

**CS FOR HOUSE JOINT RESOLUTION NO. 40(RES)**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**TWENTY-SEVENTH LEGISLATURE - SECOND SESSION**

**BY THE HOUSE RESOURCES COMMITTEE**

**Offered: 4/3/12**

**Referred: Judiciary**

**Sponsor(s): REPRESENTATIVES KELLER, Tammie Wilson, Pruitt, Thompson, Millett, Costello, Johansen, Muñoz, Peggy Wilson, Feige**

**A RESOLUTION**

1    **Commending the governor and the administration for aggressively working to protect**  
2    **the interests of the state in rights-of-way under R.S. 2477; urging the governor and the**  
3    **attorney general to develop a working alliance with the governors, attorneys general,**  
4    **and legislatures in other western states to protect and enforce the states' interests in**  
5    **ensuring access using rights-of-way authorized by R.S. 2477; urging the governor and**  
6    **the attorney general to support the interests of the State of Utah and southern counties**  
7    **of Utah in R.S. 2477 rights-of-way by actively seeking confirmation of R.S. 2477 rights-**  
8    **of-way through various means, including initiating litigation in this state; urging the**  
9    **governor and the attorney general to develop a strategy for resolving the dispute over**  
10    **the right to continued access using R.S. 2477 rights-of-way in the state, including the**  
11    **possibility of bringing lawsuits against the federal government to preserve the state's**  
12    **interest in rights-of-way; urging the governor to further strengthen the resources of the**  
13    **state for protecting the state's rights by continuing to focus the efforts of the Department**

1 of Law, the Department of Natural Resources, the Department of Fish and Game, and  
 2 other departments on defending the state's rights and powers with regard to access and  
 3 federalism issues; and urging the United States Congress to enact legislation requiring  
 4 federal agencies with land management authority to establish a process to recognize  
 5 valid R.S. 2477 rights-of-way claims expeditiously after a notice of intent to claim an  
 6 R.S. 2477 right-of-way has been filed without the need to dispute those claims in court  
 7 and to participate in good faith in the process.

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

9 **WHEREAS**, in 1866, R.S. 2477 granted rights-of-way across unappropriated federal  
 10 land to encourage the development of western land; and

11 **WHEREAS** R.S. 2477 rights-of-way were perfected by simple use or development;  
 12 and

13 **WHEREAS** R.S. 2477 rights-of-way were established in the state through use or  
 14 development until virtually all federal land in the state was withdrawn in 1969; and

15 **WHEREAS**, when R.S. 2477 was repealed in 1976 under the Federal Land Policy  
 16 Management Act (43 U.S.C. 1701), valid existing rights under R.S. 2477 were expressly  
 17 protected; and

18 **WHEREAS** the Alaska State Legislature has recognized 602 rights-of-way in statute,  
 19 and the Department of Natural Resources has identified at least 67 additional valid R.S. 2477  
 20 rights-of-way; and

21 **WHEREAS** historic R.S. 2477 rights-of-way represent a key component of the  
 22 mandate in art. VIII, sec. 1, of the Constitution of the State of Alaska to encourage the  
 23 settlement of the state's land and the development of the state's land and resources; and

24 **WHEREAS** the United States Department of the Interior and the United States Forest  
 25 Service refuse to recognize an R.S. 2477 right-of-way unless adjudicated and validated in a  
 26 decision by a court of competent jurisdiction; and

27 **WHEREAS** unilateral resistance by the federal government to the existence of the  
 28 state's rights-of-way causes great harm to the ability of the state to execute its duty to manage

1 state resources by making them accessible and available for maximum use consistent with the  
 2 public interest, as required in art. VIII, sec. 1, of the Constitution of the State of Alaska; and

3 **WHEREAS** the State of Utah recently filed notices of intent to sue to enforce its  
 4 interests in more than 18,000 R.S. 2477 rights-of-way in that state; and

5 **WHEREAS** the State of Alaska and the State of Utah share similar objections to the  
 6 large withdrawals of Federal Conservation Units that are managed by the United States  
 7 Department of the Interior and the United States Forest Service, agencies that both  
 8 unilaterally deny the existence of valid state easements; and

9 **WHEREAS** virtually all of the state's natural resource development projects are  
 10 unnecessarily burdened by numerous federal laws, including the Endangered Species Act, the  
 11 Clean Water Act, and myriad arbitrary federal regulators and policies implementing and  
 12 enforcing those and other federal laws;

13 **BE IT RESOLVED** that the Alaska State Legislature commends the governor and the  
 14 administration for aggressively working to protect the interests of the state in rights-of-way  
 15 under R.S. 2477 and urges the governor and the attorney general to develop a working  
 16 alliance with the governors, attorneys general, and legislatures in other western states to  
 17 protect and enforce the states' interests in ensuring access using rights-of-way authorized by  
 18 R.S. 2477; and be it

19 **FURTHER RESOLVED** that the Alaska State Legislature urges the governor and the  
 20 attorney general to support the interests of the State of Utah and southern counties of Utah in  
 21 R.S. 2477 rights-of-way by actively seeking confirmation of R.S. 2477 rights-of-way through  
 22 various means, including initiating litigation in this state; and be it

23 **FURTHER RESOLVED** that the Alaska State Legislature urges the governor and the  
 24 attorney general to develop a strategy for resolving the dispute over the right to continued  
 25 access using R.S. 2477 rights-of-way in the state, including the possibility of bringing  
 26 lawsuits against the federal government to preserve the state's interest in rights-of-way; and be  
 27 it

28 **FURTHER RESOLVED** that the Alaska State Legislature urges the governor further  
 29 to strengthen the resources of the state for protecting the state's rights by continuing to focus  
 30 the efforts of the Department of Law, the Department of Natural Resources, the Department  
 31 of Fish and Game, and other departments on defending the state's rights and powers with

1 regard to access and federalism issues; and be it

2 **FURTHER RESOLVED** that the Alaska State Legislature urges the United States  
3 Congress to enact legislation requiring federal agencies with land management authority to  
4 establish a process to recognize valid R.S. 2477 rights-of-way claims expeditiously after a  
5 notice of intent to claim an R.S. 2477 right-of-way has been filed without the need to dispute  
6 those claims in court and to participate in good faith in the process.

7 **COPIES** of this resolution shall be sent to the Honorable Barack Obama, President of  
8 the United States; the Honorable Joseph R. Biden, Jr., Vice-President of the United States and  
9 President of the U.S. Senate; the Honorable Ken Salazar, United States Secretary of the  
10 Interior; the Honorable John Boehner, Speaker of the U.S. House of Representatives; the  
11 Honorable Nancy Pelosi, Minority Leader of the U.S. House of Representatives; the  
12 Honorable Harry Reid, Majority Leader of the U.S. Senate; the Honorable Mitch McConnell,  
13 Minority Leader of the U.S. Senate; the Honorable Jeff Bingaman, Chair of the Energy and  
14 Natural Resources Committee of the U.S. Senate; the Honorable Gary R. Herbert, Governor  
15 of Utah; Kathy Davis, Assistant Attorney General, State of Utah, Office of the Attorney  
16 General, Division of Public Lands; the Honorable Lisa Murkowski and the Honorable Mark  
17 Begich, U.S. Senators, and the Honorable Don Young, U.S. Representative, members of the  
18 Alaska delegation in Congress; and all other members of the 112th United States Congress.