENBERG replied, "No, I haven't." He said he paid for two years and then was able to rearrange the storage of snow.

REPRESENTATIVE TUCK asked how he knew the landscaping had been cut and whether he had it surveyed.

MR. ROSENBERG answered that he has a survey from when he purchased the property and an "as-built" from when he built the building. He stated that ARRC has made markings to indicate the easement, and it is evident from looking at the property that the markings are on his property. He maintained that ARRC has acknowledged that it cut down the trees and put its fence on Mr. Rosenberg's property; the trees had been there for 25 years and

were very large and beautiful; and ARRC is trying to make amends.

REPRESENTATIVE TUCK asked whether ARRC offered any remedy.

MR. ROSENBERG responded that it did not. He has corresponded through emails; ARRC acquiesced and mentioned it would like to make amends; there has been no conclusion yet. He maintained that according to the age of the trees and the size of the roots, replacement cost is expected to be about \$200,000.

[3:58:49 PM](#)

REPRESENTATIVE WOOL asked whether the rent for snow storage was the only rent charged; and when Mr. Rosenberg stored snow elsewhere, if ARRC stopped charging rent.

MR. ROSENBERG replied that the rent was just for storage of snow on a small portion of property in the easement. He didn't need that storage space later, as business was down, and he could use part of his parking lot for snow storage.

REPRESENTATIVE WOOL asked whether the fence was erected after the trees were cut down.

MR. ROSENBERG answered that it was, and cutting the trees down was necessary to erect the fence. He explained that ARRC did not dig up the trees properly but had someone cut them down with a chain saw; it left unsightly stumps that were potentially dangerous and created a liability.

[4:00:04 PM](#)

HUGH ASHLOCK, Owner, Dimond Center, testified that his family bought the property from the Tetze estate; the Tetze family received their homestead patent in 1952; and the property is subject to the Alaska Railroad Act of 1914 ("1914 Act"), which transferred ARR to the State of Alaska. He stated that he owns the property to the center line of the ARR right of way (ROW); since Dimond Center is worth over \$80 million, the property outside of the railroad track area is most likely worth in the millions of dollars. He maintained that he wishes to commercially use that property. He added that he is willing to work with ARRC long-term, that is, implementing intermodal uses, a commuter rail stop, or other development.

REPRESENTATIVE TUCK asked whether there are any barriers to Mr. Ashlock being a better partner with ARRC.

MR. ASHLOCK answered that he would be amenable to fencing the tracks off to public access and using some of the ROW for snow storage or parking. He mentioned the possibility of an intermodal station with funding through Alaska's congressional delegation. He stated that he is willing to work together with ARRC in a positive and constructive manner.

REPRESENTATIVE TUCK asked whether any discussions in that direction have begun.

MR. ASHLOCK replied no, but he and ARRC have both "reached out" to discuss a positive step forward. He stated that ARRC still maintains that it has an exclusive-use easement and no other options are available at this point. He said that Governor Bill Walker will have a task force meeting in the next couple months to develop a long-range plan for commuter rail; Mr. Ashlock expressed his desire to be a stakeholder in that process and to positively push that effort forward.

REPRESENTATIVE TUCK asked Mr. Ashlock whether he supports HJR 38.

MR. ASHLOCK replied that he does.

[4:03:53 PM](#)

TOM MEACHAM testified that he has practiced natural resources law for 47 years. He referred to paragraph 1 of the statement of opposition submitted by ARRC, included in the committee packet, which read in part, "In addition, settled law relating to railroad rights-of-way states that even where a railroad lacks full fee simple title in its ROW, it still has full exclusive rights to use the surface of the ROW due to the inherently hazardous nature of railroad operations." He recommended that committee members specifically request that ARRC produce the citations to civil law that support that statement.

MR. MEACHAM relayed that his testimony is that the exclusive-use easement under ARTA applies in two specific situations: 1) the ARR ROW through Denali National Park and Preserve (DNPP), and 2) village claims under Alaska Native Claims Settlement Act (ANCSA) that were not resolved by the time ARTA was made law. He maintained that these are the only two instances for which ARRC

has legal authority under ARTA to impose an exclusive-use easement; the remainder of its ROW is subject to the 1914 Act easement, the subsequent U.S. Supreme Court decisions, and the land appeal decision that interpreted the ARR easement to be an easement for railroad purposes only and not for exclusive use.

MR. MEACHAM referred to paragraph 5 of ARRC's statement of opposition, which read in part, "the federal government's guarantee that it will defend ARRC's title of at least an exclusive use easement shows that the State and ARRC would have recourse to enforce ARTA's guarantee of exclusive control of the ROW should a neighboring landowner assert ownership rights in the ROW." He maintained that the proposed resolution would encourage Alaska's congressional delegation to demand an answer from USDOJ as to whether it would support the position of ARRC and defend it if sued or leave it to ARRC to make its own case for its interpretation of ARTA.

[4:07:54 PM](#)

REPRESENTATIVE KNOPP referred to the two situations in which the exclusive-use easement applies - DNPP and ANCSA - and asked when ARTA was modified to address exclusive use for these two situations.

MR. MEACHAM replied that DNPP was created decades before ARTA; and the unresolved claims of Native village corporations occurred at least a decade before ARTA. He maintained that ARTA tried to deal with the kind of rights that would be reserved for those two specific properties, but it did not purport to attempt changing any existing easement or ROW provisions.

REPRESENTATIVE BIRCH asked if ARRC ever asserted a claim that it owned an exclusive-use easement for its ROW prior to the [1982] transfer.

MR. MEACHAM responded that he is not aware of any instance prior to ARTA in which ARRC or the federal government asserted an exclusive-use easement, which is why the landowners were surprised to learn that interim conveyances had been drafted and issued asserting exclusive-use easements; that issue had never come up under the 1914 Act.

[4:11:24 PM](#)

REPRESENTATIVE TUCK referred to ARRC's statement of opposition to HJR 38, paragraph 3, which read in part, "45 U.S.C. §

1205(b)(2) required the U.S. Department of Interior to resolve any remaining claims of valid existing rights by January 1986. Those provisions were followed, and claims were adjudicated. This mechanism provided any adjacent landowners who asserted claims to ownership rights in the ROW a final opportunity to have those claims adjudicated." He asked, "If there is a dispute ... on those claims being adjudicated and an opportunity wasn't afforded, is there any type of constitutional due process ... that refuses that 'disavowment'?"

MR. MEACHAM replied that the statement by ARRC is incorrect; the citation, 45 U.S.C. § 1205(b)(2), refers to the Secretary of USDOI resolving unresolved pending Native village claims; it does not pertain to patent holders along the ARR ROW. He maintained that the procedures were not followed regarding those patent holders, because the Secretary of USDOI has no jurisdiction over their properties. He said that the question of "due process" arises when ARRC asserts a new exclusive-use claim; the landowners had no prior notice before the interim conveyance was instituted. He mentioned a U.S. Supreme Court case in the late '40s, [Mullane v. Central Hanover Bank & Trust Co.]: the City of New York decided it needed a new reservoir for the public water supply; it posted notices in some courthouses identifying all the properties it would take; the court ruled that the City could not enlarge its property interests at the expense of private landowners without informing each individual landowner. He continued by saying that ARRC knew who the landowners were along the ROW; if it was going to assert an exclusive-use easement, it had a constitutional obligation to inform all the landowners before it took effect.

REPRESENTATIVE TUCK asked, "If the railroad refused to disavow its present claim on owning an extension control of the entire ROW, ... is there anything a landowner can do?"

MR. MEACHAM suggested two options: 1) to pass HJR 38 and deliver it to Alaska's congressional delegation to demand an answer from USDOI whether it supports ARRC's interpretation of exclusive-use easement overall and not just for DNPP and Native claim lands, and 2) to litigate against ARRC and USDOI, since it involves federal law and it is the obligation of the federal courts to interpret it.

[4:16:22 PM](#)

BILL O'LEARY, Chief Executive Officer, Alaska Railroad Corporation (ARRC), paraphrased from his written testimony, which read as follows [original punctuation provided]:

Thank you madam chair, members of the committee. For the record my name is Bill O'Leary. I am the President and CEO of the Alaska Railroad and I'm here representing our 600 employees, numerous customers, and the half a million passengers that we carry every year. On their behalf I am here in opposition to House Joint Resolution 38.

I am going to talk about three issues today: the history of the ownership of the Alaska Railroad right-of-way, why we need exclusivity in the right-of-way, and the impacts to the Alaska Railroad and our customers should we not have exclusive control of the right-of-way.

I appreciate the opportunity to clear up some of the issues that were brought up Tuesday and some of the other testimony that you will most certainly hear here today. But I would like to start by saying that Representative LeDoux was absolutely correct in her assertion Tuesday that this is an issue that belongs in court. When it comes to a situation where reasonable people disagree about the nuances of a point of law, a court of law is where the decisions on that point of law should be made.

Related to that, I also want to let you know that I will do my best to answer questions after my testimony, but since I am neither a legal or real estate expert, I am a CPA by training, I have our chief counsel Andy Behrend and our Manager of Land Services, Doug Stephens on line to answer those questions in depth.

The committee heard at length on Tuesday about the supposed connection between the 1875 Railroad Act and the 1914 Act, which created the federally-owned Alaska Railroad. The fact that Congress created a separate act for the creation of our railroad, one not based on nor resembling the 1875 Act, points out just how and why we were and are unique.

Without going into an exhaustive history lesson, railroads built in the lower 48 in the 1800s were land grant railroads. That means that the federal government gave land to private builders, usually every other section along the right-of-way of the tracks, as part of the payment for building the railroad. When concerns were raised about early grants of fee simple title in vast amounts of federal land to private railroads, Congress passed the Act of 1875, which granted railroad rights-of-way that were not in fee simple, but which still gave railroads exclusive use of the land for railroad use.

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When it came to building the Alaska Railroad, however, Congress and the President recognized that the failures of private interests to build a railroad in Alaska meant that the federal government would have to do it. This was an entirely different situation than the land grant railroads that were the subject of the 1875 Act. So they wrote entirely new law in the 1914 Act that did not refer to and was not grounded in the 1875 Act. As such, the President had full authority to purchase the failed railroad out of Seward, a narrow gauge railroad out of Fairbanks, and reserve a right-of-way through land that the federal government already owned. It was only years later that the federal government would issue patents to homesteaders, while reserving the right-of-way for the Alaska Railroad, which the federal government owned exclusively and in its entirety.

This is also shown in discussions that happened at the time of transfer of the Alaska Railroad to the State of Alaska. The congressional record is clear on what the government owned and what it was giving to the State of Alaska in terms of an Exclusive Use Easement. And while the term Exclusive Use Easement was new at the time, what it included was not.

In the congressional record of June 22, 1982, the Senate Committee on Commerce, Science and Transportation specified, under the proposed Alaska Railroad Transfer Act, that the United States "would convey to the State a fee interest in the 200-foot strip comprising the railroad track right-of-way,

amounting to roughly 12,000 acres. This fee estate is recognized by the Committee to be the current interest of the Alaska Railroad derived from common practice and authorized under section 1 of the March 12, 1914 Alaska Railroad Act."

The language of the Alaska Railroad Transfer Act also plainly notes the historical and intended future status of the right-of-way in 45 U.S.C. § 1205(b)(4)(A)(ii): "exclusive control over the right-of-way by the Alaska Railroad has been and continues to be necessary to afford sufficient protection for safe and economic operation of the railroad."

Alaska's [former] U.S. Senator Ted Stevens also made it clear in his statements on the floor of the Senate on December 21, 1982, exactly what the State of Alaska was receiving from the federal government for the entirety of the right-of-way when he said, "The concept of an exclusive use easement also is introduced in the substitute. This defined interest represents the minimal interest the State is to receive in the Alaska Railroad right-of-way following completion of the expedited adjudication process...It is also the interest the State will receive through the Denali National Park and Preserve. In other areas, where the right-of-way crosses land owned in fee by the Federal Government, the full fee title to the right-of-way will be transferred to the State... Essentially, it is defined to insure [sic] that the State-owned railroad will receive exclusive and complete control over land traversed by the right-of-way."

You heard on Tuesday about a handful of court cases that had to do with the ownership and exclusivity of railroad's rights-of-way in general and specifically in the Brandt case. The conclusions of the Brandt case are based on easements derived from the 1875 Railroad Act and have nothing to do with the rights-of-way established by the 1914 Alaska Railroad Act. Additionally, Brandt does not consider the exclusivity of a railroad's rights-of-way, but instead only considers the reversion of land when railroads abandon the right-of-way.

You also heard the assertion that if a railroad does not own its right-of-way in fee, then it holds it only as a non-exclusive easement that allows adjoining landowners broad use of the right-of-way. That statement, however, does not square with the traditional interpretation of railroad rights-of-way. Many other court cases over the years have held that even when railroads do not own fee title to their rights-of-way, they nevertheless have exclusive control over those rights-of-way. As far back as 1904, the U.S. Supreme Court found that "A railroad right-of-way is a very substantial thing. It is more than a mere right [sic] of passage. [A right-of-way] is more than an easement. . . . [I]f a railroad's right-of-way was an easement it was 'one having the attributes of the fee, perpetuity and exclusive use and possession.'" In 1928 the Eighth Circuit Court of Appeals found that, "The decisions of the national courts and of a majority of the state jurisdictions, however, are to the effect that the railroad company is entitled to the exclusive use and possession of its right of way, and that the owner of the servient estate has no right to occupy the surface of the land conveyed for right of way, in any mode, or for any purpose, without the railroad company's consent." That rule has been reaffirmed over the intervening years.

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Again, I would like to point out that Representative LeDoux was correct. It's the discussing of different court cases and decisions that make this an issue that absolutely belongs in a court of law, and certainly not in the court of public opinion.

On Tuesday, doubts were expressed about the fact that we, along with every other railroad and mode of transportation, say that safety is our top priority. It was stated that our neighbors know what is safe just as well as those in the railroad industry do. Anyone who has spent any time at all with our safety personnel, our federal safety regulators, and railroad professionals at any level, know that simply isn't true.

We know that people outside the industry do not take safety as seriously as they should. The numbers of

fatalities, injuries, and YouTube videos shot on railroad tracks bear that out. Every year nearly 500 people are killed in this country trespassing on railroad property. And not just walking on the tracks. In 2012, two teenage girls in Maryland were killed when a coal train derailed and flipped over on top of them. People, time and time again, either do not consider or vastly underestimate the dangers to themselves and others when they trespass onto railroad rights-of-way, when they drive around the gates at crossings, and when they put structures such as swing sets and hot tubs in the right-of-way. And the idea that our neighbors know what is safe and unsafe that just doesn't ring true. In 2016, one of our neighbors in Crown Point decided to walk his dog down the middle of our railroad tracks and was killed when he was struck by one of our trains. 13 people have been killed trespassing on the Alaska Railroad since the transfer in 1985. Every one of those deaths was avoidable.

And here's where I must say that frankly, the comments made Tuesday regarding the fence between the Coastal Trail and the railroad tracks scare the hell out of me. The comment was made that the fence between the railroad tracks and the Coastal Trail near Westchester Lagoon was unnecessary. That couldn't be further from the truth. A trail, or any public access, near railroad tracks creates an attractive nuisance. In 1995, a twelve-year-old boy climbed through a hole in the fence near Westchester Lagoon. When a train came along, he tried to latch onto it, and ended up losing both his legs.

Loss of exclusive control of the right-of-way would be detrimental to the operations of the Alaska Railroad, our customers, our passengers, our business partners and the people of Alaska, who ultimately own the Alaska Railroad. As it is now, we can assume control in all areas of our right-of-way and assume that our professionally trained security personnel, track managers, maintenance crews, and on-board personnel, just to mention a few, are making sure that the tracks and the right-of-way are clear, safe, and operational. We have full control and discretion to remove anything and everything that poses a safety hazard to our operations. If the right-of-way is turned into a

checkerboard of control from Seward to Denali, then we cannot make that assumption. We would find it necessary to reduce track speeds in any area that we don't have complete control. That would mean if we have one parcel that is not under our control along a miles [sic] long stretch of track, it could reduce our speeds from 49 miles per hour down to 16 miles per hour for that whole stretch. Because it's a mile long train and not a Corvette, slowing down and speeding up takes miles of track. This would make it impossible to get passengers to Denali or freight to Fairbanks in a timely and economical fashion and would spell the end for the Alaska Railroad.

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Additionally, this resolution brings up the issue of who could control what goes in the right-of-way. Can our neighbors store junked cars leaking oil (which has happened) on the right-of-way? Can they plow snow berms up so that people approaching or stopped at railroad crossings can't see an oncoming train? Can they store hazardous materials on the right-of-way? Can we tell our neighbors to remove a swing set 30 feet from the tracks or remove it ourselves if they refuse to? Remember that our train cars are 80 feet long; in case of a derailment, having a 100-foot right-of-way buffer on each side of the track can be critical. Or will we have to take our neighbors to court each and every time they are doing something unsafe?

And what about what we do allow in the right-of-way? If our neighbors disagree with a public trail in the right-of-way, like the Coastal Trail, or the Fish Creek Trail that we've been working on with the Turnagain Community Council and the Municipality of Anchorage, can they stop the community from building a trail, something allowed for specifically in state law? Can they stop a gas pipeline, electric line, highway or street that might use the right-of-way? Can they demand outrageous payments for crossing their small section of the right-of-way? This ambiguity could tie up numerous projects for years, if not decades, or kill them altogether, because of the questions of ownership.

Madam Chair, members of the committee, thank you for your time and your patience. Respectfully, this resolution incorrectly describes the rights held by the federal government in the Alaska Railroad right-of-way, and misinterprets the property rights the government transferred to the State of Alaska and court cases regarding railroad rights-of-way. I again would like to state that Representative [sic] LeDoux was correct that this is an issue for the courts and I encourage you not to support House Joint Resolution 38.

[4:29:32 PM](#)

REPRESENTATIVE BIRCH relayed that the committee received testimony stating that 80 percent of all railroads in the U.S. function full well under the guidelines of the 1875 Act, which established that railroads could operate safely with a simple easement over the property of others. He asked, "If 80 percent of railroads in the U.S. can operate with a simple easement, why doesn't that work here?"

MR. O'LEARY responded that he is not familiar with that statistic.

REPRESENTATIVE TUCK mentioned pedestrians walking next to roads upon which traffic is traveling at 50 miles per hour. He suggested that such a situation is hazardous; he would be interested in knowing how many people are killed walking next to roads. He offered that ARR has a good track record in comparison to pedestrians and roadways. He expressed his belief that walking along a railroad track is safer than walking along a highway. He offered that the landowner concerns are regarding the ARRC imposing new limitations in the name of safety, when it has been a "good neighbor" for such a long time; those same safety concerns do not seem to exist for roadways; and a car could veer off the roadway much easier than a train could derail.

MR. O'LEARY answered, "All it takes is one and being in the wrong place at the wrong time, when a derailment does happen to cause such an issue - a very serious issue."

REPRESENTATIVE TUCK responded, "Don't derail your cars. Slow them down."

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REPRESENTATIVE KNOPP relayed that there was much testimony on the 1875 Act, but not much on the 1914 Act. He offered that Representative Kopp's testimony was that it was not the federal government's land - free and clear - to give away. Representative Knopp stated that it would seem appropriate to ask for clarification as to whether the land was the federal government's to give as an exclusive-use easement. He maintained that he appreciates the need for court action on the matter, as well as clarification by Congress of the two Acts.

MR. O'LEARY expressed his belief that the 1914 Act is clear and the controlling Act; ARRC feels secure in its position; however, if there is a reasonable difference of opinion on that point, then the court is the best place to clarify it.

REPRESENTATIVE KNOPP stated that ARRC maintains its position is correct and has invoked exclusive-use easement to promote safety; yet it allows use of the easement if someone pays a fee. He said that his question is not about which Act came first, but rather why ARRC is responding [now] to infringements, when it always had exclusive-use easements.

MR. O'LEARY replied that historically ARRC has not done a good job of managing its ROW and ensuring that it is safe. He maintained that ARRC has taken more of an interest in response to its increased concern for safety.

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ANDY BEHREND, Chief Counsel, Alaska Railroad Corporation (ARRC), responded that the principal of exclusive-use easements for railroads is the discretion to exclude all others from the ROW or to allow use of the ROW. He maintained that this provides the railroad with the ability to control the ROW and to look at each situation, each proposed use, and the location of the proposed use, and thereby decide if the use interferes with railroad operation and can be done safely. He stated that there are activities that can be performed safely in the ROW, especially in the margins of the ROW. He asserted that ARRC serves as a control, and without that control, activities in the ROW could expose people to danger. He added that if a train makes an emergency stop, there is a potential for derailment, physical injury to train crew and people in the ROW, and environmental damage due to spillage.

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MR. BEHREND continued by saying that the second part of the question can be answered by explaining ARRC's theory of its rights under ARTA, which repealed the 1914 Act: the history of those rights, what they are, and how they have been exercised over time. He maintained that the 1914 Act does not use any of the language of the 1875 Act; it does not refer to or take its authority from the 1875 Act; in fact, the reasons for the 1914 Act were completely different from those for the earlier land grant Act. He said that the 1914 Act basically directed and authorized the President of the U.S. and the Secretary of USDOI to use materials and equipment from the Panama Canal project to build the ARR; then directed the federal government to operate the ARR. He maintained that the 1914 Act granted federal lands for ROWs and other lands necessary for a railroad to operate. These were designations of existing federal land; that is, the federal ROW established on federal land.

REPRESENTATIVE KNOPP asked Mr. Behrend to explain "federal lands and other lands." He asked if he is referring to federal lands and the authority to acquire whatever other lands the railroad deemed necessary.

MR. BEHREND explained that the [land] grant language referred to the granting of federal lands for ROWs and other ARR properties. There was also a provision for acquiring rights.

MR. BEHREND continued by saying that it was a federal railroad operating across a federal ROW, which was under federal ownership and remained under the use and ownership of the federal government for the next 60 years. He conceded that during that period, some homestead patents were issued along the ROW. He said that at the time of ARTA in 1982, it was abundantly clear from the congressional record and the language of ARTA, that the U.S. Congress had investigated the status of the ARR ROW and concluded that the ROW was owned in fee simple; that was true regardless of other types of interest that lay along the ARR. He maintained that the determination [in ARTA] was that the ARR ROW was owned in fee simple; however, it recognized other potential claims, including both Native claims and what ARTA called "other third-party claims." He stated that ARTA put in place a two- to three-year process for determining those claims; the Secretary of USDOI was charged with that duty; and ARTA authorized and directed a conveyance to the state of the ROW and other lands.

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REPRESENTATIVE BIRCH asked for Mr. Behrend's understanding of Section 1205 of ARTA, which recognized that unresolved claims of valid existing rights were to be resolved by the Secretary of USDOJ after the transfer of the railroad. He stated that everyone lived peaceably for some time, and now there is a dispute. He mentioned that the legislature represents the "public" owners of the railroad and those who live along the railroad. He asked, "What resolution do we have for addressing unresolved claims on valid and existing rights?" He asked whether those claims are to be referred to the Secretary of USDOJ.

MR. BEHREND responded that the process that was set up was to run to 1986 and be completed in that time. The Secretary of USDOJ entertained the claims, investigated the claims, engaged in negotiation, and determined that all outstanding claims had been addressed. He added that the provision sunsetted in 1986.

REPRESENTATIVE BIRCH asked whether it is Mr. Behrend's viewpoint that the Secretary of USDOJ and the federal government no longer have a role in adjudicating or resolving disputes on unresolved claims on valid and existing rights. He offered that HJR 38 would ask the Alaska congressional delegation for its help in clarifying the issue regarding Alaska's acquisition from the federal government.

MR. BEHRENS expressed his understanding that the claims and the adjudication process were completed and sunsetted, therefore, would no longer be available.

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REPRESENTATIVE WOOL referred to the statistics regarding the number of people killed by trains - 500 per year in the U.S. - and asked for the Alaska statistics.

MR. O'LEARY answered that there were 13 deaths on ARR since transfer in 1985.

REPRESENTATIVE WOOL offered that it was a low number of deaths for 33 years. He stated that he grew up on the East coast; there were many trains and train tracks; there was a great deal of access to the tracks. He asked whether ARRC advocates fencing off the entire railroad in the name of safety if given the opportunity.

MR. O'LEARY answered no. He relayed that ARR bisects a very large portion of the state; the state has grown up around ARR and as a result, that is where the residents are. He said that ARRC recognized that there are times when people will need to cross; ARRC asks that they do it safely and quickly and not walk along the tracks. He maintained that fencing the ROW is neither an option nor ARRC's goal; in certain cases, ARRC has used fencing because of high density trespass areas that are not safe, especially in the Turnagain Arm area.

REPRESENTATIVE WOOL mentioned the 100-foot easement on each side of the track and suggested that ARRC want to exercise full control over that easement. If someone wanted to move an airplane or set up a swing set within 100 feet of a train track, ARRC would like it moved. He asked whether the practice of charging rent has been disbanded [by ARRC].

MR. O'LEARY replied that the ARRC board [of directors] rule to institute the Residential Right-Of-Way Use Permit Program was removed last November.

REPRESENTATIVE WOOL asked if his understanding is correct: the easement encompasses 100 feet on either side of the railroad tracks; this is the area in which issues have surfaced; ARRC would like to remove anything in this area; and some property owners feel that they can safely put things in that space.

MR. O'LEARY responded that it is difficult to understand what problem is trying to be solved with the proposed resolution; it appears to be a disagreement over the ownership of the land upon which the railroad operates.

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REPRESENTATIVE TUCK referred to the statement of opposition from ARRC, paragraph 3, which read in part: "45 U.S.C § 1205(b)(2) required the U.S. Department of Interior to resolve any remaining claims of valid existing rights by January 1986. Those provisions were followed, and claims were adjudicated." He asked whether USDOI's involvement included only state land, or if it included all third-party lands, including those of private ownership.

MR. BEHREND answered that the provision for adjudication of third-party claims was being handled by the Secretary of USDOI, because the federal government was transferring the railroad. Any claims at that point would have been against the federal

government, and the claims would have included any third-party claims, including from those from the state or any other public or private entity.

REPRESENTATIVE TUCK asked whether for someone not filing a claim prior to 1986, there would no longer be an opportunity to resolve the claim.

MR. BEHREND opined that for someone filing a claim in which his/her property interest was different from ARRC's property interest, the proper approach would be a "quiet title" action in court. He maintained that there is nothing in ARTA or the Alaska Railroad Corporation Act (ARCA) of 1984 that provides for a different process.

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REPRESENTATIVE JOHNSON asked Mr. O'Leary to describe the difference between an easement and a ROW. She also asked whether anyone was paying taxes on any portion of the railroad easements.

MR. O'LEARY answered no. He said the landowners abutting the ROW pay taxes on their property, which ends 100 feet from the center line of the railroad.

REPRESENTATIVE JOHNSON asked whether it is the clear position of ARRC that the 1914 Act is not subject to any of the court cases from the 1875 Act.

MR. BEHREND responded that ARRC's position is that the 1875 Act and the 1914 Act have nothing to do with one another and were enacted for different purposes. The 1875 Act was a private land grant Act; the 1914 Act directed the creation of the railroad and its ROW by the federal government - to be owned and operated by the federal government. He added that there have been court cases examining the 1875 Act; these cases have occurred throughout the 20th century and into the current century. He referred to a 2014 California case, [Union Pacific Railroad v. Santa Fe Pacific Pipelines, 2014], involving the Union Pacific Railroad (UPRR) and its ROW. The ruling read: "As to rights-of-way granted by Congress in 1875 and beyond, the Railroad has exclusive rights to the surface and, in addition, 'broad and extensive rights of sub-lateral and subjacent support to prohibit interference with railroad operations and maintenance.'" He relayed that ARRC believes that the 1914 Act

provided it with not only an exclusive-use easement, but ultimately with fee simple ownership of much of the ROW.

MR. BEHREND continued by saying that even if ARRC was wrong - something which the court would have to decide - the way the ROW has been interpreted by the 1875 Act to give exclusive usage to the railroad, ARRC would still believe that the federal government had at a minimum an exclusive-use easement in the ROW when it was transferred to ARRC; therefore, the interim conveyances and the patents that have been issued giving ARRC an exclusive-use easement were correct and proper.

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REPRESENTATIVE JOHNSON asked Mr. Behrend if his testimony is that the 1875 Act is not applicable to ARR, therefore, neither is the proposed resolution.

MR. BEHREND stated that it is ARRC's position that the 1875 Act neither applies to the ROW now nor originally, since the ROW was created through the 1914 Act, which was not connected or related to the 1875 Act. He added that under ARTA, Congress transferred the ROW to the state, and the state received patents through that process. He reiterated that ARRC does not believe the 1875 Act plays any role in establishing its property interests.

REPRESENTATIVE JOHNSON asked whether his testimony is that there are some parts of the ARR ROW that ARRC does not own.

MR. BEHREND replied that it is not. It is the position of ARRC that it owns the entire ROW; his testimony is that under the 1914 Act, most of the ROW was established by reserving ROWs on federal land, and there may have been some authority in the 1914 Act to acquire other areas for the ROWs as necessary to create a full rail line.

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REPRESENTATIVE WOOL mentioned that Mr. O'Leary commented that he did not understand what problem the proposed resolution was attempting to solve. Representative Wool offered that there is no shortage of Alaska residents who have had issue with the ARR ROW, which presents a problem to be solved. He asked whether ARRC has instituted a program to build fences in the interest of safety where the ROW abuts private land; and if so, has it been discontinued like the program that charged rents.

MR. O'LEARY replied that every year, ARRC looks for ways to address trespassing and improve safety. He stated that the fencing in the Turnagain Arm area is an example of that; fencing is the most efficient way to try to funnel people away from a very dangerous area, in which they are trespassing. He relayed that ARRC does not have a program to fence off portions of the ARR ROW; it has trespass mitigation programs and safety programs; and he added that fencing can be a part of those efforts.

REPRESENTATIVE WOOL referred to testifiers relating that their property has been bisected or obscured by fencing - property that they have lived on for decades and believed to be safe. Anyone growing up near train tracks with active trains knows not to stand on the tracks. He conceded that 13 deaths over 33 years is not a good thing but is far less alarming than automobile death statistics. He mentioned that if someone were to put up a fence by a road easement and make everyone drive 25 miles per hour in the interest of safety, people would complain to the state. He suggested that there should be discussions with landowners before putting up a fence.

MR. O'LEARY responded, "We screwed up at the Red Robin Restaurant." He maintained that ARRC personnel talked to an individual that they believed had the authority to approve the fence; it turned out that person did not have the authority; and ARRC compounded the error by erecting the fence six inches [over the property line.] He stated that ARRC took trees down and put a fence up; it fixed the fence and will "make it right" with the trees.

REPRESENTATIVE WOOL stated that his question goes to the broader issue: people have private property that is being bisected by the ARR in the name of safety, and maybe that isn't in the overall best interest.

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MR. O'LEARY maintained that he is not aware of these situations; he is not denying that they exist; and he needs to become aware of them.

REPRESENTATIVE TUCK asked for an explanation of the terms "exclusive rights to the surface" and "exclusive use."

MR. BEHREND replied that the terms are used differently in different situations. He relayed that the 1914 Act did more

than direct the creation of the railroad for railroad purposes. He cited the 1914 Act, Chapter 37, to describe the other reasons for the creation of the railroad, which read in part, "so as best to aid in the development of the agricultural and mineral or other resources of Alaska, and the settlement of the public lands therein, and so as to provide transportation of coal for the Army and Navy, transportation of troops, arms, munitions of war, the mails, and for other governmental and public uses". He maintained that ARRC believes that there was a broad purpose behind the 1914 Act in creating the railroad and its ROW.

MR. BEHREND continued by saying that in ARTA and in ARCA, there was a requirement in the exclusive-use easement that the ROW be used for transportation - including railroad, communication, and transmission purposes. The ARCA requires that ARRC manages the ROW as a utility corridor for all those purposes - including roads, transmission lines, pipelines, and communication lines of various kinds. He said that an exclusive-use easement as conveyed to the state in the general conveyances and patents under ARTA is more than the exclusive use of the surface; ARRC can also use as much of the subsurface as necessary to support those transportation, communication, and transmission functions.

REPRESENTATIVE TUCK expressed his understanding that 100 years ago, there were no buried communication lines or transmission lines; because utilities are now buried, it is ARRC's position that it should be allowed to use the subsurface [of the easement] as well as the surface.

[5:12:10 PM](#)

MR. BEHREND responded that is correct. If the utilities are related to transportation, transmission, or communication, ARRC is allowed under its exclusive rights - whether it be easement or simple ownership - to use as much of the subsurface as is necessary to support those uses.

REPRESENTATIVE WOOL asked for the number of derailments ARRC has had since the transfer [in 1982].

MR. O'LEARY answered that he did not know the number; there have been major and minor derailments; there have not been any since his association with ARRC. He mentioned one major derailment: the 1999 derailment at Gold Creek, spilling tremendous quantities of jet fuel. He conceded that the ARR has had some large derailments over the years.

REPRESENTATIVE TUCK suggested that there was a derailment along the Seward Highway with a formaldehyde spill.

MR. O'LEARY replied that he did not recall such a derailment; he reiterated that there have been significant derailments over the years. He maintained that this point "gets to the heart of this whole thing" from ARRC's perspective: the easement is 100 feet on each side of the center line; a railcar can be 80-90 feet long and can turn sideways; and it can take up to a mile to stop a fully loaded freight train even after derailment, causing a swath of destruction. He stated that safety is real and not something ARRC is trying to "hide behind" in the discussion.

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REPRESENTATIVE BIRCH expressed that he would like to hear from the sponsor on several issues that came up during testimony.

REPRESENTATIVE LEDOUX closed public testimony on HJR 38 and announced that HJR 38 would be held over.

[5:16:28 PM](#)

ADJOURNMENT

There being no further business before the committee, the House State Affairs Standing Committee meeting was adjourned at 5:16 p.m.