

SENATE CONCURRENT RESOLUTION NO. 3

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-EIGHTH LEGISLATURE - FIRST SESSION

BY SENATOR MCGUIRE

Introduced: 4/4/13
Referred: Judiciary

A RESOLUTION

1 **Establishing the Joint Committee on Access and Federal Overreach; and recommending**
2 **that the Governor establish a working group to consider establishing a permanent office**
3 **or authority to preserve state sovereignty.**

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

5 **WHEREAS**, in recognition of the powers reserved to the states and people under the
6 Tenth Amendment to the Constitution of the United States, the State of Alaska has a right to
7 review and voice concerns to federal authorities about actions taken by the federal
8 government that encroach on state affairs to a deeper and greater extent than permitted by
9 law; and

10 **WHEREAS**, in the Alaska Statehood Act, the State of Alaska received a grant of
11 103,350,000 acres of land to provide for the newly formed state to be economically self-
12 supporting; and

13 **WHEREAS** the legislature has cause for concern when federal officials and
14 departments overreach their constitutional and lawful mandate and compromise the capacity
15 of state government, through measures such as

1 (1) abrogating the "No More Clause" of the Alaska National Interest Lands
2 Conservation Act;

3 (2) the use by the United States Environmental Protection Agency of
4 administrative decisions to involve itself in the permitting process of development projects
5 occurring exclusively on state land;

6 (3) the implementation of the National Ocean Policy with regard to arctic
7 shores and the reach of the mandate traversing coasts into inland waterways of the state; and

8 (4) the use on state lands and waterways by federal officials of the Endangered
9 Species Act, the Clean Air Act, and the Clean Water Act, adversely affecting the state's right
10 to determine how to harvest its own resources according to its constitutional mandate; and

11 **WHEREAS** the federal government refuses to recognize its responsibility for
12 allowing an environmental disaster in the National Petroleum Reserve - Alaska by its own
13 actions of creating and failing to reclaim the more than 110 remaining "legacy wells," while
14 denying to the state the ability to actualize state resources under the claim of responsible
15 stewardship; and

16 **WHEREAS** the legislature recognizes that numerous Alaskans in the private sector
17 are being required to respond to federal overreach in the conduct of business, industrial,
18 subsistence, and recreational activities; and

19 **WHEREAS** the legislature recognizes there are numerous public sector entities
20 engaged in responding to federal overreach, including but not limited to the Citizens'
21 Advisory Commission on Federal Areas, the interagency Public Access Assertion and
22 Defense Unit, the Alaska National Interests Lands Conservation Act Program in the
23 Department of Natural Resources, attorneys in the Department of Law, and the Alaska Health
24 Care Commission in the Department of Health and Social Services; and

25 **WHEREAS** the legislature finds that the state requires a process whereby the attorney
26 general, in consultation with executive branch departments, reviews and reports to the
27 legislature regarding federal statutes, regulations, presidential orders, and secretarial orders
28 that may exceed the authority of the United States Congress under the Constitution of the
29 United States and that may unfairly limit the authority of the state, so that the legislature may
30 consider appropriate action; and

31 **WHEREAS** the state has a strong interest in securing rights-of-way and easements

1 across federal and other land to allow access for subsistence and recreational hunting and
2 fishing and outdoor recreation, to lower transportation costs for heating fuel, groceries, and
3 other goods and services, to provide for medical care and emergency medical evacuation
4 routes, and to provide access for exploration and production of natural resources essential to
5 the creation of good jobs that pay wages that can support a family; and

6 **WHEREAS**, as a territory and then a state, a number of federal laws, including R.S.
7 2477, granted Alaska a legal right and opportunity to establish and vest a right-of-way or
8 easement across federal and other land; and

9 **WHEREAS** several federal laws, including the Alaska National Interest Lands
10 Conservation Act, protect valid existing rights of access and provide an opportunity to
11 establish access; and

12 **WHEREAS** the state has a strong interest in gathering and preserving evidence of
13 rights-of-way and easements and asserting claims to rights-of-way or easements, as it has
14 done in AS 19.30.400; and

15 **WHEREAS** the state is engaged in an ongoing effort to collect aerial imagery and
16 digital elevation mapping data of the entire state; and

17 **WHEREAS** state government and residents of the state who have contributions to
18 make to the collection, preservation, identification, and assertion of rights-of-way and
19 easements would benefit from an electronic central repository, accessible on the Internet, that
20 included maps and images of trails and roads and provided an opportunity for members of the
21 public to input data, including Global Positioning System coordinates and other Global
22 Positioning System information, pictures, maps, and other documentation of existing and
23 potential rights-of-way and easements; and

24 **WHEREAS**, because identification and assertions of rights-of-way and easements
25 affect all concerned property owners, all parties involved in a claim for access would benefit
26 from a repository of information on rights-of-way and easements, as well as the establishment
27 of methods for alternative dispute resolution to resolve claims for rights-of-way and
28 easements;

29 **BE IT RESOLVED** by the Alaska State Legislature that a Joint Committee on
30 Access and Federal Overreach is established to

31 (1) review federal statutes, regulations, presidential executive orders, and

1 secretarial orders that create compulsory federal legislation that directs certain state action or
2 requires the state to pass legislation to be in compliance;

3 (2) review federal statutes, regulations, presidential executive orders, and
4 secretarial orders that, in reliance on art. I, sec. 8, Constitution of the United States, or any
5 other legal authority, overreach and that unfairly burden the lives of Alaskans or adversely
6 affect the development of the land, economy, infrastructure, and resources of the state;

7 (3) consider matters of access to federal and other lands referred to the
8 committee by a legislator, a committee, the governor, a department, or a concerned member
9 of the public, to ensure that matters regarding federal overreach and access that adversely
10 affect the people of the state or the State of Alaska's constitutional obligation to maximize its
11 resources for the maximum benefit of all Alaskans are identified and investigated;

12 (4) review federal statutes in effect during the period Alaska was a territory
13 along with current statutes and compile a comprehensive list of federal statutes granting
14 rights-of-way or easements that may have vested or that may currently provide opportunities
15 for assertion of rights-of-way or easements;

16 (5) review databases and records in the possession of the state and federal
17 governments and other persons relating to the historical use of roads and trails in the state,
18 including those identified in AS 19.30.400, and provide recommendations to the legislature
19 for development of a summary of databases and other records to be gathered and preserved in
20 an electronic repository on the Internet that may be accessed by the public and that will
21 provide the public an opportunity to comment on data concerning roads and trails and to
22 upload to the repository evidence of established use of roads and trails in the state;

23 (6) review and report on current policy positions being taken by federal
24 agencies regarding assertions of rights-of-way and easements across federal land in the state
25 and the effects of those policies on residents of the state;

26 (7) review and report on efforts by other states to establish rights-of-way and
27 easements across federal land, including methods used by other states to gather evidence of
28 R.S. 2477 and other historical rights-of-way and easements and the types of documentation
29 and other evidence required of other states that have brought suit to establish rights-of-way
30 and easements;

31 (8) review and identify amendments to federal law or changes to federal

1 agency policy that would assist states in identifying and establishing rights-of-way and
 2 easements across federal land by a reasonable and fair administrative process;

3 (9) meet during legislative sessions and between sessions and hold public
 4 hearings if the committee considers hearings desirable;

5 (10) hire consultants and experts; and be it

6 **FURTHER RESOLVED** that the membership of the Joint Committee on Access and
 7 Federal Overreach shall be composed of the Speaker of the House of Representatives, or the
 8 speaker's designee, and three members of the house appointed by the speaker, one of whom
 9 shall be a member of the minority caucus of the house, and the President of the Senate, or the
 10 president's designee, and three members of the senate appointed by the president, one of
 11 whom shall be a member of the minority caucus of the senate; and be it

12 **FURTHER RESOLVED** that the Joint Committee on Access and Federal Overreach
 13 shall submit reports to the legislature and the governor by January 15, 2014, and January 15,
 14 2015, containing recommendations concerning how to contain federal overreach and
 15 identifying legislation that the committee determines is appropriate to respond to federal
 16 overreach; and be it

17 **FURTHER RESOLVED** that the Alaska State Legislature encourages the governor,
 18 using existing resources, to form a working group made up of private and public sector
 19 members, including members from the legislature, to make recommendations and advise the
 20 legislature at the beginning of the Second Regular Session of the Twenty-Eighth Alaska State
 21 Legislature regarding the formation, composition, placement, and budget needs of a
 22 permanent office or authority charged with preserving state sovereignty by increasing the
 23 effectiveness of state and private sector responses to federal overreach and, where
 24 appropriate, facilitating and enhancing the exchanges of information among the legislature,
 25 state agencies, and the private sector related to federal overreach; and be it

26 **FURTHER RESOLVED** that the Joint Committee on Access and Federal Overreach
 27 shall terminate on January 15, 2015, unless extended.