

HJR 38

HOUSE JOINT RESOLUTION NO. 38

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTIETH LEGISLATURE - SECOND SESSION

**BY REPRESENTATIVES KOPP, Tuck, Drummond, Birch, Wilson, Knopp,
Rauscher, Ortiz, Stutes, Eastman**

Introduced: 2/21/18

Referred: State Affairs, Judiciary

A RESOLUTION

**Relating to certain conveyances to the Alaska Railroad Corporation under the
Alaska**

Railroad Transfer Act of 1982.

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

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 (Alaska Railroad Act, repealed January 5, 1985), which directly granted interests in federal land for railroad rights-of-way for "the construction of railroads, telegraph and telephone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

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

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 (Homestead Act, repealed October 21, 1976) and similar enactments; and

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

WHEREAS the federal government operated the Alaska Railroad from the time of completion until January 14, 1983, and held as assets during that time the rights-of-way reserved in land patents and other conveyance documents; and

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

WHEREAS 45 U.S.C. 1201 - 1214 (Alaska Railroad Transfer Act of 1982) provided

for the transfer from the federal government of "all rail properties of the Alaska Railroad to the State," and 45 U.S.C. 1202(10) provided a definition of "rail properties of the Alaska Railroad" to mean "all right, title, and interest of the United States" in those properties; and

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

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

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

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

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

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

WHEREAS, under [AS 42.40.285](#), the Alaska Railroad Corporation must receive legislative approval before applying for or receiving a grant of federal land within a municipality, and the corporation has applied for and received transfers under the Alaska Railroad Transfer Act within a municipality without the requisite legislative approval; and **WHEREAS** the exception under [AS 42.40.285](#) (5)(C) for a conveyance of all rail properties of the Alaska Railroad, as defined in 45 U.S.C 1202(10), would not apply to transfers of property not conclusively owned by the federal government at the time of transfer; and

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

BE IT RESOLVED that the Alaska State Legislature believes, as it pertains to privately held properties in the state that contain or are required to contain a reservation for the purposes set out in the Alaska Railroad Act, all conveyances to the Alaska Railroad Corporation under the Alaska Railroad Transfer Act of 1982 that purport to convey an "exclusive-use easement" as defined in 45 U.S.C. 1202(6), in

which associated rights, titles, or interests were not conclusively owned by the federal government at the time of the transfer, are contrary to law; and be it

FURTHER RESOLVED that the Alaska State Legislature believes that certain conveyances to the Alaska Railroad Corporation under the Alaska Railroad Transfer Act of 1982 that were sought or obtained without the legislative approval required under [AS 42.40.285](#) are contrary to law; and be it

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

FURTHER RESOLVED that the Alaska State Legislature urges the Alaska delegation in Congress to recognize the views of the Alaska State Legislature expressed in this resolution and to take appropriate action to encourage the recognition of validly held private property rights that were not conveyed under the Alaska Railroad Transfer Act of 1982.

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