

HOUSE JOINT RESOLUTION NO. 20

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES OGAN, Barnes, Foster

Introduced: 2/7/97

Referred: Resources

A RESOLUTION

1 **Relating to RS 2477 rights-of-way.**

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

3 **WHEREAS** Revised Statute 2477 (RS 2477) provided, "the right-of-way for the
4 construction of highways over public lands, not reserved for public uses, is hereby granted";
5 and

6 **WHEREAS** the Congress repealed RS 2477 in 1976 in the Federal Land Policy and
7 Management Act, but the Act expressly reserved existing rights-of-way created under
8 RS 2477; and

9 **WHEREAS** the Alaska State Legislature funded a \$1,200,000 project conducted by
10 the Alaska Department of Natural Resources to document the RS 2477 rights-of-way in
11 Alaska; and

12 **WHEREAS** the project found more than 560 routes that qualified as RS 2477 rights-
13 of-way; and

14 **WHEREAS** RS 2477 rights-of-way resulted from the public's use of routes to travel
15 between settlements and to gain access to resource areas in the state from the late 1800's until
16 1976; and

17 **WHEREAS** it is in the best interests of the state to preserve this historical and

1 traditional rural transportation system because these routes form the transportation network for
2 surface travel between rural settlements, provide access to mineralized and other natural
3 resource use areas, and create significant entrepreneurial, recreational, and tourism
4 opportunities; and

5 **WHEREAS** Alaska is committed to a balanced philosophy of development and wise
6 use of state resources; and

7 **WHEREAS** the surface transportation system in the state is inadequate to meet the
8 economic and social demands of the state and its citizens; and

9 **WHEREAS** the United States Department of the Interior adopted regulations
10 interpreting RS 2477 in 1938 stating that RS 2477 is "effective upon the construction or
11 establishing of highways, in accordance with State laws, over public lands not reserved for
12 public uses"; and

13 **WHEREAS** the interpretation of RS 2477 by the United States Department of the
14 Interior remained unchanged until the repeal of the statute, when the regulations were also
15 repealed; and

16 **WHEREAS** federal and state courts have consistently ruled for 100 years that it was
17 the intent of the Congress in enacting RS 2477 that the law of the state where the RS 2477
18 right-of-way is located defines the acts that constitute acceptance and the scope of the right-of-
19 way; and

20 **WHEREAS** the United States Department of the Interior is attempting to
21 administratively rescind the longstanding and widely accepted interpretation of RS 2477 by
22 adopting regulations that would reverse prior regulations and court-made law by forcing states
23 and local governments to follow an excessively bureaucratic process, to undertake costly
24 procedures, and to enter into extensive litigation that could severely restrict or eliminate many
25 RS 2477 rights-of-way in Alaska; and

26 **WHEREAS** Alaska's congressional delegation successfully derailed implementation
27 of Department of the Interior's regulations by inserting language prohibiting implementation
28 in the fiscal year 1996 budget; and

29 **WHEREAS** fiscal year 1997 appropriations allow for the publication of regulations
30 but specifically prohibit the regulations from taking effect unless "expressly authorized by an
31 Act of Congress"; and

1 **WHEREAS** Secretary of the Interior Bruce Babbitt issued a new policy on January 22,
2 1997, revoking a 1988 policy and establishing a new revised policy "for carrying out any
3 determinations the Department might be called upon to make regarding RS 2477"; and

4 **WHEREAS** the new policy by Secretary Babbitt essentially requires that each
5 RS 2477 right-of-way in Alaska be established through lengthy and costly litigation; and

6 **WHEREAS** Secretary Babbitt's new policy establishes new requirements essentially
7 requiring the Department of the Interior's approval before RS 2477 rights-of-way assertions
8 will be acceptable; and

9 **WHEREAS** Secretary Babbitt's new policy is designed to create a bureaucratic
10 impediment to the State of Alaska's legitimate claims to RS 2477 rights-of-way; and

11 **WHEREAS** this new policy illustrates again the continuing and escalating "War on
12 the West" being waged by Secretary Babbitt;

13 **BE IT RESOLVED** that the Alaska State Legislature endorses continuing efforts of
14 the Alaska delegation in Congress to preserve and protect the original meaning of Revised
15 Statute 2477 to provide adequate access to the state's land and resources and to provide
16 Alaska the same privileges extended to every other state in the Union; and be it

17 **FURTHER RESOLVED** that the Alaska State Legislature respectfully requests the
18 members of the Alaska delegation in Congress to ensure that federal law recognizes the
19 controlling nature of state law in regard to the construction and establishment of RS 2477
20 rights-of-way, as recognized by 100 years of judicial decisions and 38 years of Department
21 of the Interior regulations by enacting such a provision into federal statutes; and be it

22 **FURTHER RESOLVED** that the Alaska State Legislature respectfully requests the
23 Congress to include a reasonable period and a reasonable process for the assertion,
24 recognition, and determination of RS 2477 rights-of-way as part of any legislation addressing
25 RS 2477 rights-of-way; and be it

26 **FURTHER RESOLVED** that the Alaska State Legislature respectfully requests that
27 Governor Tony Knowles direct the appropriate state departments to implement a proactive and
28 aggressive program to assert the state's ownership of RS 2477 rights-of-way.

29 **COPIES** of this resolution shall be sent to the Honorable Tony Knowles, Governor
30 of Alaska; and to the Honorable Ted Stevens and the Honorable Frank Murkowski, U.S.
31 Senators, and the Honorable Don Young, U.S. Representative, members of the Alaska

1 delegation in Congress.