

SB

180

HFIN

FILE

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. CSSB180(FIN)

Revision Date: 13-Mar-98

Dept Affected: Natural Resources

Title: An Act Relating to State Rights-of-Way

BRU: Resource Development

Component: Land Development

Sponsor: Senators Halford, Green, Leman ...

Requestor: (S) FIN

Component Serial No. 431

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY99	FY00	FY01	FY02	FY03	FY04
PERSONAL SERVICES	48.6					
TRAVEL						
CONTRACTUAL	95.3					
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	144.9	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES (fund code)	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE

(Thousands of Dollars)

FUND SOURCE	FY99	FY00	FY01	FY02	FY03	FY04
1002 Federal Receipts						
1003 GF Match						
1004 GF	144.9					
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	144.9	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY98) cost: \$ none

POSITIONS

POSITIONS	FY99	FY00	FY01	FY02	FY03	FY04
FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	4	0	0	0	0	0

ANALYSIS:

(Attach a separate page if necessary)

Personal Services:

Requires two Natural Resource Technician II's (Range 12) @ 800 hours each = \$27.2
 and two Administrative Clerk II's (Range 8) @ 800 hours each = \$21.4

Contractual:

Copy costs for approx. 605 files = \$9.1
 Recording costs for approx. 585 files = \$87.2

Prepared by: Jane Angvik, Director *[Signature]*
 Division: Land
 Approved by Commissioner: John Shively *[Signature]*
 Agency: Natural Resources

Phone: 907-269-8503
 Date: 13-Mar-98
 Date: 3-13-98

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FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. CSSB 180 (FIN)

Revision Date _____ Dept. Affected DOT&PF
 Title An Act relating to state rights-of-way BRU Office of the Commissioner
 Component Commissioner's Office
 Sponsor Senator Halford
 Requester H RES Component Serial No. 530

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING						

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY98) cost: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

Prepared by Dennis Poshard Special Assistant Phone 465-3904
 Division Office of the Commissioner Date 4/6/98
 Approved by: *[Signature]* Commissioner Date 4/6/98
 Agency Department of Transportation and Public Facilities

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HOUSE COMMITTEE REPORT

(11)

Date Referred to Committee: April 14, 1998

FURTHER REFERRALS:

Date of Committee Action: 4/15/98

The FINANCE Committee considered:

CSSB 180(FIN)

CS FOR SENATE BILL NO. 180(FIN)

STATE RIGHTS-OF-WAY: RS 2477

"An Act relating to state rights-of-way."

recommends it be replaced with the following committee substitute CSSB 180(FIN) the same title a new title

additional referral to _____ Committee
 attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(s): _____ (Dept)

APPROVES PREVIOUS: _____ (Dept/Date)

fiscal note(s) _____

fiscal note(s) DNR 3/18/98

zero fiscal note(s) _____

zero fiscal note(s) DOTPF

SIGNING WITH RECOMMENDATIONS		DP	DNP	NR	AM
<i>Gene Therrault</i>	Therrault	✓			
<i>Kate Kelly</i>	Kelly	✓			
<i>Barry Martin</i>	Martin	✓			
<i>Robert Mulder</i>	Mulder	✓			
<i>John Kohring</i>	Kohring	X			
<i>G. Davis</i>	G. Davis	X			
<i>Richard Foster</i>	FOSTER	X			

CW- CHAIR'S SIGNATURE

Gene Therrault
Therrault

04/15/98
08:59:51

LEGISLATIVE TELECONFERENCE NETWORK SYSTEM
PARTICIPANT LIST (TESTIFIERS ONLY)
TCN:80683 SCHEDULED FOR:04/15/98 08:00 TO 10:00
PUBLIC HEARING HOUSE FINANCE

LTN1150
BY:JNU
FOR:ALL

LOCATION: ~~ANCHORAGE~~
SB 180 MYLES CONWAY ✓ ANS ?S DEPT OF LAW TESTIFY
SB 180 JANE ANGVIK ✓ TESTIFY

LOCATION: ~~KENAI~~ LIO
SB 180 MR. DALE BONDURANT ✓ SUPPORT SELF TESTIFY
SB 180 MS. KATHLEEN MOORE ✓ SUPPORT SELF TESTIFY

LOCATION: ~~HIATSU~~
SB 180 MR. CRAIG PUDDICOMBE ✓ AGAINST TESTIFY

LOCATION: ~~TOK~~
SB 180 MR. BILL MILLER ✓ SELF TESTIFY

LOCATION: KETCHIKAN
MR. PETER AMUNDSON ✓ SELF
MR. NELSON ANGATAK ✓



04/15/98 . . .
08:59:13

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PUBLIC HEARING HOUSE FINANCE

LTN1150
BY:TOK
FOR:TOK

LOCATION:TOK
SB 180

⑥

MR

BILL

MILLER

SELF

TESTIFY

⑧ KETCHIKIN Peter Amundson

04/15/98
08:33:48

LEGISLATIVE TELECONFERENCE NETWORK SYSTEM
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TCN:80683 SCHEDULED FOR:04/15/98 08:00 TO 10:00
PUBLIC HEARING HOUSE FINANCE

LTN1150
BY:JNU
FOR:ALL

LOCATION: ANCHORAGE

SB 180 ② MYLES CONWAY ANS ?S DEPT OF LAW TESTIFY
SB 180 ① JANE ANGVIK DIR DIV of lands TESTIFY
DNR

LOCATION: KENAI LIO

SB 180 MR. ③ DALE BONDURANT SELF TESTIFY
SB 180 MS. ④ KATHLEEN MOORE SELF TESTIFY

LOCATION: MATSU

SB 180 MR. ⑤ CRAIG PUDDICOMBE TESTIFY
~~SB 180 MR. ⑥ WILLIAM EASTHAM TESTIFY~~

LOCATION: ~~TKK~~

⑨ Nilsen Angavak
AFN Anchorage



House Finance Committee

DATE: April 15, 98

PLACE: Capital Stg

SUBJECT OF MEETING:
SB 180

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?		WHAT SUBJECT/ WHICH BILL?
① Dirk Risher	COMALCO AK00027	POB 78502, F.A.I., AK	99501	452-6157	463-3830	<input checked="" type="radio"/>	<input type="radio"/>	SB 180
	VP.	AK OILFIELD COUNCIL				<input type="radio"/>	<input type="radio"/>	
						<input type="radio"/>	<input type="radio"/>	
						<input type="radio"/>	<input type="radio"/>	
						<input type="radio"/>	<input type="radio"/>	
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						<input type="radio"/>	<input type="radio"/>	
						<input type="radio"/>	<input type="radio"/>	

SB 180 =

FN 144.9 DNR 3/18/98

FN & DOTPF NEW



Alaska State Legislature

Please enter into the record my testimony to the HOUSE FINANCE
committee name
 committee on SB 190 State Right, dated 4/5/98
bill # / subject OF WAY

There is a conflict with the Native Corporations creating maps that do not reflect existing trails which the State has an interest in. These "New" maps are distributed and discussed as being the "true" maps of the area. When someone wants to use a trail that is not reflected on the "Corporate" maps they are devised existence. "Private" map makers are "disappearing" our trails.

Signed: Kathleen Graves Moore
 Testifier

Self
 Representing (Optional)

WASILLA GEN. Del. Soldotna, AK. 99669
 Address

(907) 262-2988
 Phone number

- publishing brochures, atlases, or other information fact sheets that encourage deliberate use of the routes.
- signage on routes advising the public of their right to use the routes.

Each route should be evaluated to determine the highest and best use of the right-of-way according to its contemporary purpose. The State should retain the flexibility to manage routes for uses ranging from foot passage to paved highway systems. A long-term plan could certify, survey, and manage these trails within budgetary constraints. A management plan would allow the state to pace itself with certifications that should be accomplished on an annual basis.

In conclusion, DNR is available to work with the sponsor and other members on SB 180. We would prefer not to record all 585 routes at this time because we need to "certify" the routes prior to recordation. To date there are 11 which have been certified. Additionally, we recommend that the other 574 not be recorded, because it could unnecessarily cloud the title of third parties, who may ultimately be unaffected by the route once its location is established by survey. In the meantime they would not be able to sell or encumber their land because of this cloud.

The Division staff are available to work on this very important issue.

Jane Angvik
Director, Division of Land

Division of Land Analysis - May 8, 1997
SB 180: An Act relating to state rights-of-way.

The Division of Land has been working on the RS2477 issue for many years supports the direction of the bill and seeks to work with the sponsor on its development.

Principle elements of the bill:

- * identifies DNR as regulatory authority for managing the RS2477 routes, unless transferred to DOTPF.
- * acknowledges that the research and identification process is incomplete
- * requires recordation of the 585 routes that potentially qualify as RS2477 routes
- * outlines procedure and restrictions for vacating RS2477 rights-of-way.

Section 1, paragraph (b) states that DNR "shall conduct the necessary research to identify rights-of-way." The RS2477 project was funded by the Legislature beginning in FY93 to identify, research and document potential RS2477 rights-of-way throughout the state. As of spring 1997, the DNR has identified approximately 585 routes that *potentially* qualify as RS2477 routes. This research is the first step in the process of certifying that a route meets the requirement of the federal grant. Finding additional information to qualify more routes and certify the 585 which have been judged to qualify will require more work, including travel to mining districts and communities, interviewing Alaskan pioneers, and investigating federal records. This will be a costly, but beneficial endeavor.

Section 1, paragraph (c) outlines acceptance of the RS2477 grant from the federal government. The State has a regulatory process in place to recognize the grant (11AAC51). This process is called "certification" and includes the following elements:

- * Nomination of a route by DNR
- * Title search to identify servient interests, such as mining claims or other private property interests,
- * 45-day public notice period to municipalities, federal and state agencies, coastal districts, land owners that might have a servient estate, village councils, etc. (by certified mail)
- * A decision by DNR, including findings of fact and conclusions of law, that the RS2477 ROW grant has been accepted. The decision also includes a determination of the location and width of the ROW in accordance with applicable law. This decision "constitutes recognition . . . of an RS2477 right-of-way grant" (11AAC51.060(e)).

Of the 585 routes that appear to qualify, only 11 have gone through this regulatory certification process and have been noticed to the federal government under the Federal Quiet Title Act. (180 day notice requirement) In addition, quiet title action against the Department of the Interior, Bureau of Land Management and 15 federal unpatented

mining claim owners has been filed on the Harrison Creek-Portage Creek Trail near Central, Alaska.

Because the state has not given public notice on the remaining 574 routes, this bill should advocate certification of these routes, including title searches, public notice, and written determinations instead of outright acceptance of the grant. This will meet the regulatory requirement for receipt of the RS2477 grant and is a valid process that will be recognized by a court of law.

Section 1 paragraph (d) lists the RS2477 rights-of-way that this bill intends to codify. As mentioned previously, some of these routes have minimal documentation. For example, more than 100 routes have only a single piece of evidence. This level of documentation has yet to be tested in court. Therefore, the certification process is even more important to verify that these trails indeed meet with the minimal standards of the federal grant.

Additionally, this paragraph limits the ability of the DNR to vacate rights-of-way. This affects the possibility of negotiating reasonable and constructable alternative routes among land owners and users as necessary. For example an RS2477 route may traverse terrain that is less buildable than a parallel route which could be traded for the vacation of the RS2477 route.

Section 2 mandates the recording of each right-of-way identified in this bill but eliminates the *Formal requisites for recording* under AS 40.17.030. Without an in-depth title search, departmental certification, and surveying, recording routes with insufficient information could result in the clouding of title for hundreds of Alaskans who may not be directly affected by the RS2477 right-of-way. Should a lawsuit be filed that challenges the State on the validity of an RS2477, the court could easily find against the State for not following the established regulatory (certification) and statutory (recordation) processes.

A possible amendment to these proposed statutes may be to provide a wide range of criteria to establish and manage routes with a contemporary interpretation of historic uses. Alaska Statutes could be modeled after the State of Utah's RS2477 statutes. Utah takes an aggressive position related to RS2477 and is similar to the direction advocated by this proposed legislation. An amendment could provide a policy and methodology based upon previous court cases in the 9th and 10th Circuits. While Alaska is not in the 10th circuit, we can choose to adopt the decisions found in *Sierra v. Hodel* (848 F.2d 1068, 10th Cir. 1988) and similar cases.

In Utah the state has also engaged in active management of the RS2477 routes and has forced the Federal government to try to stop them in court. If Alaska were to engage in such practices, some options for action could include:

- * survey and flagging routes to avoid trespass on adjacent property
- * developing a management strategy addressing allowed uses of the routes



Resource Development Council

for Alaska, Inc.

121 West Fireweed Lane, Suite 250, Anchorage, Alaska 99503-2035
 (907) 276-0700 Fax: (907) 276-3887 e-mail: rdc@aonline.com

Founded 1975

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 Kenneth J. Freeman

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- Senator Frank Murkowski
- Congressman Don Young
- Governor Tony Knowles

January 21, 1998

Senator Rick Halford, Chairman
 Senate Resources Committee
 State Capitol
 Juneau, AK 99801

Dear Senator Halford:

RE: Support for SB 180, relating to RS 2477 rights-of-way.


The Resource Development Council supports SB 180 and urges its passage. RDC has long supported actions to designate and settle historic RS 2477 rights-of-way across public lands in Alaska while respecting private property rights. RS 2477 remains one of the most useful access tools for Alaskans to cross federal lands, as historically done.

Throughout Alaska, people depend on RS 2477 routes for access to public and private land, and to the resources of that land. Over 560 potential rights-of-way have been documented around the state.

Alaska needs to protect its RS 2477 rights and RDC believes SB 180 will help accomplish that goal. SB 180 is needed to move the process along and ensure Alaska's historic rights of access are maintained.

Sincerely,

RESOURCE DEVELOPMENT COUNCIL
 for Alaska, Inc.


 Ken Freeman
 Executive Director

cc: Senator Mike Miller
 Representative Bill Hudson
 Representative Scott Ogan
 Speaker Gail Phillips
 Representative Pete Kott



MAY 05 1997
ALASKA OUTDOOR COUNCIL

211 4th St. #302A
Juneau, Ak. 99801
(907) 463-3830
FAX 586-6020

Senator Rick Halford
Alaska State Senate
State Capitol (MS 3100)
Juneau, Alaska 99801-1182

5 May, 1997

Dear Senator Halford:

The Alaska Outdoor Council has reviewed Senate Bill 180, "An act relating to state rights-of-way" and very strongly supports it.

SB 180 takes a giant step forward in addressing the Outdoor Council's concerns about the loss of public access on public and potentially private lands through government antipathy and/or inaction. Assertion of RS 2477 rights-of-way is necessary because other provisions of law, particularly federal law, are too weak to reliably protect public access.

Sec.19.30.400 (c) is an essential part of the bill. It makes clear that the rights-of-way identified in the bill are not the end of the story. As you know, there are over a thousand additional trails that may qualify as RS 2477 rights-of-way and demand review.

The Council also recognizes the importance of Sec.19.30.410. The state's responsibility for providing public access under RS 2477 provisions must be institutionalized to preclude politically motivated backsliding.

The protection of legal public access on and across federal lands is the "compelling need" which the Department of Interior claims is essential for its consideration of RS 2477's. These rights-of-way enable Alaskans to go about their daily lives. In most cases this simply means the use of trails, rather than modern highways, but the latter should not be arbitrarily excluded.

The protection of an RS 2477 should not be denied on the excuse that it is not part of a formal state transportation system plan. The law provides that public use of a route verifies it's RS 2477 eligibility. Public use is the practical evidence of logical access needs, even though use may be intermittent over time, or may change in nature.

The Council is also concerned about state access policy in general. It is not clear that providing for public access is given enough weight when considering other legal avenues, such as section line easements or identification and retention of 17(b) easements under ANSCA. The current uproar over public access to the Situk River near Yakutat dramatizes the need for the state to act in anticipation of obstacles to legitimate public access. But all of that is not directly related to SB 180.

The Alaska Outdoor Council sincerely appreciates your efforts to introduce SB 180, and unequivocally supports the bill.

Sincerely,

Richard H. Bishop
Executive Director
Alaska Outdoor Council

cc: Senator Miller
President of the Senate
Representative Phillips
Speaker of the House



P.O. Box 20761, Juneau, Alaska 99802

Phone/FAX (907) 789-2399

April 21, 1997

Senator Rick Halford
State Capitol
Juneau, AK 99801-1182

Dear Senator Halford:

The Territorial Sportsmen would like to go on record as strongly supporting SB 180, "An Act Relating to State Rights-of-Way."

Territorial Sportsmen, Inc. is a Juneau based sportsmen/conservation organization. Our organization has been in existence for over 50 years and is dedicated to good resource management and sound conservation principles. Our membership numbers over 1,500. The Territorial Sportsmen are committed to the protection of public access to public lands and supports the recognition and protection of RS 2477 rights-of-way.

We are fully aware of the legislature's long standing recognition of the importance of RS 2477 rights-of-way to the future of our state. Quite frankly, we are convinced that without the strong support, including funding, by the legislature, the volumes of material accumulated supporting the hundreds of legitimate RS 2477 rights-of-ways would not have been completed.

We are also aware of the potential litigation that may ensue from this type of proactive position by the state. Regardless, we consider legal confrontations with the federal government essential to producing long term access options for the state and, thus, we encourage the Legislature to proceed with this effort. We agree that codifying these routes will strengthen the state's position and provide reasonable notice to the general public.

In closing, we recognize that this list of routes covers the best documented rights-of-ways. We are hopeful that the legislature and the administration will continue to pursue documentation of the remaining routes for later assertion by the state.

Sincerely,

A handwritten signature in cursive script that reads "Ron Somerville".

Ron Somerville
President



JAN 26 1998

ALASKA MINERS ASSOCIATION, INC.

501 W. Northern Lights Blvd., Suite 203, Anchorage, Alaska 99503 FAX: (907) 278-7997 Telephone: (907) 276-0347

January 17, 1998

Honorable Rick Halford
Chairman, Senate Resources Committee
Capitol Building
Juneau, AK 99801

RE: Senate Bill 180, Relating to State Rights-of-Way

Dear Senator Halford,

Thank you for the opportunity to comment on your Senate Bill 180 which relates to Revised Statute 2477 rights-of-way. The Alaska Miners Association supports this bill and very much appreciates that you have addressed this important matter.

The Alaska Miners Association, its members and predecessors have been intimately involved in the issue of RS-2477 rights-of-way since before the days of the Klondike Gold Rush and up through the present time. By virtue of the U.S. Congress's grant known as RS-2477, the roads and trails established by the miners are now rights-of-way owned by the State of Alaska. SB-180 will help ensure that these rights are protected and that the necessary legal/technical steps are completed in a timely manner. Over the past several years the State and the public have worked hard to document usage of these roads and trails but there has remained uncertainty over precisely how they must be "accepted" or "asserted" to ensure that they remain State property. SB-180 should remove this uncertainty.

There is one area where you may wish to consider changes to SB-180. This involves "vacation of rights-of-way". It would be of value to give the Department of Natural Resources authority to (but not require) write regulations establishing the procedural steps required to vacate rights-of-way. This will be especially important where Native-owned or other private lands are invoked.

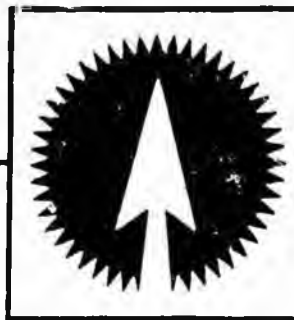
Thank you for the opportunity to comment on this important bill. Please contact me if you have any questions or if there is anything we can do to assist this legislation in become law.

Sincerely,

Steven C. Borell, P.E.
Executive Director

APR 28 1997

Alaska Forest Association, Inc.



111 STEDMAN SUITE 200
KETCHIKAN, ALASKA 99901-6599
Phone 907-225-6114
FAX 907-225-5920

April 25, 1997

Honorable Rick Halford
Alaska State Senate
State Capitol
Juneau, AK 99801

Dear Senator ~~Halford~~: *Rick*

Thank you for sharing with me SB 180, "An Act relating to rights-of-way." I agree with you that securing RS 2477 rights-of-way is critical to the future development of Alaska, and therefore must be pursued with vigor by Alaska's elected leadership. SB 180, as drafted, is an excellent move in that direction.

I see no better alternative to the approach you have taken in this bill, *viz.*, to specifically identify each accepted right-of-way within the state and require in statute the vigorous pursuit of the state's claim to these corridors. It is extremely important to prevent an arbitrary or politically motivated agency action from surrendering Alaskans' perpetual right to have access to the various parts of our state.

Finally, I think that your proposed AS 19.30.410 is a very important part of this bill. It is comparable to AS 38.05.300 which, you will recall, we rewrote in 1993 to assert the prerogative of the legislature to make the final call on major land use actions with respect to mining.

I thank you for introducing this legislation, and for the opportunity to comment on it. I hope this letter will do some small part toward helping SB 180 become law.

Sincerely,

Jack E. Phelps
Executive Director

afa\letters\2quartr\hlf9704_ltr, April 25, 1997

Ed Ellis
P.O. Box 13443
Trapper Creek, Ak 99683

2/12/98

HONORABLE STATE SENATOR RICK HALFORD
Alaska State Senate

In Reference To Senate Bill 180

Dear Senator Halford,

I strongly support the passage of this bill.

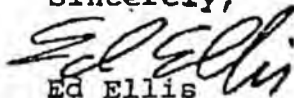
Our RS2477 rights-of-ways are the correct legal authority to provide access to our rural areas. It should be noted that this authority is now necessary, in addition to federal and private lands, for state lands also.

The element included under Sec. 19.30.140. (Vacation) is crucial to this bill. Recently the McDougal Road, an established RS2477 ROW that crosses entirely state multiple use lands, was removed from state status plats by the Division of Lands with no notification to the user public. This was followed by denial of permit to use said road by the division. In total the division actions are a de facto "vacation" of this important access.

I do feel that all codified RS2477 routes should be transferred to DOT. Or in the alternative, transferred when a legitimate request is made to construct a road upon the right-of-way. Currently, DNR has no expertise- nor wants to assist- in actual engineering- for a plan to build a useable access. Leaving one to deal with persons totally unfamiliar with proper construction. DOT would therefore be the proper agency to work with and result in a better access.

I look forward to the passage of SB 180.

Sincerely,


Ed Ellis



THE SECRETARY OF THE INTERIOR
WASHINGTON

RECEIVED
JAN 27 1997

JAN 22 1997

Ans'd.....

Memorandum

To: Assistant Secretary, Fish and Wildlife and Parks
 Assistant Secretary, Land and Minerals Management
 Assistant Secretary, Indian Affairs
 Assistant Secretary, Water and Science

From: Secretary

Subject: Interim Departmental Policy on Revised Statute 2477 Grant of Right-of-Way for Public Highways; Revocation of December 7, 1988 Policy

Revised Statute 2477, which provided that "[t]he right of way for the construction of highways over public lands, not reserved for public uses, is hereby granted," was repealed on October 21, 1976, by the Federal Land Policy and Management Act (FLPMA), 43 U.S.C. § 1701 et seq. FLPMA did not terminate valid rights-of-way established under R.S. 2477 prior to its repeal. The existence and extent of valid rights-of-way previously established pursuant to R.S. 2477 remains an issue in some places.

States or local governments asserting that R.S. 2477 rights-of-way exist on federal lands can in appropriate situations file a lawsuit in federal court seeking to establish the validity of that assertion. In the alternative or in advance of filing such a lawsuit, the Department of the Interior may also be asked to give its views on such assertions.

On December 7, 1988, Secretary Hodel signed a memorandum that discussed his policy for making determinations whether the Department would recognize claims for rights-of-way under R.S. 2477. That policy was not promulgated according to rulemaking procedures and is not a rule. In fact, because the Department has not been making such determinations in recent years, that policy has not been carried out for several years. The purpose of this memo is to revoke the 1988 policy and establish a revised policy for carrying out any determinations the Department might be called upon to make regarding R.S. 2477.

Background

At the request of Congress, the Department submitted a Report to Congress on R.S. 2477 in June 1993. In accordance with that Report's recommendations, the Department determined that regulations should be written for R.S. 2477, and a Notice of Proposed Rulemaking was published in 1994. 59 Fed. Reg. 39,216 (August 1, 1994). Thereafter, Congress attached a provision to the Department's appropriation for fiscal year 1996 that prohibited using funds appropriated by that statute for "developing, promulgating, and thereafter implementing a

rule concerning rights-of-way under section 2477 of the Revised Statutes." Pub. L. 104-134, § 110, 110 Stat. 1321-177 (1996). The Department's appropriation for fiscal year 1997 permits the publication of final regulations but says they shall not take effect unless "expressly authorized by an Act of Congress subsequent to the date of enactment of this Act." Pub. L. 104-208, § 108, 110 Stat. 3009 (1996).

I addressed the issue of whether the Department should continue to make determinations regarding R.S. 2477 claims in my May 28, 1993, letter to Congress transmitting the Department's Report: "Until final rules are effective, I have instructed the Bureau of Land Management to defer any processing of R.S. 2477 assertions except in cases where there is a demonstrated, compelling, and immediate need to make such determinations." This instruction is still in effect.

Revised Policy on R.S. 2477 Rights-of-way Determinations

Those making claims of the existence of valid R.S. 2477 rights-of-way continue to have the option of seeking to establish the validity of their claims in court. Nevertheless, it is possible that the Department may be asked, in advance of final rules taking effect, to make such determinations on the basis that such a demonstrated, compelling, and immediate need is claimed to exist. If so, until final rules are published and take effect, determinations regarding R.S. 2477 rights-of-way will be made by the Secretary of the Interior, in consultation with the appropriate Interior agency, according to the following policy:

1. **Claims.** An entity wishing the Secretary or any agencies of the Department of the Interior to make a determination whether an R.S. 2477 right-of-way exists shall file a written request with the Interior agency having jurisdiction over the lands underlying the asserted right-of-way, along with an explanation of why there is a compelling and immediate need for such a determination. The request should be accompanied by documents and maps that the entity wishes the agency to consider in making its recommendation to the Secretary. If, based on the information provided, the agency does not believe a compelling and immediate need for the determination exists, it should without further examination recommend the Secretary defer processing until final rules are effective.

2. **Withdrawals and Reservations.** The agency shall consult the public land records maintained by the Bureau of Land Management to determine the status of the lands over which the claimed right-of-way passes. If such lands were withdrawn, reserved, or otherwise unavailable pursuant to R.S. 2477 at the time that the highway giving rise to the claim of an R.S. 2477 right-of-way was allegedly constructed and remained unavailable through October 21, 1976, the agency will recommend the Secretary deny the claim.

3. **Construction.** If the lands were not withdrawn, reserved, or otherwise unavailable pursuant to R.S. 2477, the agency shall examine all available documents and maps and perform an on-site examination to determine whether construction on the alleged right-of-way had occurred prior to the repeal of R.S. 2477 on October 21, 1976. If the agency

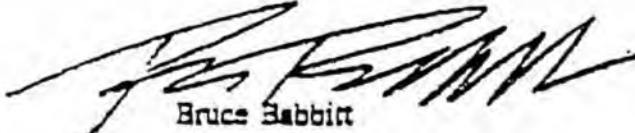
determines that construction did not occur, the agency will recommend the Secretary deny the claim.

4. Highway. The agency shall evaluate whether the alleged right-of-way constitutes a highway. A highway is a thoroughfare used prior to October 21, 1976, by the public for the passage of vehicles carrying people or goods from place to place. If the agency determines that the alleged right-of-way does not constitute a highway, the agency will recommend the Secretary deny the claim.

5. Role of State Law. In making its recommendations, the agency shall apply state law in effect on October 21, 1976, to the extent that it is consistent with federal law. The agency will in no case recommend approval of claims that do not comply with the requirements of applicable state law.

6. Secretary's Determination. The agency will make recommendations on the above-described issues to the Secretary. The Secretary will approve or disapprove those recommendations.

The December 7, 1988 policy, including attachment 1, is hereby revoked.


Bruce Babbitt

WHAT IS R.S. 2477?

- ◆ Revised Statutes 2477 (R.S. 2477) was a grant by Congress to the American public to establish access rights across the federal public lands. R.S. 2477, enacted in 1866, states that "the right of way for the construction of highways over public lands, not reserved for public uses, is hereby granted."
- ◆ R.S. 2477 rights-of-way were created by the public or by state and local governments to provide public access across federal lands. All valid existing R.S. 2477 rights-of-way have been in existence since at least 1976, when the grant of R.S. 2477 was repealed. Many of these access routes have been used for over a century. Many are state highways. All are integral parts of the travel infrastructure that allows business people and other workers, search and rescue crews, law enforcement, hunters, campers, hikers, and all Americans to travel across the vast expanses of federal lands which dominate the West.
- ◆ R.S. 2477, like all easements, are property rights and are entitled to the same legal protection as any other property right.
- ◆ According to every court and administrative action which has directly addressed R.S. 2477 prior to now, state law provides the basis for determination of the existence and scope of R.S. 2477 rights-of-way.
- ◆ The scope of any R.S. 2477 right-of-way is defined by state law. Where state law has not established a specific scope, the common law of easements, also applied to these rights, defines the scope as that which is reasonable and necessary to provide safe travel for legitimate uses. Safety can only be provided by continued application of these state law standards.
- ◆ R.S. 2477 rights-of-way have been protected by every Congressional action taken for management of the public lands, including specifically the Federal Land Policy Management Act of 1976 (FLPMA), which repealed R.S. 2477.
- ◆ Federal regulatory authority over R.S. 2477 is limited by the obligation to honor the vested property right. Any action by Federal agencies to limit or divest these rights is contrary to established legal principles.
- ◆ The Department of Interior has published draft regulations purporting to provide a basis for administrative treatment of R.S. 2477 rights-of-way. These regulations would result in a substantial administrative reversal of long-established administrative policies, and would contravene established jurisprudence, moving a giant step toward elimination of historical rights of access to and across federal public lands.
- ◆ Settled methods of dealing with R.S. 2477 rights-of-way should not be changed. These rights-of-way were established by the public over a period of 110 years in reliance on the law and on administrative interpretations of the grant. Any change in these approaches would cause chaos in the many legal relationships which have been created on the basis of existing law. The regulations as proposed would also constitute an unfunded federal mandate by imposing new duties on state and local governments to protect their existing rights-of-way, while also imposing a new administrative burden on the federal agencies at taxpayer expense.

4/15/98

ALASKA STATE CHAMBER OF COMMERCE

Resolution 98-8

Revised Statute 2477

WHEREAS, the Alaska State Chamber of Commerce recognizes that throughout Alaska people depend on RS 2477 routes for access to public and private land and to the resources of that land; and

WHEREAS, the Alaska State Chamber of Commerce recognizes that over fifteen hundred potential rights-of-way have been identified statewide; and

WHEREAS, the Alaska State Chamber of Commerce recognizes that changes to federal policy could block public use of RS 2477 routes unless they are documented now by the state;

THEREFORE, BE IT RESOLVED that the Alaska State Chamber of Commerce believes that to document RS 2477 rights-of-way successfully, the routes must be researched and mapped to show that the rights-of-way crossed public land when it was unreserved federal land and that public users or a public authority accepted the route; and

BE IT FURTHER RESOLVED that the Alaska State Chamber of Commerce supports the State of Alaska's assertion of rights-of-way through federal lands as recognized through RS 2477.

ADOPTED

December 5, 1997

BY Pamela La Bolle
Pamela La Bolle
President

BY David W. Marquez
David Marquez
Chairman, Board of Directors



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Sponsor Statement

CSSB 180(FIN)

" An Act Relating to State Rights-of-way."

Revised Statute 2477 (R.S. 2477) was a right granted to the states by the United States Congress with the passage of the Mining Act of 1866. The purpose of this law was to provide for, and guarantee, the public's right to establish access across federal lands. Subsequent congressional action, and more than 100 years of case law, has recognized the state's authority to determine and define R.S. 2477 rights-of-way.

Although Congress repealed R.S. 2477 in 1976 with the adoption of the Federal Land Policy and Management Act, they specifically acknowledged the legal existence of R.S. 2477 rights-of-way established prior to the repeal. Current Federal Regulation explicitly provides that any rights conferred by the R.S. 2477 grant shall not be diminished. (43 CFR § 2801.4)

Last year the legislature passed SJR 13 with broad support reiterating their position regarding R.S. 2477 and making clear the objection to the United States Department of the Interior's new policy. Information that came forward during the committee process on SJR 13 as well as during the Joint Senate and House Resources Committee's overview of the issue supports the subsequent action being taken with Senate Bill 180.

SB 180, an Act relating to state rights-of-way, codifies 602 documented R.S. 2477 rights-of-way, requires them to be recorded and provides a process for, and limitations on, their vacation.

Beginning with the legislative appropriations in 1992 and 1993, which funded the research and compilation of historical information regarding R.S. 2477, the legislature has taken the lead in moving this issue forward. In undertaking those legislatively designated projects, the Department of Natural Resources (DNR) reviewed some 1,700 potential R.S. 2477 routes. This DNR review resulted in the identification of 602 rights-of-way that appear to qualify and can be supported with appropriate documentation. These 602 routes are published in the Historical Trails catalogue and incorporated into the state land administration system (LAS).

While the R.S. 2477 rights-of-way codified in this bill have already been accepted by public users and deemed supportable by the state, it is likely the federal government will dispute the state's ownership on some or all of these routes. Although the current federal administration is attempting to limit the state's rights regarding R.S. 2477 rights-of-way, over 100 years of case law on point recognizes state law as controlling on the issue. Codifying these routes in statute will strengthen the state's position for possible subsequent court action, and provide the affected land owners and general public clear notification that these R.S. 2477 rights-of-way are available for use.

R.S. 2477 rights-of-way are crucial to the future of our young and still largely undeveloped state. They are essential to provide surface travel to Alaska's many untapped mineral deposits and other natural resources, recreational areas and tourism opportunities, and access to and between Alaska's rural areas.

R.S. 2477 rights-of-way are an existing state right that we cannot allow to be "regulated away" by the federal bureaucracy. I urge your support of this legislation.