

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

April 9, 2012

1:37 p.m.

MEMBERS PRESENT

Representative Steve Thompson, Vice Chair
Representative Wes Keller
Representative Bob Lynn
Representative Max Gruenberg
Representative Lindsey Holmes

MEMBERS ABSENT

Representative Carl Gatto, Chair
Representative Lance Pruitt
Representative Mike Hawker (alternate)

COMMITTEE CALENDAR

HOUSE JOINT RESOLUTION NO. 40

Commending the governor and the administration for aggressively working to enforce the rights of the state in R.S. 2477 rights-of-way; urging the governor and the attorney general to develop a working alliance with other western states to protect and enforce appropriation request to fund an aggressive effort by the state to resolve issues relating to R.S. 2477 rights-of-way, including possible litigation, and to continue to work to preserve the rights of the state in regard to R.S. 2477 rights-of-way.

- MOVED CSHJR 40(JUD) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: HJR 40

SHORT TITLE: R.S. 2477 RIGHTS-OF-WAY

SPONSOR(S): REPRESENTATIVE(S) KELLER

02/22/12	(H)	READ THE FIRST TIME - REFERRALS
02/22/12	(H)	RES, JUD
03/26/12	(H)	RES AT 1:00 PM BARNES 124
03/26/12	(H)	Heard & Held
03/26/12	(H)	MINUTE(RES)
03/30/12	(H)	RES AT 1:00 PM BARNES 124
03/30/12	(H)	Heard & Held

03/30/12 (H) MINUTE(RES)
04/02/12 (H) RES AT 1:00 PM BARNES 124
04/02/12 (H) Moved CSHJR 40(RES) Out of Committee
04/02/12 (H) MINUTE(RES)
04/03/12 (H) RES RPT CS(RES) NT 4DP 3NR 1AM
04/03/12 (H) DP: DICK, P.WILSON, FEIGE, SEATON
04/03/12 (H) NR: FOSTER, GARDNER, HERRON
04/03/12 (H) AM: KAWASAKI
04/09/12 (H) JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

JIM POUND, Staff
Representative Wes Keller
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HJR 40 on behalf of Representative Keller, sponsor.

KENT SULLIVAN, Assistant Attorney General
Natural Resources Section
Civil Division (Juneau)
Department of Law (DOL)
Juneau, Alaska

POSITION STATEMENT: Provided information during the hearing on HJR 40.

ROD ARNO, Executive Director
Alaska Outdoor Council (AOC)
Palmer, Alaska

POSITION STATEMENT: Testified in support of HJR 40.

ACTION NARRATIVE

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VICE CHAIR STEVE THOMPSON called the House Judiciary Standing Committee meeting to order at 1:37 p.m. Representatives Thompson, Holmes, Lynn, Keller, and Gruenberg were present at the call to order. Representative Gatto was excused.

HJR 40 - R.S. 2477 RIGHTS-OF-WAY

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VICE CHAIR THOMPSON announced that the only order of business would be HOUSE JOINT RESOLUTION NO. 40, Commending the governor

and the administration for aggressively working to enforce the rights of the state in R.S. 2477 rights-of-way; urging the governor and the attorney general to develop a working alliance with other western states to protect and enforce the states' interests in ensuring access using rights-of-way authorized by R.S. 2477; urging the governor and the attorney general to support the State of Utah and the southern counties of Utah in a lawsuit against the federal government concerning R.S. 2477 rights-of-way, including filing an amicus brief in support of Utah; urging the governor to dedicate state resources to establish, protect, and enforce the state's interests in R.S. 2477 rights-of-way and to preserve state rights-of-way against encroachment by the federal government; urging the governor to reestablish a federalism section in the Department of Law and sections in the Department of Natural Resources and the Department of Fish and Game to support the preservation of the state's rights and powers in compact cases; and urging the governor to prepare an appropriation request to fund an aggressive effort by the state to resolve issues relating to R.S. 2477 rights-of-way, including possible litigation, and to continue to work to preserve the rights of the state in regard to R.S. 2477 rights-of-way. [Before the committee was CSHJR 40(RES).]

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JIM POUND, Staff, Representative Wes Keller, Alaska State Legislature, on behalf of the sponsor, Representative Keller, explained that HJR 40 addresses rights-of-way in Alaska under the federal Revised Statute 2477 ("R.S. 2477"). Alaska has approximately 670 pending R.S. 2477 rights-of-way, and HJR 40 commends the administration for the work it has done to date, and requests that more be done. Currently, he said, the State of Utah has brought suit against the federal government in order to assert its rights. Therefore, the proposed joint resolution also asks the State of Alaska to join in Utah's efforts using any means at its disposal; asks that Alaska communicate and cooperate with any other Western states currently working on R.S. 2477 rights-of-way; requests that the attorney general seek funding for this and other federal issues being addressed by the Department of Law; and asks that Alaska's right to identify and determine the future of its commerce corridors be asserted. In response to a question, he offered his understanding that R.S. 2477 rights-of-way would become state property.

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KENT SULLIVAN, Assistant Attorney General, Natural Resources Section, Civil Division (Juneau), Department of Law (DOL), confirmed that [R.S. 2477s] would become public rights-of-way vested with the state.

REPRESENTATIVE GRUENBERG, noting that HJR 40 currently addresses the need of the state to get [R.S. 2477 rights-of-way] issues resolved, questioned whether language should be added to also address the rights of individuals to travel throughout the state. He referred specifically to the language on page 2, lines 27-28, through page 3, lines 1-2, which in part read:

WHEREAS unilateral resistance by the federal government to the existence of the state's rights-of-way causes great harm to the ability of the state to execute its duty to manage state resources by making them accessible and available for maximum use consistent with the public interest, as required in art. VIII, sec. 1, of the Constitution of the State of Alaska;

REPRESENTATIVE KELLER, as the sponsor, relayed that he'd presumed that the resolution already did address the rights of individuals.

MR. SULLIVAN, in response to a question, offered his understanding that the way the resolution is drafted indicates that the view is that the state's interest and that of its citizens are synonymous, although the resolution doesn't specifically address that point.

REPRESENTATIVE GRUENBERG offered his belief that the resolution should contain language addressing the rights of individuals to use [R.S. 2477 rights-of-way] to access property.

MR. POUND questioned whether adding such language could lead to an interpretation by the government and/or the courts that when R.S. 2477 rights-of-way run across private property, the individual that owns the property - rather than the state - would have to file a suit against the federal government.

REPRESENTATIVE KELLER, in response to comments, expressed a preference for leaving the language in that particular "**WHEREAS**" clause as is, surmising that language elsewhere in the resolution implies that the whole point is access to the state's resources by Alaskans. He acknowledged, however, that perhaps adding the words, "for Alaskans", following the word,

"accessible", on page 3, line 1, of the resolution might be acceptable.

MR. SULLIVAN offered his understanding that adding that language would not be problematic. In response to another question, he indicated that the DOL's budget does contain funding for litigation related to R.S. 2477 rights-of-way.

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ROD ARNO, Executive Director, Alaska Outdoor Council (AOC), testifying in support of HJR 40, stated that the AOC was instrumental in getting 602 rights-of-way put in statute, and characterized that as an important thing to do. He said HJR 40 would make public one of the most contentious issues in the state today: the lack of public access to public resources. This lack of access prevents many Alaskans from being able to gather the state's resources for food and fuel, and from being able to access and work their mining claims. In conclusion, he stated that the AOC supports passage of HJR 40, believing access to the state's resources to be very important to its membership.

MR. SULLIVAN, in response to a question, and noting that most of the R.S. 2477 rights-of-way in Alaska came into existence because of mining activity, indicated that it's the historical purpose of a particular path/trail - rather than its historical size or historical mode of use - that would be the limiting factor for an R.S. 2477 right-of-way; for example, if a path/trail was historically used to reach a mine on foot, an R.S. 2477 right-of-way to that mine would not necessarily be limited to only foot traffic. "Generally, you're not limited to precisely what created it historically," he added.

VICE CHAIR THOMPSON, after ascertaining that no one else wished to testify, closed public testimony on HJR 40.

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REPRESENTATIVE GRUENBERG made a motion to adopt [Conceptual] Amendment 1, to add "to Alaskans" following the word "accessible", on page 3, line 1. There being no objection, Conceptual Amendment 1 was adopted.

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REPRESENTATIVE HOLMES made a motion to adopt Conceptual Amendment 2, to delete the language on page 3, lines 9-12, which

read: "WHEREAS virtually all of the state's natural resource development projects are unnecessarily burdened by numerous federal laws, including the Endangered Species Act, the Clean Water Act, and myriad arbitrary federal regulators and policies implementing and enforcing those and other federal laws;". There being no objection, Conceptual Amendment 2 was adopted.

VICE CHAIR THOMPSON characterized HJR 40 as very important. He related an incident in which a friend of his was trying to take a piece of equipment to his mine by using an old trail, but federal [law enforcement officers] arrested him at gun point.

REPRESENTATIVE HOLMES, in response to a question, explained that she'd offered Conceptual Amendment 2 as a conceptual amendment so that the drafter could address any title change necessitated by its adoption.

REPRESENTATIVE GRUENBERG requested that that also apply with regard to the adoption of Conceptual Amendment 1.

REPRESENTATIVE HOLMES, in conclusion, characterized HJR 40 as a good piece of legislation.

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REPRESENTATIVE KELLER moved to report CSHJR 40(RES), as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHJR 40(JUD) was reported from the House Judiciary Standing Committee.

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ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 2:04 p.m.