

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.