

**ALASKA STATE LEGISLATURE  
HOUSE JUDICIARY STANDING COMMITTEE**

May 15, 2025

1:00 p.m.

**MEMBERS PRESENT**

Representative Andrew Gray, Chair  
Representative Chuck Kopp, Vice Chair  
Representative Ted Eischeid  
Representative Genevieve Mina  
Representative Sarah Vance  
Representative Jubilee Underwood

**MEMBERS ABSENT**

Representative Mia Costello

**COMMITTEE CALENDAR**

HOUSE BILL NO. 64

"An Act relating to the surrender of infants; and providing for an effective date."

- HEARD & HELD

HOUSE BILL NO. 136

"An Act relating to use of railroad easements."

- HEARD & HELD

HOUSE BILL NO. 24

"An Act relating to aggravating factors considered at sentencing."

- HEARD & HELD

**PREVIOUS COMMITTEE ACTION**

BILL: HB 64

SHORT TITLE: SURRENDER OF INFANTS; INF. SAFETY DEVICE

SPONSOR(S): REPRESENTATIVE(S) TOMASZEWSKI

01/24/25	(H)	READ THE FIRST TIME - REFERRALS
01/24/25	(H)	HSS, JUD
03/13/25	(H)	HSS AT 3:15 PM DAVIS 106

03/13/25 (H) Heard & Held  
 03/13/25 (H) MINUTE(HSS)  
 04/29/25 (H) HSS AT 3:15 PM DAVIS 106  
 04/29/25 (H) Heard & Held  
 04/29/25 (H) MINUTE(HSS)  
 05/01/25 (H) HSS AT 3:15 PM DAVIS 106  
 05/01/25 (H) Moved HB 64 Out of Committee  
 05/01/25 (H) MINUTE(HSS)  
 05/02/25 (H) HSS RPT 2DP 2NR 1AM  
 05/02/25 (H) DP: PRAX, SCHWANKE  
 05/02/25 (H) NR: MEARS, MINA  
 05/02/25 (H) AM: GRAY  
 05/14/25 (H) JUD AT 1:00 PM GRUENBERG 120  
 05/14/25 (H) -- MEETING CANCELED --  
 05/15/25 (H) JUD AT 1:00 PM GRUENBERG 120

BILL: HB 136

SHORT TITLE: RAILROAD UTILITY CORRIDORS

SPONSOR(S): REPRESENTATIVE(S) KOPP

03/14/25 (H) READ THE FIRST TIME - REFERRALS  
 03/14/25 (H) TRA, JUD  
 04/01/25 (H) TRA AT 1:00 PM BARNES 124  
 04/01/25 (H) Heard & Held  
 04/01/25 (H) MINUTE(TRA)  
 05/06/25 (H) TRA AT 1:00 PM BARNES 124  
 05/06/25 (H) Heard & Held  
 05/06/25 (H) MINUTE(TRA)  
 05/08/25 (H) TRA AT 1:00 PM BARNES 124  
 05/08/25 (H) Moved CSHB 136(TRA) Out of Committee  
 05/08/25 (H) MINUTE(TRA)  
 05/09/25 (H) TRA RPT CS(TRA) 3DP 1NR 3AM  
 05/09/25 (H) DP: MCCABE, MOORE, STUTES  
 05/09/25 (H) NR: MINA  
 05/09/25 (H) AM: TILTON, EISCHEID, CARRICK  
 05/14/25 (H) JUD AT 1:00 PM GRUENBERG 120  
 05/14/25 (H) -- MEETING CANCELED --  
 05/15/25 (H) JUD AT 1:00 PM GRUENBERG 120

BILL: HB 24

SHORT TITLE: AGGRAVATING FACTORS AT SENTENCING

SPONSOR(S): REPRESENTATIVE(S) JOSEPHSON

01/22/25 (H) PREFILE RELEASED 1/10/25  
 01/22/25 (H) READ THE FIRST TIME - REFERRALS  
 01/22/25 (H) STA, JUD  
 05/01/25 (H) STA AT 3:15 PM GRUENBERG 120

05/01/25	(H)	Heard & Held
05/01/25	(H)	MINUTE(STA)
05/06/25	(H)	STA AT 3:15 PM GRUENBERG 120
05/06/25	(H)	Heard & Held
05/06/25	(H)	MINUTE(STA)
05/10/25	(H)	STA AT 1:00 PM GRUENBERG 120
05/10/25	(H)	-- MEETING CANCELED --
05/12/25	(H)	JUD AT 1:00 PM GRUENBERG 120
05/12/25	(H)	-- MEETING CANCELED --
05/13/25	(H)	STA AT 3:15 PM GRUENBERG 120
05/13/25	(H)	Moved HB 24 Out of Committee
05/13/25	(H)	MINUTE(STA)
05/14/25	(H)	STA RPT 4DP 2DNP 1AM
05/14/25	(H)	DP: HOLLAND, HIMSCHOOT, STORY, CARRICK
05/14/25	(H)	DNP: VANCE, MCCABE
05/14/25	(H)	AM: MOORE
05/15/25	(H)	JUD AT 1:00 PM GRUENBERG 120

**WITNESS REGISTER**

REPRESENTATIVE FRANK TOMASZEWSKI  
 Alaska State Legislature  
 Juneau, Alaska

**POSITION STATEMENT:** As prime sponsor, introduced HB 64.

DAVID GOFF, Staff  
 Representative Frank Tomaszewski  
 Alaska State Legislature  
 Juneau, Alaska

**POSITION STATEMENT:** Presented the sectional analysis for HB 64 on behalf of Representative Tomaszewski, prime sponsor.

LORI BRUCE, representing self  
 New Haven, Connecticut

**POSITION STATEMENT:** Testified in opposition to HB 64.

NOELLE OZIMEK, representing self  
 Boston Massachusetts

**POSITION STATEMENT:** Testified during the hearing on HB 64.

CARLA ERICKSON, Chief Assistant Attorney  
 Alaska Department of Law  
 Juneau, Alaska

**POSITION STATEMENT:** Answered questions during the hearing on HB 64.

IVAN LONDON, Senior Attorney

Mountain State Legal Foundation  
Denver, Colorado

**POSITION STATEMENT:** Gave invited testimony during the hearing on HB 136.

HUGH ASHLOCK, Owner  
Diamond Center Mall, LLC;  
Diamond Center Holdings, LLC  
Anchorage, Alaska

**POSITION STATEMENT:** Gave invited testimony during the hearing on HB 136.

JOE MATHIS, property owner  
Anchorage, Alaska

**POSITION STATEMENT:** Gave invited testimony during the hearing on HB 136.

JOHN PLETCHER, property owner  
Anchorage, Alaska

**POSITION STATEMENT:** Gave invited testimony during the hearing on HB 136.

MEGHAN CLEMENS, External Affairs Director  
Alaska Railroad Corporation  
Anchorage, Alaska

**POSITION STATEMENT:** Presented a PowerPoint, titled, "HB 136: Railroad Utility Corridors," and answered questions.

DIANA RHOADES, Program Director  
Anchorage Park Foundation  
Anchorage, Alaska

**POSITION STATEMENT:** Testified in opposition to HB 136.

ALEXA DOBSON  
Executive Director, Bike Anchorage  
Anchorage, Alaska

**POSITION STATEMENT:** Testified in opposition to HB 136

REPRESENTATIVE ANDY JOSEPHSON  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** As prime sponsor, presented HB 24.

TAMMIE WILLIS  
representing self  
(No address provided)

**POSITION STATEMENT:** Gave invited testimony during the hearing on HB 24.

KAREN LOEFFLER, representing self  
Anchorage, Alaska

**POSITION STATEMENT:** Gave invited testimony during the hearing on HB 24.

**ACTION NARRATIVE**

[1:00:45 PM](#)

CHAIR GRAY called the House Judiciary Standing Committee meeting to order at 1:00 p.m. Representatives Mina, Vance, Eischeid, Underwood, and Gray were present at the call to order. Representative Kopp arrived as the meeting was in progress.

**HB 64-SURRENDER OF INFANTS; INF. SAFETY DEVICE**

[1:01:36 PM](#)

CHAIR GRAY announced that the first order of business would be HOUSE BILL NO. 64, "An Act relating to the surrender of infants; and providing for an effective date."

[1:01:49 PM](#)

The committee took an at-ease from 1:01 p.m. to 1:03 p.m.

[1:03:17 PM](#)

REPRESENTATIVE FRANK TOMASZEWSKI, Alaska State Legislature, as prime sponsor, introduced HB 64. He read the sponsor statement [included in the committee packet], which read as follows [original punctuation provided]:

In 2008 Alaska enacted its safe surrender law to ensure that surrendered infants receive immediate care for their safety and provide legal protection for the relinquishing parent, thereby reduce potential infant death due to illegal abandonment. Our current safe surrender law requires a parent to directly relinquish an infant to another individual.

Infant safety devices protect both relinquishing parents and infants. Infant safety devices allow a parent to surrender an infant anonymously through a

climate-controlled device at a designated facility. Currently, twenty-two states authorize infant safety devices. House Bill 64 would authorize the use of infant safety devices as an additional method of infant relinquishment under the safe surrender laws. These devices would safely hold an infant with an automatic lock and constant video surveillance while immediately alerting appropriate personnel of the surrender. Infant safety devices would be placed in conspicuous areas with appropriate signage as determined by the Department of Family and Community Services (DFCS). An infant safety device may be located at hospital, emergency department, freestanding birth center, office of a private physician, rural health clinic, municipal police department, state trooper post, fire department, or other facility designated by the DFCS commissioner.

The ability to relinquish an infant to a safe location rather than an individual allows additional anonymity for the relinquishing parent while still ensuring that surrendered infants receive immediate medical care.

[1:05:56 PM](#)

DAVID GOFF, Staff, Representative Frank Tomaszewski, Alaska State Legislature, on behalf of Representative Tomaszewski, prime sponsor, read the sectional analysis for HB 64 [included in the committee packet], which read as follows [original punctuation provided]:

Section 1

Amends the child abandonment statute (AS 47.10.013(c)) to make a parent immune from prosecution if they safely leave the infant in a safety device that is fiscally affixed to allowable public agency facility.

Section 2

Amends the child abandonment statute (AS 47.10.013(d)) to conform to Section 1 abandonment for the person to whom an infant is safely surrendered.

Section 3

Amends the child abandonment statute (AS47.10.013(e)) to include designated facility as a receiver of a safely abandoned infant.

Section 4

Adds a new subsection to the child abandonment statute to require receiving facilities to immediately notify the nearest peace officer, community health aide, physician, or hospital employee.

Adds a new subsection to specify what an infant safety device must be equipped with and where it must be located.

Section 5

Provides an effective date of July 1, 2026.

[1:07:38 PM](#)

REPRESENTATIVE KOPP asked whether the bill is voluntary or if the Department of Health (DOH) would "assign entities."

REPRESENTATIVE TOMASZEWSKI stated that the bill gives the commissioner the discretion to make those designations.

[1:08:51 PM](#)

CHAIR GRAY asked whether the bill sponsor or his staff had visited one of these [infant safety devices] "baby boxes."

REPRESENTATIVE TOMASZEWSKI said no, he had never seen or been placed in a baby box.

[1:09:23 PM](#)

REPRESENTATIVE VANCE shared her understanding that the Safe Surrender of Infants Act allows parents to relinquish an infant who is less than 21 days old, and asked whether the same parameters apply in HB 64.

MR. GOFF confirmed that the bill would follow the same 21-day rule. He explained that once the baby box door is opened, it sounds a silent alarm in the fire station, hospital, emergency room, or healthcare facility; after the baby is placed in the basinet, the door locks upon closure and a second alarm is sounded. If no one responds, local dispatch is notified to take custody of the child.

[1:13:12 PM](#)

REPRESENTATIVE VANCE sought to confirm that HB 64 would allow any mother to surrender an infant under three weeks old

anonymously without judgment and the state would provide for that child.

MR. GOFF responded affirmatively.

[1:13:47 PM](#)

CHAIR GRAY sought to confirm that any person, not just the mother, could surrender the child. In addition, he asked about constant surveillance, and whether a six-month-old baby being placed in the box would eliminate the adult's right to anonymity.

REPRESENTATIVE TOMASZEWSKI shared his understanding that existing laws prevent the submission of a child by someone other than the parent.

MR. GOFF clarified that the camera providing 24-hour surveillance is inside the box to ensure the safety of a child, not to capture the identity of the person relinquishing the child.

REPRESENTATIVE TOMASZEWSKI added that cameras are everywhere, so anonymity is subject to interpretation.

CHAIR GRAY pointed out that anonymity in smaller communities is unlikely.

REPRESENTATIVE TOMASZEWSKI anticipated that the boxes would be placed in larger hub communities, not the small communities.

[1:18:35 PM](#)

REPRESENTATIVE UNDERWOOD asked whether baby boxes are linked to a reduction in abandonments.

MR. GOFF did not know the answer. He reported that 54 babies had been submitted to baby boxes across the U.S.

[1:22:02 PM](#)

REPRESENTATIVE EISCHEID asked how many infants had been relinquished under the Safe Surrender of Infants Act.

MR. GOFF responded that the numbers are not clear, but he was aware of three babies that had been abandoned in Alaska.

REPRESENTATIVE KOPP referenced a letter from Chief Schrage at the Anchorage Fire Department [included in the committee packet] that testified to recent incidents of abandoned newborns in Anchorage under the Safe Haven Law and spoke in support of HB 64.

[1:23:59 PM](#)

CHAIR GRAY asked what other states with baby boxes are doing with regard to the Indian Child Welfare Act (ICWA).

MR. GOFF imagined that those states would be doing everything they could to work with those agencies.

[1:25:18 PM](#)

The committee took a brief at-ease at 1:25 p.m.

[1:25:51 PM](#)

CHAIR GRAY opened public testimony on HB 64.

[1:26:24 PM](#)

LORI BRUCE, representing self, stated that she has studied safe haven laws for over ten years and led an open letter to the U.S. Department of Health and Human Services (USDHHS) that called for federal oversight of these devices. The letter was signed by 100 clinicians and child welfare experts because of the growing awareness of the harms and unintended consequences of baby boxes. She said under present conditions, she strongly recommends against the use of these boxes because they decrease the likelihood of crisis intervention and increase unnecessary family separation. They also violate ICWA and are not regulated by any government authority. She reported that three deaths have been associated with boxes over the past year. Additionally, context terms disallow providers from altering the signs on the boxes that could inform at-risk parents of family preservation and other options, which ties the hands of the first responders by withholding legal options from at-risk families. She said there's nothing that would stop an older baby or toddler from being left in a box. She added that there are many better ways to help these families.

[1:30:10 PM](#)

REPRESENTATIVE EISCHEID asked Ms. Bruce where she resides.

MS. BRUCE said she currently resides in Connecticut.

[1:30:45 PM](#)

NOELLE OZIMEK, representing self, informed the committee that she is the former director of research and development at the National Safe Haven Alliance and a reproductive biologist currently based at Harvard Medical School. In running the safe haven crisis hotline, she said she worked with many providers, law enforcement officers, and parents looking to surrender their children and came to the belief that baby boxes are not the best way to end infant abandonment. When people come into hospitals to surrender it provides the opportunity to intervene and provide resources for parents and children. Baby boxes diminish this opportunity, she said, and increases the liability for all those involved if child is harmed or dies. She stated that a box failure could kill an infant and the current boxes are designed poorly. She reiterated her belief that the people who panic and abandon infants should be provided with better options.

[1:35:04 PM](#)

REPRESENTATIVE MINA asked how to regulate the inspection of baby boxes to ensure their function.

MS. OZIMEK replied it's a difficult question to answer because the boxes are patented in the U.S. by one provider, so that company would need to be very involved in the testing process. She suggested that an alternative route to be explored is baby drawers, which would be more open to regulation and testing by states or institutions.

[1:36:20 PM](#)

REPRESENTATIVE UNDERWOOD asked whether anyone has been charged with a crime after surrendering their baby.

MS. OZIMEK said she has seen many cases of law enforcement following people home and involving child protective agencies.

REPRESENTATIVE UNDERWOOD asked which state this occurred in.

MS. OZIMEK answered all across the U.S.

[1:37:52 PM](#)

CHAIR GRAY announced that public testimony would be left open on HB 64.

[1:38:08 PM](#)

The committee took a brief at-ease at 1:38 p.m.

[1:38:14 PM](#)

REPRESENTATIVE TOMASZEWSKI, in response to public testimony, opined that he would rather have a panicked parent leave their baby in a warm box instead of outside on the side of the road. He clarified that Alaska already has safe surrender laws, so parents would not be charged with a crime for using the baby box. He said the bill is intended to help struggling parents.

[1:40:08 PM](#)

REPRESENTATIVE MINA asked whether there are ways to provide resources to parents in a panicked crisis situation, so they don't default to abandoning their child.

REPRESENTATIVE TOMASZEWSKI agreed that providing parents with additional information or a number to call on the box would be a good idea.

[1:41:29 PM](#)

CHAIR GRAY asked whether a crime could be charged in the case of severe drug exposure.

REPRESENTATIVE KOPP shared his understanding that as long as no physical injury had occurred to the child prior to surrender, no crime would be charged.

[1:43:12 PM](#)

REPRESENTATIVE VANCE asked to hear from DOH. She shared her understanding that the bill would enhance safe surrender laws and is intended to provide resources that improve the safety of both mother and child - not charge them with a crime. She suggested that other organizations could provide baby boxes for infants in compliance with state law, and further clarified that there is a process and resources available for surrendering a child who is older than 21 days.

[1:46:33 PM](#)

REPRESENTATIVE MINA noted that trafficking and ICWA are important points of discussion.

CHAIR GRAY asked whether safe haven laws allow parents to surrender drug-exposed infants in person.

[1:48:35 PM](#)

CARLA ERICKSON, Chief Assistant Attorney, Department of Law (DOL), said that would be grounds for a child in need of aide (CINA) petition in a civil case, but she was unsure how it would be handled on the criminal side.

REPRESENTATIVE MINA asked how the safe surrender law impacts ICWA if an Alaska Native mother were giving her baby up.

MS. ERICKSON stated that ICWA requires the state to make efforts to notify the Indian child's Tribe and allow them to participate in the CINA petition. She said she's not familiar with any cases in which the state was not aware of the identity of the parents, which in turn allowed them to identify the child's Tribe.

[1:50:14 PM](#)

CHAIR GRAY announced that HB 64 was held over.

**HB 136-RAILROAD UTILITY CORRIDORS**

[1:50:34 PM](#)

CHAIR GRAY announced that the next order of business would be HOUSE BILL NO. 136, "An Act relating to use of railroad easements." [Before the committee was CSHB 136(TRA).]

[1:50:47 PM](#)

The committee took a brief at-ease at 1:50 p.m.

[1:51:18 PM](#)

REPRESENTATIVE KOPP, as prime sponsor, presented CSHB 136(TRA). He directed attention to a PowerPoint presentation on HB 136 [hard copy included in the committee packet], beginning on slide

2, "Purpose of HB 136," which read as follows [original punctuation provided]:

HB 136 affirms Alaska's right to set management policies for the Alaska Railroad Easement

REPRESENTATIVE KOPP continued to slide 3, "What HB 136 does not do," which read as follows [original punctuation provided]:

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

[1:54:40 PM](#)

CHAIR GRAY asked whether the bill would prevent the installation of the Fish Creek Trail connector.

REPRESENTATIVE KOPP stated the bill has no impact on that trail.

[1:55:19 PM](#)

REPRESENTATIVE KOPP moved to slides 4-5, "How did we get here?" Which showed a historical timeline of railroad rights-of-way and easements in the U.S.

[2:00:03 PM](#)

CHAIR GRAY asked about fee interest.

REPRESENTATIVE KOPP defined fee interest as "owning outright." He resumed the presentation on slide 5 which an explanation of Reeves v. Godspeed and Alaska Railroad Corporation v. Flying Crown Homeowners' Association, which brought legal uncertainty when the railroad asserted the right to fence off several homes that encroached on the easement despite the homeowners' land patent making no mention of the railroad.

[2:04:08 PM](#)

REPRESENTATIVE KOPP moved to slide 6 and discussed the intent of Alaska Railroad Transfer Act (ARTA). He shared his belief that the Ninth Circuit Court of Appeals misapplied the law in Alaska Railroad Corporation v. Flying Crown Homeowners' Association when asserting that the railroad had the right to absolutely exclude, even for noninterfering uses. In 2018, Congressman Young, the only living member of Congress who debated on the

passage of ARTA, gave a written statement clarifying ARTA did not intend to authorize the transfer of privately owned property interest.

[2:05:57 PM](#)

CHAIR GRAY asked about if the railroad had built a fence on those homeowners' property, whether they would have the right to do things that did not interfere with the railroad on their property.

REPRESENTATIVE KOPP answered in his view, yes, which the bill would make clear.

[2:07:11 PM](#)

REPRESENTATIVE KOPP continued to slide 7, "What is a Railroad 'right-of-way," which defined "right-of-way as the right of passage through the public lands of the United States. He advanced to slide 8, "What is an 'easement'?" Slide 8 read as follows [original punctuation provided]:

A non-possessory right to use property owned by another for a specific purpose - Marvin Brandt Revocable Trust v. United States, 572 U.S. 93 (2014)

The Railroad right of way becomes an easement when it crosses another person or entity's private property i.e., Homestead patented lands

REPRESENTATIVE KOPP moved to slide 9, "Exclusive Use for Railroad, Telegraph and Telephone only," which read as follows [original punctuation provided]:

- The right to exclude is the essence of ownership, conversely, to the extent one does not have exclusion rights, one does not have property
- Exclusivity has many meanings and applies to the easement holder, not the landowner
- An easement that permits the holder to exclude the underlying landowner is no longer an easement but is full ownership

REPRESENTATIVE KOPP turned to slide 10, "Homestead Land Patents," which read as follows [original punctuation provided]:

These are privately owned lands over which much of the Railroad easement crosses. More than 142.34 miles of track in Alaska crosses lands that are patented to individuals\*

These patents cite a reservation to the U.S. government of a right of way for rail, telegraph, and telephone

\* USRA Valuation of the Alaska Railroad Sep. 1983

REPRESENTATIVE KOPP continued to slide 11, which stated that the railroad right of way was reserved for "railroad, telegraph, and telephone." He advanced to slide 12, "Why does HB 136 matter?" Slide 12 read as follows [original punctuation provided]:

The 9th Circuit's 2023 ruling in Alaska Railroad Corporation v. Flying Crown held the ARC possesses an "exclusive use" easement in the entire right of way, which conflicts with significant U.S. Supreme Court and Alaska Supreme Court rulings on the general nature of the property interest that railroads possess in their easement over private property

[2:14:19 PM](#)

CHAIR GRAY questioned why the Ninth Circuit Court of Appeals held that ARRC possesses an exclusive use easement.

REPRESENTATIVE KOPP said the court argued that ARRC had "something special," and while not explicitly stated in the 1914 Railroad Act, Congress intended for it to be exclusive use. However, because of the legal uncertainty now due to the Ninth Circuit's ruling left unchallenged, the railroad can exclude all noninterfering uses and they are the sole arbiter of what to exclude. Fortunately in the Flying Crown Homeowners Association's case, a land use agreement was negotiated that said ARRC would not stop land owners from using the air park until the case was finally resolved.

REPRESENTATIVE KOPP moved to slide 13, "What's the harm?" Slide 13 read as follows [original punctuation provided]:

- The Alaska Railroad does not own the land over which more than half of the railroad right of way traverses\*

- The Alaska Railroad wrongly asserts a fee interest in the easement over these private lands
- This policy allows the Alaska Railroad discretion to deny safe, noninterfering landowner uses of land within the easement
- The Alaska Railroad restricts access via onerous fees, permits, and crossing restrictions to property owners whose land is bisected by the railroad easement

[2:17:16 PM](#)

CHAIR GRAY asked why ARRC would assert a fee interest and what it would allow the corporation to do with the land that they wouldn't otherwise be able to do with an easement.

REPRESENTATIVE KOPP said it would allow for monetization. Furthermore, it would impact the resale value of these properties. He stressed that the goal of the bill is not to stop ARRC from excluding any interfering use that would prohibit them from safely operating the right-of way; however, it's important that the railroad does not have the discretion to deny safe, noninterfering landowner uses of land within those easements. He added that ARRC can restrict access with onerous fees, permits, and crossing restrictions to property owners whose land is bisected by the railroad easement.

CHAIR GRAY asked why a person can't just walk across the track and why a fee would be levied.

REPRESENTATIVE KOPP explained that property owners must pay a fee to build a crossing and maintain it even if they own the land on both sides of the track.

[2:21:15 PM](#)

REPRESENTATIVE KOPP transitioned to slide 14, "Examples," which read as follows [original punctuation provided]:

- Homestead properties being charged for access to their own property, or road access blocked
- Private property owners being charged for utilities buried on their property
- Business owners denied the opportunity to use or develop their commercial properties

- Municipalities denied access to lands and charged large sums of money to maintain road crossings
- Utility companies charged exorbitant fees to access the right of way
- Homeowner Associations being sued
- Outdoor recreationists being denied access to public property

REPRESENTATIVE KOPP continued to slide 15, "Crossing Fees," which read as follows [original punctuation provided]:

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

[2:24:41 PM](#)

REPRESENTATIVE KOPP moved to slide 16, "Crossing Fees Cont'd," which read as follows [original punctuation provided]"

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

REPRESENTATIVE KOPP turned to slide 17, "A matter of justice," which read as follows [original punctuation provided]:

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

"Unlawful acts, performed long enough and with sufficient vigor, are never enough to amend the law."

- Justice Gorsuch

-McGirt v. Oklahoma U.S. Supreme Court July 9, 2020

[2:29:30 PM](#)

REPRESENTATIVE VANCE sought to better understand the difference between the corridor, rights-of-way, and easements.

REPRESENTATIVE KOPP said the ARRC transportation corridor is a creature of statute that was added when Alaska took possession of the federal railroad to make clear that more uses of the easement were permitted.

REPRESENTATIVE VANCE asked what ARRC would consider "unreasonable interference" with regard to easements.

REPRESENTATIVE KOPP said it would come down to a commonsense decision regarding potentially derailment in high-speed areas. He added that landowners are some of the best protectors of the easement because they understand the danger and the beauty of the railroad.

[2:36:17 PM](#)

REPRESENTATIVE VANCE asked about liability with permits and whether issuance of a permit transfers liability if something were to happen on that area of the easement.

REPRESENTATIVE KOPP confirmed that crossings require a permit, and permits make clear that the railroad is not responsible for that private crossing.

REPRESENTATIVE VANCE asked who has liability on the easements.

REPRESENTATIVE KOPP said the liability falls on both. The landowner is responsible for noninterfering use, and if interfering use results in injury, they would be held liable to the railroad. He added that the question of liability is

addressed in the permit and agreed to by both parties, whereas the fee issue is the real area of concern for landowners.

[2:39:25 PM](#)

REPRESENTATIVE EISCHEID asked whether a non-exclusive easement would conflict with the federal law that allows the corporation to fence the easements.

REPRESENTATIVE KOPP answered no. He said ARTA never gave the railroad an exclusive license to the right-of-way. He explained that homestead patent landowners were never notified that their properties could be impacted by ARTA because their interests were never to be affected by the act, as they held "perfect title" to the land. However, the government was concerned that those with contested title would not be able to stop the railroad from using the corridor. He said the bill narrowly focused on non-exclusivity where the railroad crosses homestead patent lands because it was never Congress's intent to claw back their fundamental property interests.

[2:43:04 PM](#)

CHAIR GRAY asked whether the bill would prevent the railroad from asserting its right to put a fence in.

REPRESENTATIVE KOPP said absolutely, without the bill, the railroad does not need to claim interference to exclude. The bill would make clear that the policy of the state is to avoid fencing people off and disallowing safe noninterfering uses of their property when the easement crosses their land.

[2:44:48 PM](#)

IVAN LONDON, Senior Attorney, Mountain State Legal Foundation, provided invited testimony. He stated that he is a constitutional and property rights attorney. He noted that he has experience litigating easements with state and federal legislative authority. He opined that the railroad is an entity that can be governed by the legislation because the legislature created ARRC; therefore, giving it the right to govern and regulate it. He continued that the proposed legislation would not change the nature of the property rights.

[2:48:39 PM](#)

HUGH ASHLOCK, Owner, Diamond Center Mall, LLC;, Diamond Center Holdings, LLC, provided invited testimony. He explained that his parents originally built the Diamond Mall, and it is the highest trafficked facility in the state. He explained that the mall is located on a former homestead property that his family purchased as a direct transfer from the original owner. He suggested that the right-of-way on the property is the most valuable piece of right-of-way in the state. He stated that the right-of-way is subject to only rail, telegraph, and telephone use. He expressed the desire to build a culvert on the right-of-way and create a parking lot, housing, or other mixed-use projects in the area, and this would be without interrupting the railroad's usage. He stated that in 2005 he received \$3 million, per a bill sponsored by Alaska's Congressional Delegation, to implement intermodal transportation, with a train/bus combination. He explained that this resulted in a bus station in the Diamond Mall parking lot; however, the railroad was not interested in participating in the project.

MR. ASHLOCK stated that after the multimodal project, he had a national chain restaurant interested in the Diamond Center location, but he needed 5,000 square feet of the right-of-way for landscaping. He noted that he was quoted an exorbitant price; however, now he understands that he would have been paying for the use of his own land. After relaying this story, he said, "I have run into some bad actors over the years." He continued by expressing the desire to create an intermodal station or create a new parking lot, as the easement property is worth "a lot of money."

[2:53:23 PM](#)

JOE MATHIS, property owner, provided invited testimony on HB 136. He shared that his family has owned a 160-acre homestead in the state for 69 years. He stated that the parcel is bisected by the Alaska Railroad right-of-way, which is contained in the patent for the land. He said that before state ownership of the railroad, his relatives had helped install the rail crossing on the property; however, since the ownership transferred to the state, annual permit fees for crossing and contract renewal fees have continually increased. He added that an underground electric line was installed by the family at its own expense, with no maintenance cost and no liability to the railroad; however, this requires an additional annual \$500 fee to ARRC.

[2:58:38 PM](#)

JOHN PLETCHER, property owner, provided invited testimony. He shared that his family moved to their property in Anchorage in 1981, and since that time, they have maintained a large garden in the easement. He stated that the parcel of land has not caused problems; however, they do not want to be continually threatened by ARRC's permit requirements. Regarding a residential use policy, he stated that he received a letter informing him that he needed a permit, which he declined. After this, ARRC threatened to put a lien on the property. He stated that, per the exclusive use provision, the railroad wanted to charge \$2,200 annually. He discussed the details of the exclusive use provision, of which will be published in an article on the website, [www.railroadedalaska.com](http://www.railroadedalaska.com). He shared his understanding of what the courts have said about the exclusive use provision. He noted that there is nothing in the property patent about ARRC's exclusive use.

MR. PLETCHER stated that his community has created a railroad committee, of which he chairs. He advised the committee members to go to its website [listed above] and visit the document's page. He cited that the legislature has directed policy on ARRC in the past, and he noted these sections in the statute. Concerning the comment made by Mr. O'Leary that the railroad paid all the legal fees in the Flying Crown case, he said, "The governor forced them to do it." He added, "The railroad's got more money than God."

[3:06:45 PM](#)

CHAIR GRAY asked Mr. London whether there is some expectation that affected homeowners have some understanding about the legal rights of the railroad.

MR. LONDON emphasized that the bill has nothing to do with property rights or expectations, and instead, outlines how the state will let ARRC operate.

[3:10:30 PM](#)

The committee took an at-ease from 3:10 p.m. to 3:14 p.m.

[3:14:47 PM](#)

CHAIR GRAY opened public testimony on HB 136.

[3:15:05 PM](#)

MEGHAN CLEMENS, External Affairs Director, Alaska Railroad Corporation, said while she agrees with many of the comments made today, she disagrees on some key items, such as the nature of the exclusive use easement. She said the arguments presented today were heard and analyzed by the district court and the Ninth Circuit Court of Appeals, and the opinions offered by those courts do a good job of explaining how they came to be fully in favor of ARRC and the need for the exclusive use easement, as well as a clear legal case of how that was transferred from the federal government.

[3:17:26 PM](#)

CHAIR GRAY questioned Judge Kindred's reasoning for the greatest exclusive use finding.

MS. CLEMENS referred to a PowerPoint, titled "HB 136: Railroad Utility Corridors," and explained that the courts approached determining the nature of the property interest by answering the nature of the interest reserved by the federal government, as well as the interest in the right-of-way that was conveyed to the railroad by ARTA. She acknowledged that the 1914 act that reserved the right-of-way for the railroad did not fully define the nature of the property interest, so to answer that question, the court considered the legal precedent for Lower-48 railroads, and how the original federal ownership of the Alaska Railroad impacts this consideration. She continued to slide 4, "What is Standard for Lower 48 Railroads?" Slide 4 read as follows [original punctuation provided]:

- Prior to 1875 General Railroad Right-of-Way Act, railroads were granted ROW in fee simple by federal government
  - 1875 Act granted easement, not fee. Two Supreme Court rulings related to limits of 1875 Act easements:
    - 1875 Act railroads do not possess subsurface mineral rights
- Great Northern Railway Company v United States
- If 1875 Act railroad abandons ROW, the court confirmed reversionary rights to underlying property owner
- Marvin M. Brandt Revocable Trust v. United States
- Tenth Circuit ruled 1875 Act railroads had the right to exclude from ROW under the 1875 Act, in congruence with Great Northern and Brandt, because "[a] railroad easement is exclusive in character"

LKL Associates., Inc., v. Union Pacific Railroad Co.

MS. CLEMENS continued to slide 5, "Does original federal ownership affect consideration?" Slide 5 read as follows [original punctuation provided]:

- The Alaska Railroad was unique: the only railroad in the country wholly owned and operated by the federal government
- In 1914 Act, federal government was reserving ROW to itself
- Difficult to imagine the federal government would have reserved a lesser property interest for itself than that granted to 1875 Act railroads
- Established precedent: where land grants are ambiguous, such ambiguity must be resolved in favor of the sovereign grantor -the federal government
- 1982 Congress clearly found the federal government held either fee simple or exclusive use easement in ROW

MS. CLEMENS turned to slide 6, "What interest in the ROW did Congress convey to ARRC?" Slide 6 read as follows [original punctuation provided]:

1982 Alaska Railroad Transfer Act: "the Congress finds that 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."

Congress is unambiguous in reserving and defining exclusive use easement in ARTA:

ARTA specifies that the federal government must grant the State an easement that is

"not less than an exclusive-use easement"

ARTA Definition: "'exclusive-use easement'" means an easement which affords to the easement holder the following:

(A) the exclusive right to use, possess, and enjoy the surface estate of the land subject to this easement for transportation, communication, and transmission purposes and for support functions associated with such purposes;

(B) the right to use so much of the subsurface estate of the lands subject to this easement as is necessary for the transportation, communication, and transmission purposes and

associated support functions for which the surface of such lands is used;  
(C) subjacent and lateral support of the lands subject to the easement; and  
(D) the right (in the easement holder's discretion) to fence all or part of the lands subject to this easement and to affix track, fixtures, and structures to such lands and to exclude other persons from all or part of such lands;

[3:21:42 PM](#)

CHAIR GRAY asked, in the case of Flying Crown, why ARRC was asserting the right to build fence.

MS. CLEMANS did not know the answer. She referenced the ARRC right-of-way residential use policy, which charged fair market value for residential uses of the right-of-way. The policy lacked public support and was subsequently rescinded; nonetheless, the homeowners association demanded that the railroad relinquish any claim to an exclusive use easement within the right-of-way. She said the exclusive use easement is very important to ARRC's ability to operate a safe and efficient railroad. She added that active airstrips in the right-of-way are uncommon; nevertheless, ARRC does its best to be a good neighbor, but by virtue of managing the railroad, property owners are not always given the answer they want.

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CHAIR GRAY asked whether Ms. Clemens supports or opposes the bill.

MS. CLEMANS stated that the bill language looks similar to current practices and reiterated that ARRC does not charge for residential lawn or gardening uses within the right-of-way if it does not interfere with the purposes of the corridor. She clarified that fee structures are defined to be revenue neutral across departments. She summarized slide 9, "HB 136," which read as follows [original punctuation provided]:

Proposed bill language:

"The corporation shall allow an owner of real property subject to an easement in favor of the corporation... to use the property in a manner that does not

unreasonably interfere with the corporation's use of the property.

The corporation may require the owner of real property subject to an easement in favor of the corporation to obtain a permit from the corporation to construct a railroad crossing within the easement and may charge the owner a revenue-neutral fee associated with issuing the permit and developing and maintaining the crossing."

Bill Sponsor's presentation implied the above bill language would:

- Undermine ARRC's exclusive use easement
- Require ARRC to assume the expense of road crossings burdening the rail line even when permitted to entities without property interests in the ROW
- Allow ARRC to use ROW for Railroad, Telegraph and Telephone purposes only  
(ARTA allows for Transportation, Communication and Transmission)
- Address "Outdoor recreationists being denied access to public property"

[3:28:16 PM](#)

VICE CHAIR KOPP asked whether there's anything ARRC could do to help Mr. Mathis maintain his private crossing in a revenue neutral capacity. He added that an annual fee of \$1,000 is a lot for a family on Social Security.

MS. CLEMANS said she's not prepared to fully answer for the maintenance and operations of that particular crossing; but it's unusual for a crossing owner to personally maintain the crossing, as ARRC owns the regulatory obligation and usually oversees the work with reimbursement requests to ensure that it meets industry standards.

[3:30:52 PM](#)

VICE CHAIR KOPP commented that the bill is trying to set a management policy, not relitigate the issue.

[3:31:57 PM](#)

DIANA RHOADES, Program Director, Anchorage Park Foundation, testified in opposition to HB 136. She said the foundation is one of the lead advocates for the connection of the Fish Creek Trail to the Tony Knowles coastal trail in the Alaska Railroad

right-of-way for one mile. She opined that CSHB 136(TRA) would still cause legal uncertainty for the Fish Creek Trail, adding that the exclusive use is what allows the trail to be built in the right-of-way. She further posited that the existing right-of-way is not wide enough for future uses that might benefit the public. She expressed concern that the legislation may have unintended consequences.

[3:35:37 PM](#)

ALEXA DOBSON, Executive Director, Bike Anchorage, testified in opposition to HB 136. She stated that Bike Anchorage is a nonprofit organization working to make Anchorage more bike friendly. She argued that the proposed legislation would threaten the trail projects along the railroad corridors across the state. She noted that she has not reviewed Version H. She expressed the understanding that some believe the proposed bill is not about the Fish Creek Trail; however, she argued that the bill has been supported by the interest of those wanting to stop this and other trails. She pointed out that during the 04/01/25 hearing of HB 136, Hugh Ashlock, Ivan London, John Pletcher, and Joe Mathis, were invited to testify. She expressed the understanding that they were all involved with the Flying Crown case, of which the sponsor has cited as the impetus for HB 136. She argued that the reason for this would be to set precedent for private landowners along the railroad. She expressed the understanding that the bill sponsor's firm was hired to lobby against the Fish Creek Trail extension project, which is also connected with the Flying Crown case concerning easement usage. She reiterated that the proposed legislation might not mention trails; however, she argued that individuals with known interest in stopping trails are advancing it. She pointed out that many of the most promising trail corridors in the state align with the railroad. She argued that if the proposed bill passes, it could cause legal delays for trail projects, or stoppage all together. She urged the committee to oppose the proposed legislation and support the state's "world-class" trail network.

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CHAIR GRAY announced that public testimony on HB 136 would be kept open and the bill would be held over.

**HB 24-AGGRAVATING FACTORS AT SENTENCING**

[3:38:07 PM](#)

CHAIR GRAY announced that the final order of business would be HOUSE BILL NO. 24, "An Act relating to aggravating factors considered at sentencing."

[3:38:28 PM](#)

REPRESENTATIVE ANDY JOSEPHSON, Alaska State Legislature, as prime sponsor, presented HB 24. He paraphrased the sponsor statement [included in the committee packet], which read as follows [original punctuation provided]:

In Alaska today, prosecutors may seek additional sentencing for crimes motivated by bias, if the perpetrator's action was targeted because of the victim's race, sex, color, creed, physical or mental disability, ancestry, or national origin. These crimes are typically known as 'hate crimes,' as they would likely not occur if it were not for the hatred of the perpetrator towards members of a specific group or class of people. HB 24 would add 'sexual orientation or gender identity' to this list.

Before an act is deemed a hate crime, the defendant must first be tried and convicted of a crime. It is only during the sentencing phase of the criminal process that these aggravating factors may come into play, and only if the crime can be shown to be motivated by bias against a particular class or group. Currently, 47 states plus the District of Columbia allow for sentence enhancement when the defendant has been convicted of a hate crime. Of these statutes, 34 include sexual orientation as an aggravating factor, and 24 include gender identity.

Tammie Willis is a vocal LGBTQ+ activist from Sterling. In November 2019, while organizing an annual Pride event, she found a threatening note containing homophobic slurs on her car. Roughly a week later, a large rock was thrown at her car while she drove to work. On December 9, she was attacked in her home by an knife-wielding assailant. She received dozens of stitches, bruising on her arms, legs, and stomach, and a concussion. These attacks occurred within days of announcements touting Pride in the Park planning meetings. It is clear that Mrs. Willis was targeted because of her LGBTQ identity and advocacy.

Amending AS 12.55.155(c) to include 'sexual orientation or gender identity' would not reverse the attack Ms. Willis suffered. However, it would send a powerful message that Alaska rejects crime motivated by hate, and that we as a state are willing to punish it accordingly. As Alaskans and Americans, we have a constitutional right to be and express ourselves. We must support crime victims who are targeted for exercising these rights, and I urge you to join me in supporting HB 24 to do just that.

[3:46:26 PM](#)

TAMMIE WILLIS, representing self, provided invited testimony during the hearing on HB 24 and shared her story. In October 2019, she received a death threat for her involvement in a pride event in Soldotna and her LGBTQ identity. Later, when driving to Kenai Peninsula College a rock was thrown through her car window with "dyke" written on it. The third incident occurred in December when she was physically attacked in her home resulting in four lacerations on her arm and stitches in her chest from a knife wound. For safety purposes she was forced to leave her home and quit her job, all while continuing to receive death threats throughout this time. She shared her belief that if this had been "on the record," the Alaska State Troopers and Soldotna Police would have taken the case more seriously and investigated it as a hate crime, rather than dismissing it and brushing her off. When the Federal Bureau of Investigation (FBI) got involved, the cases had been closed and evidence lost. She spoke to the impact of this crime and the importance of the bill.

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KAREN LOEFFLER, representing self, provided invited testimony during the hearing on HB 24 and informed the committee that she had been a federal prosecutor in Alaska for 30 years. She spoke to the danger of a perpetrator who attacks someone because of their status or who they are due to the likelihood of continued criminal activity. In addition, she emphasized the vulnerability of individuals who don't have the ability to protect themselves, because who they are is an inherent risk to their safety. She stated the importance of acknowledging these situations in law, protecting the public, and addressing the dangerousness of the perpetrators.

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REPRESENTATIVE JOSEPHSON summarized a PowerPoint presentation on HB 24 [hard copy included in the committee packet], beginning on slide 2, which explained that HB 24 amends aggravators under AS 12.55.155(c)(22). Slide 3 indicated that aggravating factors are considered during sentencing. Slide 4 discussed aggravating factors in sentencing. Slide 5 explained why aggravating factors are used in hate crimes. Slide 6 showed data on national hate crime victims based on sexual orientation or gender identity. Slide 7 showed hate crime laws nationwide. Slide 8 indicated that among all 50 states, Alaska is "middle of the pack" for hate crimes rates. Slide 9 spoke to an increase in anti-LGBTQ attacks, per an FBI hate crimes report. Slide 10 highlighted nationwide hate crime legislation. Slide 11 said Alaska illustrated that the state is not immune.

[3:57:34 PM](#)

[HB 24 was held over.]

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[4:00:21 PM](#)

#### **ADJOURNMENT**

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 4:00 p.m.