

**CS FOR SENATE CONCURRENT RESOLUTION NO. 3(JUD)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-EIGHTH LEGISLATURE - FIRST SESSION

**BY THE SENATE JUDICIARY COMMITTEE**

**Offered: 4/13/13**

**Referred: Today's Calendar**

**Sponsor(s): SENATORS MCGUIRE, Micciche, Coghill, Bishop, Fairclough, Giessel, Meyer, Dunleavy, Stevens, Dyson, Kelly, Stedman**

**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; and be it

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

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

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

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