

ALASKA STATE LEGISLATURE
SENATE TRANSPORTATION STANDING COMMITTEE

April 28, 2022

1:51 p.m.

MEMBERS PRESENT

Senator Robert Myers, Chair
Senator Mike Shower, Vice Chair
Senator Peter Micciche
Senator Jesse Kiehl

MEMBERS ABSENT

Senator Click Bishop

COMMITTEE CALENDAR

SENATE BILL NO. 231

"An Act providing that the Alaska Railroad Corporation is subject to the Executive Budget Act; providing that expenditures of the Alaska Railroad Corporation are subject to appropriation; and providing for an effective date."

- HEARD & HELD

SENATE BILL NO. 166

"An Act providing for and relating to the issuance of general obligation bonds for the purpose of paying the cost of state infrastructure projects, including construction, major maintenance, and port and transportation projects; and providing for an effective date."

- MOVED CSSB 166 (TRA) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: SB 231

SHORT TITLE: AK RAILROAD CORP; EXEC BUDGET ACT

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

03/15/22	(S)	READ THE FIRST TIME - REFERRALS
03/15/22	(S)	TRA, FIN
03/24/22	(S)	TRA AT 1:30 PM BELTZ 105 (TSBldg)
03/24/22	(S)	Heard & Held

03/24/22 (S) MINUTE (TRA)
04/14/22 (S) TRA AT 1:30 PM BELTZ 105 (TSBldg)
04/14/22 (S) -- MEETING CANCELED --
04/28/22 (S) TRA AT 1:30 PM BELTZ 105 (TSBldg)

BILL: SB 166

SHORT TITLE: G.O. BONDS FOR INFRASTRUCTURE PROJECTS

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

01/18/22 (S) READ THE FIRST TIME - REFERRALS
01/18/22 (S) TRA, FIN
01/27/22 (S) TRA AT 1:30 PM BELTZ 105 (TSBldg)
01/27/22 (S) Heard & Held
01/27/22 (S) MINUTE (TRA)
02/15/22 (S) TRA AT 1:30 PM BELTZ 105 (TSBldg)
02/15/22 (S) Heard & Held
02/15/22 (S) MINUTE (TRA)
04/26/22 (S) TRA AT 1:30 PM BELTZ 105 (TSBldg)
04/26/22 (S) Scheduled but Not Heard
04/28/22 (S) TRA AT 1:30 PM BELTZ 105 (TSBldg)

WITNESS REGISTER

JACK BROWN, representing self
Anchorage, Alaska

POSITION STATEMENT: Testified in support of SB 231.

ROBERT GASTROCK, representing self
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 231.

SARA TAYLOR, representing self
Anchorage, Alaska

POSITION STATEMENT: Testified in support of SB 231.

BONNE WOLDSTAD, representing self
North Pole, Alaska

POSITION STATEMENT: Testified in support of SB 231, noting it was a step in the right direction.

MICHAELLA ANDERSON, staff
Senator Robert Myers
Alaska State Legislature

POSITION STATEMENT: Reviewed the summary of changes in SB 166 from Version A to Version B.

NEIL STEININGER, Director

Office of Management and Budget
Office of the Governor
Juneau, Alaska

POSITION STATEMENT: Answered questions on SB 166, General Obligation (GO) Bonds: State Infrastructure Projects, Version B.

ACTION NARRATIVE

[1:51:41 PM](#)

CHAIR ROBERT MYERS called the Senate Transportation Standing Committee meeting to order at 1:51 p.m. Present at the call to order were Senators Kiehl, Shower, and Chair Myers. Senator Micciche arrived as the meeting was in progress.

SB 231-AK RAILROAD CORP; EXEC BUDGET ACT

[1:52:10 PM](#)

CHAIR MYERS announced the consideration of SENATE BILL NO. 231 "An Act providing that the Alaska Railroad Corporation is subject to the Executive Budget Act; providing that expenditures of the Alaska Railroad Corporation are subject to appropriation; and providing for an effective date."

[1:52:18 PM](#)

CHAIR MYERS opened public testimony on SB 231.

[1:52:41 PM](#)

JACK BROWN, representing self, Anchorage, Alaska, spoke in support of SB 231. He read a hypothetical letter he had written to illustrate the ongoing dispute and litigation between the Alaska Railroad and South Anchorage homesteaders in the Flying Crown subdivision along an airstrip in South Anchorage, which read:

[Original punctuation provided.]

I'm a South Anchorage homeowner and I've been fighting the Alaska RR for 9 years now. Their long running lack of budgetary and policy oversight has led directly to the gutting of the value of my home. No Alaskan or American should ever have to go through what I and many others have gone through. Hopefully my testimony here today will be helpful so that others can better understand what's driving this issue and help affect meaningful change.

I've written a hypothetical letter from our Alaska Federal District Judge Kindred, who recently rewrote 140+ years of ROW law against Alaskans, and in the process made a complete mockery of our constitution and settled law. The letter is written to Homesteader Mr Sperstad of whom I'm a successor, and all of the WW 1 & 2 Veterans and Miners who came to Homestead and settle in Alaska.

Dear Mr. Sperstad.

Congratulations on the April 17th, 1950, signing of your new Federal Homestead Patent. The US thanks you for the hardships you're willing to endure in this challenging environment and your adventurous spirit to help settle the last frontier. It's people like you who will set the stage for prosperity in this great land for generations to come.

As you're well aware sir, the Alaska RR transits and completely divides your new Homestead, and the following simple language is found within your patent:

"Excepting and reserving, however, to the US a right of way for the construction of railroads, Telegraph, and Telephone lines in accordance with the Act of March 12th, 1914."

This simple language would seem to state the obvious: the US has awarded you supreme title to land and divested itself of all right, title, and interest in the property with the new Federal Homestead land patent conveyed to you. However, just like a road or a canal, the US must reserve the right to continue to safely operate the train through your Homestead and requires a right of way to do so. Unfortunately, it's not so simple.

I am writing to you today to ensure that you understand clearly that, despite what may seem obvious in the patent language, the actual far-reaching implications to you, your heirs, and your successors of having the Alaska Railroad as your neighbor are not addressed within the patent language and are quite extensive. Let me explain. I've defined for the US that the actual intent of this sentence is to give the

US the fee equivalent authority to fence you out and otherwise permanently deny you any access whatsoever across the ROW for the purposes of improving your private Homestead property. If you have the financial means, present and future access "may" be negotiated at the sole discretion of the RR and it's US owned commercial real estate division via annual lease fees and payments calculated by the square foot at current market rates. You should further be warned that these rising market rates could increase rapidly and prove cost prohibitive to you and your heirs and successors either now or in the future.

[1:56:22 PM](#)

Additionally, any agreed upon leased or other access to your Homestead can be rescinded at any time for any reason whatsoever by the US now or in the future with 30 days' notice if you're unable to pay escalating access and other ROW use fees.

To further clarify: in your area the US only requires roughly half of the ROW acreage through your Homestead to safely operate the train or build a future 2nd track. The remaining portion of your fee simple ROW property has been designated for non-railroad residential and commercial real estate revenue generating operations executed at the sole discretion of the US. I realize that this may be a shock and confusing to you and other Homesteaders but I assure you this is the correct interpretation of the law.

[1:57:16 PM](#)

SENATOR MICCICHE joined the meeting.

MR. BROWN continued to read his written testimony.

[Original punctuation provided.]

Even though congress put an end to land grant railroads in America in 1875 to avoid this exact issue for settlers like you, the land grant railroad for all practical purposes continues alive and well through your Homestead and throughout the Alaska rail belt. Although technically the US recognizes you as the servient owner in fee of the 200' ROW land and the dirt under the tracks, you have no legal right of access or control over any of these ROW lands,

including those large portions of the ROW acreage completely unneeded for the current or future safe operation of the train.

Again sir, it's our privilege to welcome and congratulate you on your new Alaskan Federal Homestead Land Patent. We apologize if denying you access across the Homestead we've just conveyed to you causes you any financial or other hardship. We do note, however, that you do indeed have access to some of your Homestead without having to trespass on private RR land. You're quite fortunate in this regard as many Homesteaders are discovering that they have no lawful access to any buildable Homestead acreage due to the ROW location. They simply have no choice other than to try and pay whatever the RR demands or give up on their dreams of Homesteading in Alaska. So again, I must warn you that because the US has held back a 200-foot swath of private property within your Homestead, it's critical that you plan your future time and investments into your property very carefully. Just because there aren't fences in place today doesn't mean you won't be denied access or have to pay to avoid fences in the future or be fenced out entirely if you can't afford it or refuse to pay. There is no "permanent" access across the ROW in your Homestead. The ROW across your land for all practical purposes is fee simple land grant RR land in everything but name.

Thank You,

Judge Kindred of the Alaska Federal district court,
2022.

[1:59:48 PM](#)

ROBERT GASTROCK, representing self, Anchorage, Alaska, related that he had an ongoing dispute with the Alaska Railroad regarding the right-of-way (ROW) for over 11 years, mirroring Mr. Brown's dispute. He purchased his home when the federal government owned and operated the railroad but sold it last year.

MR. GASTROCK related that he provided written testimony to the committee. He offered his belief that SB 231 would provide executive and legislative oversight of the Alaska Railroad, which has been lacking since the Alaska Railroad Corporation was formed in the 1980s. He offered his view that many of ARRC's

policies were ill-conceived and detrimental to public access and private property rights.

[2:01:37 PM](#)

MR. GASTROCK offered his view that ARRC acts with impunity. He said ARRC considers itself a state agency when seeking state or federal funding, but it uses its corporate status to avoid disclosing financial information to the public. He provided two examples when ARRC had ignored statutory requirements. He said that the patents received and accepted by ARRC in 2006 were done without legislative approval as required by statutes. He said that the patents had clouded the title of property owners, including himself and Mr. Brown. He explained that the patent was superimposed on the patent granted to Mr. Sperstad.

[2:03:44 PM](#)

MR. GASTROCK stated that the legislature amended AS 42.42.350 and AS 42.42.410 to say that the railroad could not claim exclusive use in any area where the railroad could not demonstrate that the federal government had such rights to transfer to the state. He stated that members might be aware that ARRC filed a lawsuit against Flying Crown Airpark. The property association had asked ARRC to honor the statute and provide proof that the federal government owned fee title to the land or something other than a surface easement. Flying Crown provided a complete chain of title reports showing that there was no mention of any interest by the federal government regarding land ownership of any portion of the right-of-way that runs through Tom Sperstad's homestead. Instead of acknowledging the facts, ARRC filed a lawsuit in federal court against Flying Crown, which is still under litigation.

[2:05:06 PM](#)

MR. GASTROCK asked members to support SB 231.

[2:05:30 PM](#)

SARA TAYLOR, representing self, Anchorage, Alaska, stated that the Alaska Railroad Corporation (ARRC) claims to own 12,000 acres of land along a 500-mile railway corridor, including submerged land. She expressed concern that the legislature does not have oversight over ARRC. She referred to a US Supreme Court case [Illinois Central Railroad v. Illinois 146 U.S. 387 (1892)] regarding Illinois Central Railroad ownership of 1,000 acres of submerged lands. The court reaffirmed that each state, in its sovereign capacity, holds permanent title to all submerged lands within its borders and holds these lands in public trust.

MS. TAYLOR stated that Alaskans have a constitutional right to free access to use navigable waterways. She offered her view that state officials cannot disregard the public trust doctrine protections when the state received title to submerged lands along the Alaska Railroad. She said AS 38.05.126 is not ambiguous. She asked members to consider the substantial merits of SB 231.

[2:09:38 PM](#)

BONNIE WOLDSTAD, representing self, North Pole, Alaska, spoke in support of SB 231, noting it was a step in the right direction. She expressed concern that the state does not have sufficient oversight over ARRC. She stated that in 2003, the Alaska Railroad worked to repeal 45 U.S.C. Sections 1208 and 1209 of the federal act. She summarized that the adjacent property was to revert to the adjacent property owners, but by repealing this law, the Alaska Railroad no longer needed to comply with those provisions. She referred to the Anchorage lawsuit. She noted that then-Representative Tammy Wilson introduced a bill related to railroad rights-of-way [HB 93]. She expressed an interest in having the railroad accountable to the people. She was unsure whether the remedy was to expand ARRC's board members to include property owners, but she viewed SB 231 as a step in the right direction because it would provide accountability. The US patents that were issued before statehood do not offer exclusive easements. She characterized the railroad's exclusive easements as an inverse take.

[2:13:24 PM](#)

CHAIR MYERS closed public testimony on SB 231.

CHAIR MYERS held SB 231 in committee.

SB 166-G.O. BONDS FOR INFRASTRUCTURE PROJECTS

[2:13:40 PM](#)

CHAIR MYERS announced the consideration of SENATE BILL NO. 166 "An Act providing for and relating to the issuance of general obligation bonds for the purpose of paying the cost of state infrastructure projects, including construction, major maintenance, and port and transportation projects; and providing for an effective date."

[2:13:52 PM](#)

SENATOR SHOWER moved to adopt the committee substitute (CS) for SB 166, work order 32-GS2543\B, as the working document.

[2:14:02 PM](#)

CHAIR MYERS objected for discussion purposes.

[2:14:07 PM](#)

At ease

[2:14:17 PM](#)

CHAIR MYERS reconvened the meeting.

[2:14:48 PM](#)

MICHAELLA ANDERSON, staff, Senator Robert Myers, Alaska State Legislature, reviewed the changes in SB 166, Version B. She reported that SB 166, Version A proposed issuance of general obligation bonds in the amount of \$325,175,000. The committee substitute (CS) for SB 166, Version B amends that to \$391,171,258.

MS. ANDERSON stated that the committee substitute removed two projects from the original bill. The Knik Arm Port Infrastructure for \$175 million was removed because the funds did not specify a project or grantee, making it legally questionable. The Juneau Access project for \$25 million was removed because no actual construction occurred, which is considered crucial for general obligation bond projects.

[2:15:52 PM](#)

MS. ANDERSON referred to page 2 and read a list of projects added in the committee substitute (CS) for SB 166, Version B.

Municipality of Anchorage - Port of Alaska
modernization \$75,000,000
City of Emmonak - Port of Emmonak rehabilitation
\$8,500,000

Haines Borough - Lutak Dock restoration \$3,211,000

Kodiak Island Borough - Kodiak fire station was
reduced from \$15,000,000 to \$8,000,000

Lynn Canal Transmission Corporation northern segment
of the southeast intertie project- \$5,000,000

City of Seward - Seward ship transfer rail extension
\$4,500,000

[2:16:39 PM](#)

MS. ANDERSON noted that Chair Myers will propose an amendment to remove the Southeast Conference from page 3, line 3 for the Kenai River Bluffs stabilization.

2:17:08 PM

MS. ANDERSON referred to the Department of Education and Early Development projects, which were primarily taken from the School Major Maintenance Fund and deferred maintenance lists. She read:

American Charter Academy School: \$5,200,000

Anderson K-12 school partial roof replacement:
\$1,015,574

Chenega Bay K-12 school renovation: \$5,759,942

Copper River district office roof replacement:
\$581,556

Craig Elementary School rehabilitation: \$1,905,489

Craig Middle School rehabilitation: \$5,668,124

Eagle River Elementary School improvements: \$5,422,355

Galena Interior Learning Academy composite building
renovation: \$5,904,081

Kake schools heating upgrades: \$191,618

Mat-Su Central School: \$10,400,000

Mt. Edgecumbe High School dining hall renovation:
\$4,741,000

Tatitlek K-12 school renovation: \$6,972,263

Valdez High School and Hermon Hutchens Elementary
School domestic water piping replacement: \$830,671

West High School partial roof replacement: \$4,322,259

2:18:33 PM

MS. ANDERSON stated that there was no longer a Department of Health & Social Services section of the bill. She said Sec. 5 relates to the Department of Family and Community Services because the department was split. She identified two projects

that were previously vetted in SB 74 and funds were allocated to:

Alaska Veterans and Pioneers Home roof replacement:
\$2,268,000

Fairbanks Pioneer Home roof and flooring replacement:
\$2,441,800

MS. ANDERSON stated that the following project came from the deferred maintenance list:

Sitka Pioneer Home - service entrance door replacement
\$91,000

[2:19:15 PM](#)

MS. ANDERSON reviewed Sec. 6, noting that the Department of Health allocated \$36,400 for the Sitka Public Health Center handicap ramp repairs and remodel project.

[2:19:17 PM](#)

MS. ANDERSON reviewed Sec. 7, noting that the Department of Labor & Workforce Development allocated \$1,000,000 for the Alaska Vocational Technical Center student housing and services center repairs and renovation project.

[2:19:33 PM](#)

MS. ANDERSON reviewed Sec. 7, noting that the Department of Military and Veterans Affairs allocated \$200,000 for the Kotzebue armory fire alarm panels project.

[2:19:46 PM](#)

MS. ANDERSON reviewed Sec. 9, noting that the Department of Natural Resources allocated \$887,000 for the Alaska Plant Materials Center (APMC) renovation and upgrades project. She stated that this was derived from the deferred maintenance list. She indicated that this would combine all of the \$10,000 projects for the APMC in one allocation.

[2:20:06 PM](#)

MS. ANDERSON reviewed Sec. 10, noting that the Department of Public Safety allocated \$15,500,000 for the following projects:

Alaska state troopers training academy: \$1,500,000
derived from the deferred maintenance list.

Interior law enforcement training facility:
\$14,000,000, which is a project placed in CAPSIS
affecting 12 House districts.

[2:20:27 PM](#)

MS. ANDERSON referred to Sec. 11, noting that the Department of Transportation and Public Facilities (DOTPF) allocated funding for two new projects:

Homer slope stability and erosion mitigation program:
\$3,725,000

Mainline ferry vessel replacement state match:
\$26,000,000

North State Office Building parking: \$5,000,000

[2:20:49 PM](#)

MS. ANDERSON reviewed Sec. 12, noting that the projects for the University of Alaska were derived from the general obligation bond list and \$79,059,000 was allocated to the following projects:

Anchorage Campus - energy performance upgrades:
\$11,171,000

Bartlett and Moore Hall modernization and renewal:
\$20,500,000, which was increased due to inflation.

Juneau campus - Anderson scuba locker and lab
repurpose: \$350,000

Fire and emergency services training and education
facility replacement: \$41,800,000

Kenai, Homer, Mat-Su, Kodiak, and Valdez campuses HVAC
healthy building upgrades \$4,429,000

Ketchikan Campus - maritime center roof replacement:
\$800,000

[2:21:42 PM](#)

MS. ANDERSON stated that the committee substitute (CS) for SB 166, Version B, removed the old Sec. 8 that indicated that the Office of Management and Budget (OMB) could request general funds to pay for the bond package before the bonds were issued.

She stated that section was removed so OMB must wait until the bonds are issued before funding these projects.

[2:22:15 PM](#)

CHAIR MYERS removed his objection; found no further objection, and Version B was adopted as the working document.

[2:22:40 PM](#)

CHAIR MYERS moved to adopt Conceptual Amendment 1.

[2:22:54 PM](#)

SENATOR SHOWER objected for discussion purposes.

[2:22:48 PM](#)

CHAIR MYERS read Conceptual Amendment 1, which was handwritten, as follows:

pg 3, ln 3 - remove "southeast conference"
replace with "City of Kenai."

CHAIR MYERS explained that Conceptual Amendment 1 would correct a drafting error. He stated that the funding is for the Kenai River Bluffs stabilization project, which is not a Southeast project.

CHAIR MYERS noted that Legislative Legal is directed to make any changes or deletions to the suggested language, including technical, conforming, or bill title changes, in order to accomplish the intent.

[2:23:14 PM](#)

SENATOR KIEHL asked if a grant recipient needed to be added to the language.

[2:23:38 PM](#)

NEIL STEININGER, Director, Office of Management and Budget, Office of the Governor, Juneau, Alaska, introduced himself.

[2:23:46 PM](#)

SENATOR KIEHL asked for the correct grant recipient for the Kenai River Bluffs stabilization project.

MR. STEININGER responded that the grant recipient would be the City of Kenai.

[2:24:14 PM](#)

SENATOR MICCICHE moved to adopt Conceptual Amendment 1 to Conceptual Amendment 1.

[2:24:18 PM](#)

CHAIR MYERS objected for discussion purposes.

[2:24:23 PM](#)

SENATOR MICCICHE stated Conceptual Amendment 1 to Conceptual Amendment 1 would add the "City of Kenai" before the hyphen on page 3, line 3, which would read:

City of Kenai - Kenai River Bluffs stabilization

[2:24:38 PM](#)

CHAIR MYERS removed his objection; he found no further objection, and Conceptual Amendment 1 to Conceptual Amendment 1 was adopted.

CHAIR MYERS noted Conceptual Amendment 1, as amended, was before the committee.

[2:24:52 PM](#)

SENATOR SHOWER removed his objection.

[2:24:54 PM](#)

CHAIR MYERS found no further objection, and Conceptual Amendment 1, as amended, was adopted.

[2:25:24 PM](#)

CHAIR MYERS closed public testimony on SB 166.

[2:25:38 PM](#)

SENATOR KIEHL noted that Galena was misspelled [on page 3, line 19].

CHAIR MYERS stated that Legislative Legal Services was empowered to make any technical and conforming changes.

[2:26:01 PM](#)

SENATOR KIEHL stated that school projects were typically identified on a deferred maintenance priority list. He indicated that using the priority list helps keep the state out of court, given some challenges to the equal protection clause of the Alaska Constitution. He noted that two projects listed on page 3, lines 13 and 14 were ones that were not on the deferred maintenance list. He suggested that those projects should receive scrutiny in subsequent committees.

2:27:06 PM

SENATOR SHOWER moved to report the committee substitute (CS) for SB 166, work order 32-GS2543\B, as amended, from committee with individual recommendations and attached fiscal note(s).

CHAIR MYERS found no objection, and CSSB 166(TRA) was reported from the Senate Transportation Standing Committee.

2:27:38 PM

At ease

2:29:07 PM

CHAIR MYERS reconvened the meeting.

2:29:17 PM

There being no further business to come before the committee, Chair Myers adjourned the Senate Transportation Standing Committee meeting at 2:29 p.m.