

HJR

60

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

N 1
Bill Version: HJR 60
(H) Publish Date: 2/21/96

Title: Relating to RS 2477
Sponsor: Rep James
Requestor: _____

Dept Affected: LFA
BRU: _____
Component: _____
Serial #: _____

EXPENDITURES/REVENUES: (THOUSANDS OF DOLLARS)

OPERATING	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants, Claims						
Miscellaneous						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (THOUSANDS OF DOLLARS)

General Fund						
Federal Fund						
Other						
TOTAL	0	0	0	0	0	0

POSITIONS:

Full-Time						
Part-Time						
Temporary						

ANALYSIS: (ATTACH A SEPARATE PAGE IF NECESSARY)

FOR BUDGET ANALYSIS

H. State Affairs Committee
by Walt Wilcox
Lee A. De...
Shirley Kilian

Date: 2/19/96
Phone: 465-3743
Phone: _____

SENATE COMMITTEE REPORT

First Committee of Referral

DATE: 3/25/98

FURTHER:

DATE TURNED INTO OFFICE: 4-2-98

The Resources Committee considered CS FOR HOUSE JOINT RESOLUTION NO. 60(RES)
 Relating to Revised Statute 2477 rights-of-way.

and recommends:

- be replaced with SEN CS 147C 6D (Res)
- adopt previous CS ()
- attached amendment(s)
- adopt Letter of Intent by Committee
- further referral to the Committee

Senate Bill:
 same title
 new title
 House Bill:
 same title
 technical title
 new: SCR#

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>Beauce</i>	✓	<i>[Signature]</i>			
<i>Christ Taylor</i>					
<i>[Signature]</i>					
<i>[Signature]</i>					
<i>[Signature]</i>					
CHAIR: <i>[Signature]</i>	✓	CHAIR:			

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal
<i>LAA</i>	<i>7/98</i>	✓	

*Grant
date to
CS, also*

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's MB

SENATE CS FOR CS FOR HOUSE JOINT RESOLUTION NO. 60(RES)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE RESOURCES COMMITTEE

Offered:

Referred:

Sponsor(s): HOUSE STATE AFFAIRS COMMITTEE

A RESOLUTION

1 **Relating to Revised Statute 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6 **WHEREAS the Congress repealed RS 2477 in 1976 in the Federal Land Policy and**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 RS**
8 **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 for travel**
15 **between settlements and to access mineralized areas in Alaska from the late 1800's until 1968;**
16 **and**

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

1 traditional rural transportation system because these routes form the transportation network for
2 surface travel between rural settlements and access to mineralized areas and because the routes
3 create significant entrepreneurial, recreational, and tourism opportunities for our citizens; and

4 **WHEREAS** the State of Alaska is committed to a balanced philosophy of the
5 development and wise use of Alaska's scenic beauty, mineral wealth, wildlife, and other
6 natural resources coupled with environmental protection to ensure that future generations will
7 experience Alaska as it is known by present generations of Alaskans; and

8 **WHEREAS** the surface transportation system in Alaska is inadequate to address the
9 needs of our state; and

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

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

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

21 **WHEREAS** the United States Department of the Interior is attempting to
22 administratively rescind the long-standing and widely accepted interpretation of RS 2477 by
23 adopting regulations restrictively defining key statutory terms contrary to the intent of the
24 Congress and virtually eliminating all RS 2477 rights-of-way in Alaska; and

25 **WHEREAS** legislation has been introduced in the United States Senate by Senator
26 Frank Murkowski and Senator Ted Stevens, and legislation has been introduced in the United
27 States House of Representatives to preserve the long-standing judicial and executive
28 interpretation of RS 2477 and to protect the existence of rights-of-way previously granted by
29 the federal government under RS 2477;

30 **BE IT RESOLVED** that the Alaska State Legislature endorses the efforts of the
31 Alaska delegation in Congress to preserve and protect the original meaning of Revised Statute

1 2477 to enable this generation and future generations of Alaskans to use the routes established
2 by Native and pioneer Alaskans; and be it

3 **FURTHER RESOLVED** that the Alaska State Legislature respectfully requests the
4 members of the Alaska delegation in Congress to ensure that federal law recognizes the
5 controlling nature of state law in regard to the construction and establishment of RS 2477
6 rights-of-way, as recognized by 100 years of judicial decision and by 38 years of Department
7 of the Interior regulation by enacting such a provision into federal statutes; and be it

8 **FURTHER RESOLVED** that the Alaska State Legislature respectfully requests that
9 the Congress include a 10-year period and a reasonable process for the assertion, recognition,
10 and determination of the existence of RS 2477 rights-of-way as part of legislation addressing
11 RS 2477 rights-of-way.

12 **COPIES** of this resolution shall be sent to the Honorable Ted Stevens and the
13 Honorable Frank Murkowski, U.S. Senators, and the Honorable Don Young, U.S.
14 Representative, members of the Alaska delegation in Congress.




Alaska State Legislature

Official Business

State Capitol
Juneau AK 99801

MEMO

TO: Legal Services
via fax: X2029 this page only

FROM: Annette Kreitzer, Aide to
Senate Resources Committee 

DATE: April 1, 1996

RE: CS HJR 60: RS2477 Highway Rights of Way

Please create a FINAL Resources committee subcommittee for HJR 60 that incorporates an amendment adopted in Senate Resources:

1) Page 3, Line 9:
the Congress include a [REASONABLE] 10-year period and a reasonable process...

There were no other changes to the bill. Please deliver the FINAL to Senator Leman's office, Room 115 of the Capitol.

CS FOR HOUSE JOINT RESOLUTION NO. 60(RES)
IN THE LEGISLATURE OF THE STATE OF ALASKA
NINETEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE RESOURCES COMMITTEE

Offered: 3/18/96

Referred: Rules

Sponsor(s): HOUSE STATE AFFAIRS COMMITTEE

A RESOLUTION

1 Relating to Revised Statute 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 RS
8 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 for travel
15 between settlements and to access mineralized areas in Alaska from the late 1800's until 1968;
16 and

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

1 traditional rural transportation system because these routes form the transportation network for
2 surface travel between rural settlements and access to mineralized areas and because the routes
3 create significant entrepreneurial, recreational, and tourism opportunities for our citizens; and

4 **WHEREAS** the State of Alaska is committed to a balanced philosophy of the
5 development and wise use of Alaska's scenic beauty, mineral wealth, wildlife, and other
6 natural resources coupled with environmental protection to ensure that future generations will
7 experience Alaska as it is known by present generations of Alaskans; and

8 **WHEREAS** the surface transportation system in Alaska is inadequate to address the
9 needs of our state; and

10 **WHEREAS** the United States Department of the Interior adopted regulations in 1938
11 interpreting RS 2477 stating that RS 2477 is "effective upon the construction or establishing
12 of highways, in accordance with State laws, over public lands not reserved for public uses";
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14 **WHEREAS** the interpretation of RS 2477 by the United States Department of the
15 Interior remained unchanged until the repeal of the statute when the regulations were also
16 repealed; and

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

21 **WHEREAS** the United States Department of the Interior is attempting to
22 administratively rescind the long-standing and widely accepted interpretation of RS 2477 by
23 adopting regulations restrictively defining key statutory terms contrary to the intent of the
24 Congress and virtually eliminating all RS 2477 rights-of-way in Alaska; and

25 **WHEREAS** legislation has been introduced in the United States Senate by Senator
26 Frank Murkowski and Senator Ted Stevens, and legislation has been introduced in the United
27 States House of Representatives to preserve the long-standing judicial and executive
28 interpretation of RS 2477 and to protect the existence of rights-of-way previously granted by
29 the federal government under RS 2477;

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2 by Native and pioneer Alaskans; and be it

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6 rights-of-way, as recognized by 100 years of judicial decision and by 38 years of Department
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8 **FURTHER RESOLVED** that the Alaska State Legislature respectfully requests that
9 the Congress include a ^{10-year} [reasonable] period and a reasonable process for the assertion,
10 recognition, and determination of the existence of RS 2477 rights-of-way as part of legislation
11 addressing RS 2477 rights-of-way.

12 **COPIES** of this resolution shall be sent to the Honorable Ted Stevens and the
13 Honorable Frank Murkowski, U.S. Senators, and the Honorable Don Young, U.S.
14 Representative, members of the Alaska delegation in Congress.

3 10-year
work on



Alaska Environmental Lobby, Inc.

P.O. Box 22151 Juneau, Alaska 99802

Phone: 907-463-3366

Fax: 907-463-3312

The Alaska Environmental Lobby cannot support HJR 60

This resolution accurately quotes the language of RS 2477 providing that *"the right-of-way for the construction of highways over public lands, not reserved for public use, is hereby granted."*

It correctly notes that the Federal Land Policy and Management Act repealing RS 2477 in 1976 expressly reserves existing rights-of-way created under RS 2477.

It laudably commits Alaska *"to a balanced philosophy of the development and wise use of Alaska's scenic beauty, mineral wealth, wildlife, and other natural resources coupled with environmental protection to ensure future generations"* might experience Alaska as we know it now.

However, this resolution's confidence in case law that supports the intent of a Congress that governed the United States over 130 years ago might very well be misplaced. "The law must be stable, but it cannot stand still".

This resolution's reliance on a definition of "construction" satisfied by mere seasonal use weakens Alaska's RS 2477 case and at the very least will make lawyers wealthy.

It is not a bad thing that this resolution recognizes the efforts of our Alaskan delegation in Congress, but the legislation that's come out of that effort-so far-does not address the concerns of many of their constituents.

- Owners of private land are concerned about "takings".
- The Native community is concerned about the status of their lands.
- Nothing has been done by our Alaskan delegation to clarify the State's still evolving position on section lines. Do surveyed section lines qualify? Unsurveyed?

Nonresidents have problems with Alaska's RS 2477 effort too.

- What about access through National Parks?
- Should traditional winter trails across wetlands be turned into all-weather highways?

Alaska has a public relations problem. Alaskans' reactions to it range from anger to embarrassment, but eventually it will effect all of us...one way or another. The reality is that this resolution and the legislation it endorses will do nothing positive for that problem and might very well make it worse...even as it whips up problems among the very residents of Alaska it intends to help.

4/1/96



TYONEK NATIVE CORPORATION

1689 C Street, Suite 219
Anchorage, Alaska 99501
(907)272-0707

17 8260
D-36 Tyonek

Senator Georgianna Lincoln
Alaska State Legislature
State Capitol (MS 3100)
Juneau, Alaska 99801-1182

March 14, 1996

MAR 18 1996

Faxed this date to (907)465-2652

Dear Senator Lincoln:

Tyonek Native Corporation and The Native Village of Tyonek are requesting your assistance in conveying our concerns over House Joint Resolution No. 60. relating to Revised Statute 2477 right-of-way(RS2477).

Please be aware that the State has made a claim of RS2477(#200) that crosses the Chuitna River at its mouth, takes out a 100 feet through the village, and violates the Russian Orthodox cemetery in the village, then travels on to the old village site where it terminates in the old village cemetery(also Russian Orthodox), turns around and comes back.

The purpose of RS2477 is supposedly to provide access to mineralized areas to the general public. As you know, Tyonek is a private community much like the private communities elsewhere in the lower 48. However to meet the needs of the resource development industry, Tyonek has already provided access to resource developers such as ARCO, Placer Dome, Unocal, to name a few. Such access was provided by Tyonek, at no cost to the State of Alaska and without disrupting the community. Why then is RS2477#200 needed? Why does the State need access to Tyonek's cemeteries?

RS2477 as written and proposed by U.S. Congress Bill H.R. 2081, provides for no public review or comment on any R.S. 2477 right-of-way, no permitting or environmental impact review, no compensation to the land owner(constituting a taking under the 5th Amendment), and no commitment by the State to maintain the right-of-way after it is taken. While we agree that there are certain rights-of-way that everyone can agree to support, we cannot and do not support RS 2477 #200 in its present format, and have grave concerns about the constitutionality of RS2477 in its present form. Thank you for your support and consideration on this issue.

Sincerely,



Tom Harris
CEO, TNC

Sponsor Statement

April 1, 1996

HJR 60 RS 2477 highway rights of way
By Rep. Jeannette James

Federal Revised Statute 2477 (RS 2477) provided for "the right-of-way" for the construction of highways over public lands, not reserved for public uses. This preserves access all over Alaska using traditional roads and trails for current and future roads and trails.

Congress repealed RS 2477 in 1976, but reserved existing rights-of-way created under RS 2477.

The US Department of the Interior is attempting to administratively recind the long-standing and widely accepted interpretation of RS 2477 by adopting regulations restrictively defining key statutory terms contrary to the intent of the Congress and virtually eliminating all RS 2477 rights-of-way in Alaska.

S. 1425 has been introduced in the US Senate, and H.R. 2081 has been introduced in the US House to preserve the long standing judicial and executive interpretation of RS 2477 and to protect the existing rights-of-ways previously granted by the federal government under RS 2477.

HJR 60 supports the federal legislation and asks that the US government allow us a reasonable period and process for the assertion, recognition, and determination of the existence RS 2477 rights-of-way.