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FISCAL NOTE

STATE OF ALASKA
2012 LEGISLATIVE SESSION

Bill Version CSHB 146(RES)
 Fiscal Note Number 4
 (S) Publish Date 1/27/12

Identifier (file name) HB146-DNR-MLW-01-10-12 Dept. Affected Natural Resources
 Title LAND TRANSFER FROM STATE AND ALASKA RR Appropriation Land & Water Resources
 Allocation Mining, Land & Water
 Sponsor Rep. Wilson OMB Component Number 3002
 Requester (S) L&C

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	FY13 Appropriation Requested	Included in FY13 Governor's Request	Out-Year Cost Estimates					
			FY14	FY15	FY16	FY17	FY18	
OPERATING EXPENDITURES	FY13	FY13						
Personal Services								
Travel								
Services								
Commodities								
Capital Outlay								
Grants, Benefits								
Miscellaneous								
TOTAL OPERATING	***	***	***	***	***	***	***	***

FUND SOURCE		(Thousands of Dollars)						
1002	Federal Receipts							
1003	GF Match							
1004	GF							
1005	GF/Prgm (DGF)							
1037	GF/MH (UGF)							
1178	temp code (UGF)							
	TOTAL	***	***	***	***	***	***	***

POSITIONS								
Full-time								
Part-time								
Temporary								

CHANGE IN REVENUES

Estimated SUPPLEMENTAL (FY12) operating costs 0.0 (separate supplemental appropriation required,
(discuss reasons and fund source(s) in analysis section))

Estimated CAPITAL (FY13) costs 0.0 (separate capital appropriation required,
(discuss reasons and fund source(s) in analysis section))

Why this fiscal note differs from previous version (if initial version, please note as such)

This is a updated version for the second session of the 27th legislature. The allocation and appropriation have been changed to reflect the revised DNR structure.

Prepared by Brent Goodrum, Director Phone (907) 269-8501
 Division Mining, Land & Water Date/Time 1/10/12 12:00 AM
 Approved by Daniel S. Sullivan Date 1/10/2012
Department of Natural Resources

Analysis

HB 146 creates a mechanism whereby, if the State of Alaska (SOA) and the Alaska Railroad Corporation (ARRC) discontinue use of the right-of-way (ROW) along the Alaska Railroad Corporation's Eielson Spur Line, the interest of the State of Alaska and the Alaska Railroad Corporation in the land within the ROW would revert to the abutting landowners. Under Section 2 of the bill, the reversion would only occur if (1) the governor issues a notice of discontinuance or (2) the SOA and the ARRC have made no use of the ROW for transportation, communication, or transmission purposes for 18 years.

Assuming neither condition is met, there would be no fiscal impact to the Department of Natural Resources. However, if either condition were met, determining (1) how the 98 property owners along the Eielson Spur line would be affected and (2) processing any resulting land disposals would require a significant effort by the state, possibly including surveys, title reports, appraisals, conveyances, hazardous materials reviews, and public notice, comment, and best-interest findings processes.

At a minimum, one new position (Natural Resource Specialist II (range 16) for 9 months at \$83,300/year = \$62,470) would be required to determine identities and contact addresses for the owners of the 98 properties along the ROW, review title history and conveyance documents for these properties, determine whether there exists a reversionary interest in each of the properties and whether surveys are sufficient to describe the properties affected, and prepare title reports. Depending upon the outcome of this initial work, there could be additional surveys, title reports, appraisals, conveyances, hazardous materials reviews, and public notice, comment, and best-interest findings processes. Estimating costs associated with this additional work is difficult, but could range from \$100,000 to \$150,000.

Because the fiscal impact to the Department is contingent upon the conditions outlined in Section 2 of the bill being met or not met, and because the total amount of work required if one of those conditions were met would be contingent upon what was discovered in initial assessment work, the fiscal impact to the Department is indeterminate.

FISCAL NOTE

**STATE OF ALASKA
2012 LEGISLATIVE SESSION**

Bill Version CSHB 146(RES)
Fiscal Note Number 3
(S) Publish Date 1/27/12

Identifier (file name) HB146-DCCED-ARRC-12-14-11 Dept. Affected DCCED
 Title Land Transfer from State and Alaska Railroad Appropriation Alaska Railroad Corporation
 Allocation Alaska Railroad Corporation
 Sponsor Rep. Tammie Wilson
 Requester Senate Labor & Commerce OMB Component Number _____

Expenditures/Revenues _____ (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	FY13 Appropriation Requested	Included in Governor's FY13 Request	Out-Year Cost Estimates					
			FY13	FY14	FY15	FY16	FY17	FY18
OPERATING EXPENDITURES								
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Services	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Commodities	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Capital Outlay								
Grants, Benefits								
Miscellaneous								
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE		(Thousands of Dollars)						
1002	Federal Receipts							
1003	GF Match							
1004	GF							
1005	GF/Prgm (DGF)							
1037	GF/MH (UGF)							
1178	temp code (UGF)							
	TOTAL	0.0	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS									
Full-time									
Part-time									
Temporary									
CHANGE IN REVENUES									

Estimated SUPPLEMENTAL (FY12) operating costs _____ 0.0 (separate supplemental appropriation required,
(discuss reasons and fund source(s) in analysis section))

Estimated CAPITAL (FY13) costs _____ 0.0 (separate capital appropriation required,
(discuss reasons and fund source(s) in analysis section))

Why this fiscal note differs from previous version (if initial version, please note as such)

This is the same as the initial version that passed the House, updated on new form for the 2012 legislative session.

Prepared by Wendy Lindskoog, VP of Corporate Affairs Phone 907-265-2498
 Division Alaska Railroad Corporation Date/Time 12/14/11 1:00 PM
 Approved by Susan K. Bell, Commissioner Date 1/11/2012
Commerce, Community, and Economic Development

FISCAL NOTE #3

**STATE OF ALASKA
2012 LEGISLATIVE SESSION**

BILL NO. CSHB 146(RES)

Analysis

Congress repealed a Right-of-Way reversion provision in the Alaska Railroad Transfer Act Section 1209 in 2003. HB 146 reinstates the reversionary right in State law for the Eielson Branch of the Alaska Railroad system and will not have a foreseeable cost to the Alaska Railroad.

Alaska State Legislature House of Representatives

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Sponsor Statement

House Bill 146 –27th Legislature

In 2003, Alaska Railroad Corporation asked Congress to repeal reversionary sections (1208 & 1209) of the Alaska Railroad Transfer Act (ARTA).

CSHB(Res) 146 reinstates the mechanism (per ARTA) for landowners along the Eielson spur to receive ownership of their property after the easement is no longer used.

The affected parties, ARRC and property owner, support this measure.

I appreciate the committee's consideration for this bill and request your support.

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January 27, 2012

CSHB 146 (RES) – Sectional Analysis

Section 1. Amends the uncodified law of the State of Alaska by adding a new section, FINDINGS, replacing the reversionary rights of abutting land owners along the Alaska Railroad Corporation's Eielson Spur Line if the Railroad, which were taken away by the 2003 U.S. Congress in the repeal of the reversion language of 45 U.S.C. 1208(c) and 1209.

Section 2. Amends the uncodified law of the State of Alaska by adding a new section, DISPOSITION OF RAILROAD RIGHT-OF-WAY TO PROPERTY OWNERS ALONG THE EIELSON SPUR LINE, to replace the reversionary rights of abutting land owners along the Eielson Spur Line if ever the Alaska Railroad Corporation were to discontinue use of the right-of-way along the Eielson Spur Line, provides definition of “discontinued use”; ensures reverted right-of-way is transferred to the respective abutting landowner, and constitutes legislative approval under AS 42.40.285(1) for the Alaska Railroad Corporation to convey interest in the Eielson Spur Line.

Section 3. Provides for an immediate effective date.



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January 27, 2012

CSHB 146 (RES) – Explanation of Changes

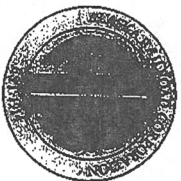
In 2(b): This sentence was intended to deal with the situation where you have different abutting landowners on each side of the right-of-way. The first version implies that the right-of-way could be conveyed to “another person” who is not an abutting landowner. Therefore, the old language defeated the purpose of the bill’s intent.



Basic Chronology

- The Act of Congress dated March 12, 1914 reserved to the United States a 200' right of way (ROW) for the construction of railroads, telegraph and telephone lines across all federally owned lands in Alaska.
- Carl Finell filed for his Alaskan homestead in 1946 in the North Pole area.
- 1947: Utilizing the ROW granted by the 1914 Act, the United States constructed a railroad spur from Fairbanks to Satellite Field (Eielson Air Force Base) bisecting Carl Finell's homestead.
- 1949: Carl Finell received the federal patent to his homestead—the reservation for the railroad ROW was included in the patent.
- 1969: The remainder of the Finell homestead was purchased, including the property that the railroad crosses.
- 1980: The State of Alaska and federal government begin negotiating for the transfer of the Alaska Railroad to State ownership.
- 1983: Congress passed the Alaska Railroad Transfer Act (ARTA) authorizing the sale of the Alaska Railroad and its properties to the State. Section 1209 of ARTA provided that the railroad ROW transferred to the State would “revert” back to U.S. ownership if the State made no use of the ROW for transportation, communication, or transmission purposes for a continuous period of 18 years. Upon such reversion, the U.S. was then obligated to convey the unused ROW to adjacent landowners.
- 1985: The Alaska Railroad is transferred from federal ownership to State ownership.
- 2003: Congress repealed the ROW reversion provision in ARTA Section 1209.
- 2005/2006: While researching crossing closing issues, it was discovered that the ARTA ROW reversion provision had been repealed.

While the railroad has the right to cross their property along the Eielson spur, property owners contend they lost a contingent future property interest when Congress repealed the ARTA ROW reversion provision in 2003, and that it is only fair and equitable for the State to restore this reversionary right. HB 146 accomplishes this goal.



ALASKA RAILROAD CORPORATION
CHAIRMAN, BOARD OF DIRECTORS
TELEPHONE: (907) 265-2403
FACSIMILE: (907) 265-2312

December 17, 2010

Bonne' Woldstad
P.O. Box 56702
North Pole, Alaska 99705

Dear Ms. Woldstad:

You have asked the Alaska Railroad Corporation (ARRC) Board of Directors to support your efforts to obtain legislation that would direct disposal of certain railroad right-of-way on the railroad's Eielson Branch. It is your desire to see railroad right-of-way conveyed to adjoining landowners if and when the ARRC relocates its rail operations to a different location. While relocation is not imminent, ARRC has for many years conducted studies and other activities preliminary to such an effort and recently received \$1 million in federal funds through FMATS to complete the required environmental assessment. This is a very positive step, but the schedule for moving the railroad remains uncertain due to lack of construction funding (more than \$50 million is needed).

In the past, you have provided considerable testimony to the Board regarding your family's property at approximate Milepost 15 of the Eielson Branch. You believe the repeal of the reversion provisions of the Alaska Railroad Transfer Act had an adverse effect on your land interest. This section provided for reversion of railroad right-of-way to adjacent landowners in the event the land ceased being used for transportation, communication, or transmission purposes. In 2000, ARRC had asked the Alaska Congressional delegation for help in light of title questions arising from our first rail realignments near Anchorage and Seward, as well as a couple of spur line locations that had been unused since transfer in 1985. The simplest solution was to repeal that language, and the repeal became effective on February 20, 2003.

We understand that you and your family were not aware of the repeal until 2006 when ARRC proposed to close the Ruby Crossing at MP 15.17 and you were researching all the pertinent legal and historical arguments related to a closure. Since then, you and other family members have met or talked with ARRC staff numerous times about your concerns.

Both you and the Board have heard many times from railroad staff that the Eielson Branch was not a focus when the reversion repeal was sought. I can assure you it was not a factor for the Board during that effort. ARRC's General Counsel has taken the position that the legal effect, if any, of the repeal on the underlying title claims of

Ms. Bonne' Woldstad
December 17, 2010
Page 2 of 2

landowners along the Eielson Branch is not ripe for decision. Unless and until the right-of-way ceases to be used by the State for transportation, communication, or transmission purposes (which is broader than railroad purposes), the ARRC believes no vested claims would have been affected. However, we are not opposed to waiving a statute of limitations defense, so as to preserve any claim you currently have from this point forward if your legislative efforts are not successful. Our attorneys are still researching how this might be accomplished.

Equally important, I'd like to assure you that ARRC has no interest in retaining portions of the Eielson Branch right-of-way if rail operations are relocated elsewhere. ARRC is not the final decision-maker on use of this corridor because it is a State asset, not just a railroad one, under both the current law and the now-repealed reversion. Without other directions being given, we would turn jurisdiction of any vacated right-of-way over to the State. However, we will be happy to participate in any discussions with state officials on the subject. Further, we will not oppose your efforts to obtain a simple legislative direction regarding any future Eielson Branch relocation. Given that relocation is still many years down the road, there should be ample time for legislative and administration officials to fashion a fair and reasonable outcome.

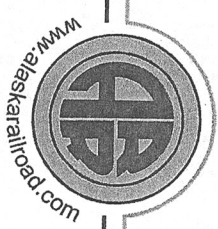
Very truly yours,



John Binkley, Chairman

ALASKA RAILROAD CORPORATION

Corporate: P.O. Box 107500, Anchorage, AK 99510 • 327 Ship Creek Avenue, Anchorage, AK 99501



ALASKA RAILROAD TRANSFER ACT ("ARTA")

UNITED STATES CODE TITLE 45 CHAPTER 21

[June 2005]

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EDITOR'S NOTES were added by ARRC's Office of the General Counsel.

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(b) Procedures for issuance of certificate of public convenience and necessity; inventory, valuation, or classification of property; additional laws, authorities, etc., applicable

As soon as practicable after January 14, 1983, the Interstate Commerce Commission shall promulgate an expedited, modified procedure for providing on the date of transfer a certificate of public convenience and necessity to the State-owned railroad. No inventory, valuation, or classification of property owned or used by the State-owned railroad pursuant to subchapter V of chapter 107 of Title 49 shall be required during the two-year period after the date of transfer. The provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and section 382(b) of the Energy Policy and Conservation Act (42 U.S.C. 6362(b)) shall not apply to actions of the Commission under this subsection.

(c) Eligibility for participation in Federal railroad assistance programs

The State-owned railroad shall be eligible to participate in all Federal railroad assistance programs on a basis equal to that of other rail carriers subject to part A of subtitle IV of Title 49.

(d) Laws and regulations applicable to national forest and park lands; limitations on Federal actions

After the date of transfer to the State pursuant to section 1203 of this title, the portion of the rail properties within the boundaries of the Chugach National Forest and the exclusive-use easement within the boundaries of the Denali National Park and Preserve shall be subject to laws and regulations for the protection of forest and park values. The right to fence the exclusive-use easement within Denali National Park and Preserve shall be subject to the concurrence of the Secretary of the Interior. The Secretary of the Interior, or the Secretary of Agriculture where appropriate, shall not act pursuant to this subsection without consulting with the Governor of the State of Alaska or in such a manner as to unreasonably interfere with continued or expanded operations and support functions authorized under this chapter.

(e) The State-owned railroad may take any necessary or appropriate action, consistent with Federal railroad safety laws, to preserve and protect its rail properties in the interests of safety.

(Pub.L. 97-468, Title VI, §608, Jan. 14, 1983, 96 Stat. 2556)

[**Editor's Note:** §§(a)(1) and (c) were amended in 1995 to reflect abolition of the Interstate Commerce Commission, Pub.L. 104-88, §326. §(a)(5) was amended and § (e) was added in 2004, Pub.L. 108-447, Div. H, §152.]

1208. FUTURE RIGHTS-OF-WAY

(a) Access across Federal lands; application approval

After January 14, 1983, the State or State-owned railroad may request the Secretary of the Interior or the Secretary of Agriculture, as appropriate under law, to expeditiously approve an application for a right-of-way in order that the Alaska Railroad or State-owned railroad may have access across Federal lands for transportation and related purposes. The State or State-owned railroad may also apply for a lease, permit, or conveyance of any necessary or convenient terminal and station grounds and material sites in the vicinity of the right-of-way for which an application has been submitted.

(b) Consultative requirements prior to approval of application; conformance of rights-of-way, etc.

Before approving a right-of-way application described in subsection (a) of this section, the Secretary of the Interior or the Secretary of Agriculture, as appropriate, shall consult with the Secretary. Approval of an application for a right-of-way, permit, lease, or conveyance described in subsection (a) of this section shall be pursuant to applicable law. Rights-of-way, grounds, and sites granted pursuant to this section and other applicable law shall conform, to the extent possible, to the standards provided in the Act of March 12, 1914 (43 U.S.C. 975 et seq.) and section 1202(6) of this title. Such conformance shall not be affected by the repeal of such Act under section 615 of this title.

(c) Reversion to United States [Repealed]. Pub.L. 108-7, Div. I, Title III, §345(5), Feb. 20, 2003, 117 Stat. 418.]

Reversion to the United States of any portion of any right-of-way or exclusive-use easement granted to the State or State-owned railroad shall occur only as provided in section 1209 of this title. For purposes of such section, the date of the approval of any such right-of-way shall be deemed the "date of transfer."

(Pub.L. 97-468, Title VI, §609, Jan. 14, 1983, 96 Stat. 2556)

1209. REVERSION [Repealed. Pub.L. 108-7, Div. I, Title III, §345(5), Feb. 20, 2003, 117 Stat. 418.]

(a) Reversion or payment to Federal Government for conversion to use preventing State-owned railroad from continuing to operate

If, within ten years after the date of transfer to the State authorized by section 1203 of this title, the Secretary finds that all or part of the real property transferred to the State under this chapter, except that portion of real property which lies within the boundaries of the Denali National Park and Preserve, is converted to a use that would prevent the State-owned railroad from continuing to operate, that real property (including permanent improvements to the property) shall revert to the United States Government, or (at the option of the State) the State shall pay to the United States Government an amount determined to be the fair market value of that property at the time its conversion prevents continued operation of the railroad.

(b) Reversion upon discontinuance by State of use of any land within right-of-way; criteria for discontinuance

If, after the date of transfer pursuant to section 1203 of this title, the State discontinues use of any land within the right-of-way, the State's interest in such land shall revert to the United States. The State shall be considered to have discontinued use within the meaning of this subsection and subsection (d) of this section when:

(1) the Governor of the State of Alaska delivers to the Secretary of the Interior a notice of such discontinuance, including a legal description of the property subject to the notice, and a quitclaim deed thereto; or

(2) the State has made no use of the land for a continuous period of eighteen years for transportation, communication, or transmission purposes. Notice of such discontinuance shall promptly be published in the Federal Register by the Secretary, the Secretary of the Interior, or the Secretary of Agriculture, and reversion shall be effected one year after such notice, unless within such one-year period the State brings an appropriate action in the United States District Court for the District of Alaska to establish that the use has been continuing without an eighteen-year lapse. Any such action shall have the effect of staying reversion until exhaustion of appellate review from the final judgment in that action or termination of the right to seek such review, whichever first occurs.

(c) Conveyances by United States subsequent to reversion

Upon such reversion pursuant to subsection (b) of this section, the Secretary of the Interior shall immediately convey by patent to abutting landowners all right, title and interest of the United States. Where land abutting the reverted right-of-way is owned by

different persons or entities, the conveyance made pursuant to this subsection shall extend the property of each abutting owner to the centerline of the right-of-way.

(d) Discontinuance by State of use of national park or forest lands; jurisdiction upon reversion

If use is discontinued (as that term is used in subsection (b) of this section) of all or part of those properties of the Alaska Railroad transferred to the State pursuant to this chapter which lie within the boundaries of the Denali National Park and Preserve or the Chugach National Forest, such properties or part thereof (including permanent improvements to the property) shall revert to the United States and shall not be subject to subsection (c) of this section. Upon such reversion, jurisdiction over that property shall be transferred to the Secretary of the Interior or the Secretary of Agriculture, as appropriate, for administration as part of the Denali National Park and Preserve or the Chugach National Forest.

(e) Payment into Treasury of United States of excess proceeds from sale or transfer of all or substantially all of State-owned railroad; limitations

Except as provided in subsections (a) through (d) of this section, if, within five years after the date of transfer to the State pursuant to section 1203 of this title, the State sells or transfers all or substantially all of the State-owned railroad to an entity other than an instrumentality of the State, the proceeds from the sale or transfer that exceed the cost of any rehabilitation and improvement made by the State for the State-owned railroad and any net liabilities incurred by the State for the State-owned railroad shall be paid into the general fund of the Treasury of the United States.

(f) Enforcement by Attorney General

The Attorney General, upon the request of the Secretary, the Secretary of the Interior, or the Secretary of Agriculture, shall institute appropriate proceedings to enforce this section in the United States District Court for the District of Alaska.

(Pub.L. 97-468, Title VI, §610, Jan. 14, 1983, 96 Stat. 2556)

1210. OTHER DISPOSITION

If the Secretary has not certified that the State has satisfied the conditions under section 1203 of this title within one year after the date of delivery of the report referred to in section 1204(a) of this title, the Secretary may dispose of the rail properties of the Alaska Railroad. Any disposal under this section shall give preference to a buyer or transferee who will continue to operate rail service, except that--