SB
180

SFIN

FILE

REPORTED OUT OF 3/12/98

FISCAL NOTE

STATE OF ALASKA **BILL NO. CSSB180(FIN)**
1998 LEGISLATIVE SESSION

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	96.3					
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)

	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

	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] for Phone : 907-269-8503
Division: Land Date : 13-Mar-98
Approved by Commissioner:
John Shively [signature] for John Shively Date: 3-13-98
Agency: Natural Resources

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REPORTED OUT OF SFC 3/11/98

FISCAL NOTE

No. 1
Bill Version: CSSB180(RES)
(S) Publish Date: 2/24/98

STATE OF ALASKA **BILL NO.**

1998 LEGISLATIVE SESSION

Revision Date: 24-Feb-98
Title: An Act Relating to State Rights-of-Way
Sponsor: Senators Halford, Green, Leman ...
Requestor: (S) FIN

Dept Affected: Natural Resources
BRU: Resource Development
Component: Land Development
Component Serial No. 431

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY99	FY00	FY01	FY02	FY03	FY04
PERSONAL SERVICES	48.6					
TRAVEL						
CONTRACTUAL	93.1					
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	141.7	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	141.7					
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	141.7	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. 585 files = $8.8
Recording costs for approx. 585 files = $84.3

Prepared by: Jane Angvik, Director
Phone: 907-269-8503
Division: Land
Date: 24-Feb-98
Approved by Commissioner: John Shively
Date: 2-24-98
Agency: Natural Resources

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FISCAL NOTE 3/11/98

No. 2

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. Bill Version: CSSB180(RES)
(S) Publish Date: 2/24/98

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	Senate Resources	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
CHANGE IN REVENUES ( )	0.0	0.0	0.0	0.0	0.0	0.0

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 Legislative Liasion	Phone	465-3904
Division	Office of the Commissioner	Date	2/5/98
Approved by:	[signature], Commissioner	Date	2/5/98
Agency	Department of Transportation and Public Facilities		

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0-LS0817\H.1
Luckhaupt
3/10/98

SENATE FINANCE COMMITTEE
Amendment Number: 1
Bill Number: SB 180
Sponsor: Torgerson Date: 3/11/98
Logged In By: [illegible]

AMENDMENT

OFFERED IN THE SENATE BY

TO: CSSB 180(RES)

moved Sen Torgerson
no objection - adopted

1	Page 7, following line 7:	
2	Insert "Egegik - Cold Bay	221"
3	Page 12, following line 10:	
4	Insert "Katmai - Savonoski	490"
5	Page 15, following line 23:	
6	Insert "Trout Creek Trail	803"
7	Page 15, following line 26:	
8	Insert "Thanksgiving Creek Trail	836"
9	Page 21, line 15:	
10	Delete "1852."	
11	Insert "1852"	
12	Page 21, following line 15:	
13	Insert "Ladue River Trail	1854
14	Steele Creek - Border	1871
15	Manley Hot Springs - Sullivan Creek	1872
16	Dry Bay Trail	1873
17	Cottonwood Bay - Old Iliamna	1876
18	Bear Creek - Eagle Creek	1884
19	Little Minook Creek - Troublesome Creek	1885
20	Hodanza River Trail	1889

1 Mission Creek Trail 1891
2 The Government Route - Fortymile Station to Eagle Supply Route 1892
3 Canyon Creek - Hanagita River 1894
4 Bremner River Trail 1895
5 Chickaloon - Coal Creek 1896
6 Purgatory - Stevens Village 1897
7 Lost Creek Trail (Yukon Flats) 1898
8 Minook Creek - Pioneer Creek 1899."

9 Page 22, line 13:
10 Delete "shall"
11 Insert "may"

SENATE FINANCE COMMITTEE
Amendment Number: 2
Bill Number: SB 180
Sponsor: Adams Date: 3/11/98
Logged In By: Mindy

0-LS0817\H.2
Luckhaupt
3/10/98

AMENDMENT

OFFERED IN THE SENATE BY SENATOR ADAMS - Move

TO: CSSB 180(FS)

Sen Torgerson - object
fails 1-85
(Sen Adams yea)

1 Page 22, line 11:

2 Delete "Not later than January 1, 1999, the"

3 Insert "The"

4 Page 22, line 12:

5 Delete "each"

6 Insert "a"

7 Page 22, line 12:

8 Delete "Act."

9 Insert "Act after completing a survey of the right-of-way."

SENATE FINANCE COMMITTEE REPORT

DATE: 2/24/98

FURTHER: 3/11/98

DATE TURNED IN TO OFFICE: 3/12/98

Finance Committee considered SENATE BILL NO. 180

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

and recommends:

[X] be replaced with ______ CS SB 180 (FIN)

[ ] adopt previous ______ CS ______ ( )

[ ] attached amendment(s)

[ ] adopt Letter of Intent by ______ Committee

[ ] further referral to the ______ Committee

Senate Bill:
[x] same title
[ ] new title

House Bill:
[ ] same title
[ ] technical title
[ ] new: SCR* ______

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
[signature]	✓	[signature]	X		
[signature]	✓				
[signature]	✓				
Co-Chair: [signature]	✓	Co-Chair:			
Co-Chair: [signature]	✓	Co-Chair:			

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal
Natural Resources	2/24/98		141.7
DOT + PF	2/5/98	✓	

[ ] **APPROPRIATION -- no fiscal note**

***include fiscal notes accompanying Governor's bill**

THE SECRETARY OF THE INTERIOR
WASHINGTON

RECEIVED
JAN 27 1997
Ans'd............

JAN 22 1997

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

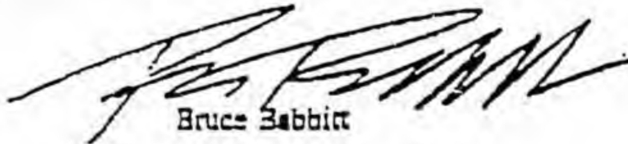
determines that construction did not occur, the agency will recommend the Secretary deny the claim.

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

United States Department of the Interior

BUREAU OF LAND MANAGEMENT
ALASKA STATE OFFICE
222 W. 7th Avenue, #13
ANCHORAGE, ALASKA 99513-7599

1400 (910)

Dick Bishop
Alaska Outdoor Council
P.O. Box 73902
Fairbanks, AK 99707-3902

MAR 21 1997

Dear Mr. Bishop:

Thank you for inviting me to have lunch with you last week and discuss some of the Bureau of Land Management's (BLM) activities. The questions and discussion regarding R.S. 2477 underscore the interests of Alaskans in this issue.

An unanswered question was, "What is BLM doing with the R.S. 2477 assertions that were filed in Fairbanks and sent to the Anchorage office?" The answer is that we will serialize them just as we did in the Fairbanks office.

We then intend to sort them, statewide, by federal land ownership and send a copy to each of the other agencies if they are the federal land managing agency for the case, or share a land management responsibility for the case. For example, if the travel route is wholly on the Fish and Wildlife Service we will send a copy of the assertion to them. If the travel route touches on the BLM and/or the Fish and Wildlife Service and/or the Park Service, each will receive a copy of the assertion. The Council will be notified of the results of this process.

This process will notify the federal agencies of the Outdoor Council's assertion in the travel route. There remain several unanswered questions that need to be pursued over time. They include:

- Whether we must process, favorably or unfavorably in the context of the Secretary of Interior's guidance (copy enclosed), any of the assertions;
- Whether we ask the Outdoor Council for reasons why it is compelling to address a specific assertion(s) (ref. Secretary's guidance);
- Whether the State or the Council is prepared to assume the responsibility and liabilities associated with a travel route.

There are other questions as well; however, BLM is willing to work with the Council, the State, and other landowners to address access needs whether it be under R.S. 2477 or other authority. Once again, thanks for the invitation to visit with you and, I look forward to seeing you again.

Feel free to contact me or Dee Ritchie in our Fairbanks office if you have any questions.

Sincerely,

State Director

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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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.

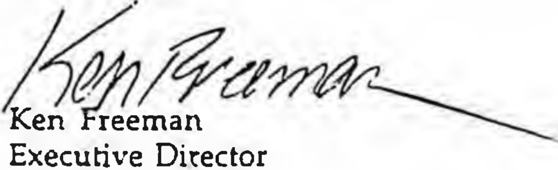
The Resource Development Council supports SB 180 and urges its passage. RDC has long supported actions to designate and settle historic RS 2477 rights-of-way across public lands in Alaska while respecting private property rights. RS 2477 remains one of the most useful access tools for Alaskans to cross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

SUPPORT

MAY 05 199

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 organizations 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,

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.

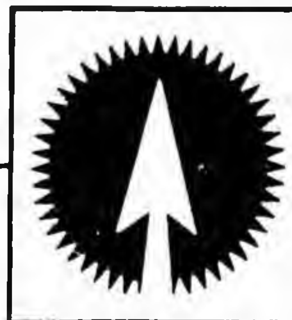
Thank you for the opportunity to comment on this important bill. Please contact me if you have any questions or if there is anything we can do to assist this legislation in become law.

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

Jack E. Phelps
Executive Director

afa\letters\2quartr\hlfd9704_ltr, April 25, 1997

REALTOR ®

ALASKA ASSOCIATION OF REALTORS, INC.
741 Sesame Street, Suite 100 - Anchorage, Alaska 99503
Telephone 907-563-7133 • Fax 907-561-1779

Senator Drue Pearce
Chairman Senate Finance
Room 532, Capitol
Juneau, AK 99801

March 9, 1998
Ref: SB 180 (RES) RS 2477

Dear Senator,

The Alaska Association of REALTORS® has been made aware of SB 180. We have not had time to analyze the impact this bill would have on private property owners across the state. There is concern regarding the adverse effect this legislation may have on certain owners by creating easements and thereby potentially reducing some property values.

AAR is requesting a reasonable time period to review this important piece of legislation and forward to the Senate our position. Thank you.

Sincerely,

Bill Brady

Bill Brady, Chairman
AAR Legislative Group

cc: Senate Finance Committee
Senator Rick Halford

The Voice for Real Estate™ in Alaska

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AMERICAN CONGRESS ON SURVEYING AND MAPPING
ALASKA SECTION

Tuesday, February 24, 1998

From: Patrick Kalen, Chair

To: Senator Gary Wilken

Ref: Senate Bill 180

We strongly support this bill. RS 2477 routes are an important part of Alaska's history. We hope that this bill is passed in this legislature.

We have [illegible]e concerns about the section regarding vacations. RS 2477 routes are hard to vacate, and the[illegible] be. I had a conversation with one of the bill drafters regarding the proposed **SEC. 1[illegible].410 Vacations of right-of-way** wording on page 21, about the three conditions that pertain to vacations of rights-of-way, lines 10-15. In this portion of the proposed statute, the interpretation could be made that the three conditions to be met for a vacation are all "ors". That is, if any one of the conditions is true, the vacation could proceed.

We think it should be tighter. The first two items should be connected with an "and". An RS2477 right-of-way should not qualify for vacation unless an viable alternate exists, and then it must also be approved by the municipal assembly. The municipal assembly therefore cannot vacate unless the first condition is met, and no agency can vacate without the approval of the municipal assembly.

Another point: we think that the municipal assembly does not request the vacation. Usually they are requested by individuals or corporations that have a land title problem arise over an RS 2477 right-of-way that crosses their land. Surveyors get involved when we pick up a reference to an abandoned RS 2477 route across a piece of property, and seek a vacation to clear the title. Therefore we suggest that the word "approved" be substituted for the word "requested" on line 14, i.e. "the municipal assembly has approved the vacation,............."

Vacations remain hard to get, which we do agree with. As for the third condition, line 15, the legislature, we venture to guess, may never have an RS 2477 route submitted to it for vacation approval. We agree with this provision, as it makes it clear that we are trying to protect the RS2477 rights-of-way.

Copy: Senator Rick Halford
Senator Loren Leman
Senator Bert Sharp
Sharon Macklin

SETTLED PRECEDENT ON R.S. 2477

Revised Statutes 2477 (R.S. 2477) states, in its entirety:

> "Sec. 8. *And be it further enacted*, That the right of way for the construction of highways over public lands, not reserved for public uses, is hereby granted." § 8 of the Act of July 26, 1866, 14 Stat. 253, later codified at 43 U.S.C. § 932.

This statute has been interpreted innumerable times over the 128 years since its passage by state and federal courts and by the Department of Interior and these interpretations have consistently outlined fundamental core principles which have guided its application over the years. In particular, the statute has been applied universally by reference to state law. Furthermore, the definitions under state law of terms such as "highway" and "construction" have always been honored. The new regulations proposed by the Department of Interior do not provide a fair treatment of this legal history and the definitions which were relied upon for the 110 years that the offer under R.S. 2477 was open. The following outline provides just a few quotations from the vast body of administrative and court-made law which the new regulations attempt to ignore and thereby reverse.

I. THE ROLE OF STATE LAW:

Early federal regulations stated:

> *This grant [R.S. 2477] becomes effective upon the construction or establishing of highways, in accordance with the State laws, over public lands not reserved for public uses. No application should be filed under this act, as no action on the part of the Federal Government is necessary. 56 I.D. 533 (May 28, 1938).*

These regulations were retained, virtually unchanged, for 110 years:

> *No application should be filed under R.S. 2477, as no action on the part of the Government is necessary. . . . Grants of rights-of-way referred to in the preceding section become effective upon the construction or*

establishment of highways, in accordance with the State laws, over public lands, not reserved for public uses. 43 C.F.R. §§ 2822.1-1, 2822.2-1 (October 1, 1974) (See also, 43 C.F.R. 244.54 (1938); 43 C.F.R. 244.58 (1963).

In 1986, the Department recognized its duty to honor prior, valid exist' rights:

A right-of-way issued on or before October 21, 1976, pursuant to then existing statutory authority is covered by the provisions of this part unless administration under this part diminishes or reduces any rights conferred by the grant or the statute under which it was issued, in which event the provisions of the grant or the then existing statute shall apply. 43 U.S.C. § 2801.4 (February 25, 1986).

Supplementary information supplied by the Department stated:

It was not the intent of the proposed rulemaking, nor is it the intent of this final rulemaking, to diminish or reduce the rights conferred by a right-of-way granted prior to October 21, 1976. . . . In addition, if questions should arise regarding the rights of a right-of-way holder under a grant or statute, the earlier editions of the Code of Federal Regulations on rights-of-way will remain available to assist in interpretation of the rights conferred by the grant or earlier statute. . . . In carrying out the Department's management responsibilities, the authorized officer will be careful to avoid any action that will diminish or reduce the rights conferred under a right-of-way grant issued prior to October 21, 1976. 51 Fed.Reg. 6542 (February 25, 1976).

The Department also recognized the role of state law when making representations to the courts:

The parties are in agreement that the right of way statute is applied by reference to state law to determine when the

offer of grant has been accepted by the "construction of highways. *Wilkenson v. Dept. of Interior of United States*, *634 F.Supp. 1265, 1272 (D. Colo. 1986) (citation omitted).*

The Department's own appellate bodies also recognized the proprietv of the application of state law:

The question of whether a road is a public highway is a matter of state law. *The Sierra Club et al.*, *104 IBLA 17, 19 (1988).*

State courts have also been consistent in their treatment of R.S. 2477 rights-of-wav:

Under this act [R.S. 2477] highways could be established over public lands not reserved for public uses while they remained in the ownership of the government. Congress did not specify or limit the methods to be followed in the establishment of such highways. It was necessary, therefore, in order that a road should become a public highway, that it be established in accordance with the laws of the state in which it was located. *Ball v. Stephens*, *158 P.2d 207, 209 (Cal. Ct. App. 1945).*

It has been held by numerous courts that the grant [under R.S. 2477] may be accepted by public use without formal action by public authorities, and that continued use of the road by the public for such length of time and under such circumstances as to clearly indicate an intention on the part of the public to accept the grant is sufficient. *Lindsav Land & Livestock v. Churnos*. *285 P. 646, 648 (Utah, 1930).*

By this act [R.S. 2477] the government consented that any of its lands not reserv[illegible] for a public purpose might be taken and used for public roads. The statute was a standing offer of a free rights of way over the public domain, and as soon as it was accepted in an appropriate manner by the agents of the public, or the

public itself, a highway was established. Streeter v. Stalnaker, *61 Neb. 205, 85 N.W. 47, 48 (1901).*

Federal courts have concurred:

The salient issue is whether the scope of R.S. 2477 rights-of-way is a question of state or federal law. . . . Especially when an agency has followed a notorious, consistent, and long-standing interpretation, it may be presumed that Congress' silence denotes acquiescence: "[G]overnment is a practical affair, intended for practical men. Both officers, lawmakers, and citizens naturally adjust themselves to any long-continued action of the Executive Department, on the presumption that unauthorized acts would not have been allowed to be so often repeated as to crystallize into a regular practice. That presumption is not reasoning in a circle, but the basis of a wise and quieting rule that, in determining the meaning of a statute or the existence of a power, weight shall be given to the usage itself,--even when the validity of the practice is the subject of investigation." United States v. Midwest Oil Co., 236 U.S. 459, 472-73, 35 S.Ct. 309, 312- 13, 59 L.Ed. 673 (1915).. . . The perfection of an R.S. 2477 right-of-way admittedly is a different issue [from] its scope. However, all of the above-cited cases concern the conflict between an alleged R.S. 2477 right-of-way and a competing claim of right to the land. The cases subsume the question of scope into the question of perfection; and indeed a critical part of many of the state law definitions of perfection included the precise path of the purported roadway. Having considered the arguments of all parties, we conclude that the weight of federal regulations, state court precedent, and tacit congressional acquiescence compels the use of state law to define the scope of an R.S. 2477 right-of-way. Sierra Club v. Hodel *848 F.2d at 1080, 1083. (Citations omitted.)*

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> *Ordinarily, this expression of intent [by the state legislature] would constitute valid acceptance of the right-of-way granted in Section 932. That section acts as a present grant which takes effect as soon as it is accepted by the State. . . . All that is needed for acceptance is some "positive act on the part of the appropriate public authorities of the state, clearly manifesting an intention to accept . . . ." Wilderness Society v. Morton, 479 F.2d 842, 882 (D.C. Cir. 1973), (quoting Hamerly v. Denton, Alaska, 359 P.2d 121, 123 (1961); citing also Kirk v. Schultz, 63 Idaho 278, 282, 119 P.2d 266, 268 (1941); Koloen v. Pilot Mound Township, 33 N.D. 529, 539, 157 N.W. 672, 675 (1916); Streeter v. Stalnaker, 61 Neb. 205, 206, 85 N.W. 47, 48 (1901)).*

"Under R.S. 2477, a right-of-way could be established by public use under terms provided by state law." Sierra Club v. Hodel, 675 F.Supp. at 604. *"Whether the roads have been established under the provisions of R.S. 2477 is a question of New Mexico law."* U.S. v. Jenks, 804 F.Supp. 232, 235 (D.N.M. 1992). *"Whether a right of way has been established is a question of state law."* Shultz v. Department of Army, U.S., 10 F.3d at 655.

II. STATEMENTS OF THE 10TH CIRCUIT COURT OF APPEALS ON THE IMPORTANCE OF STATE LAW

The United States Circuit Court of Appeals for the 10th Circuit, commenting on "more than four decades of agency precedent, subsequent BLM policy as expressed in the BLM Manual, and over a century of state court jurisprudence" on this issue:

> *The adoption of a federal definition of R.S. 2477 roads would have very little practical value to BLM. State law has defined R.S. 2477 grants since the statute's inception. A new federal standard would necessitate the remeasurement and redemarcation of thousands of R.S. 2477 rights-of-way across the country, an administrative duststorm that would choke BLM's ability to manage the public lands . . . . That a change to a federal standard would adversely affect existing property relationships squarely refutes Sierra Club's allegation that the use of a state law standard unfairly prejudices the federal*

> *government. R.S. 2477 rightholders, on the one hand, and private landowners and BLM as custodian of the public lands, on the other, have developed property relationships around each particular state's definition of the scope of an R.S. 2477 road. The replacement of existing standards with an "actual construction" federal definition would disturb the expectations of all parties to these property relationships.* Sierra Club v. Hodel, *848 F.2d at 1082-1083.*
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> ***
>
> *FLPMA admittedly embodies a congressional intent to centralize and systematize the management of public lands, a goal which might be advanced by establishing uniform sources and rules of law for rights-of-way in public lands. The policies supporting FLPMA, however, simply are not relevant to R.S. 2477's construction. It is incongruous to determine the source of interpretative law for one statute based on the goals and policies of a separate statute conceived 110 years later. Rather, the need for uniformity should be assessed in terms of Congress' intent at the time of R.S. 2477's passage.* Id.

III. CONGRESSIONAL INTENT IN PASSING FLPMA

Debate leading up to the enactment of FLPMA, on a predecessor bill, addressed R.S. 2477 specifically. This bill contained the same terms which were later incorporated into FLPMA, providing that "All actions by the Secretary under this Act shall be subject to valid existing rights" and providing for the repeal of R.S. 2477.

Senator Stevens, of Alaska, expressed concern that rights to *"de facto public roads"* established across public lands and roads *"that through tradition, through usage, through the passage of time, in fact, have become public access roads or highways"* would be jeopardized by the repeal of R.S. 2477. 120 Cong. Rec. 22283-22284 (1974). Senator Haskell, of Colorado, speaking in favor of the legislation (S-424), stated: *"if a strip of land is being used for a highway over public land in accordance with State law at the time of enactment of this bill, then that grant of right-of-way is preserved by reason of section 502 of the bill."* Id. at 22284.

There can be no question that Congress intended, when it passed FLPMA, that R.S. 2477 rights-of-way be interpreted in accordance with state law. In an attempt to *"make sufficient legislative history,"* Senator Haskell referred specifically to state case law, stating:

I am referring now, if the Senator would like, the citation is Koloen versus Pilot Mound Township, I believe it is, 33 North Dakota 529, it says:

> *To constitute acceptance of congressional grant of right-of-way for highways across public lands there must be either user sufficient to establish a highway under the laws of the State, or some positive act proper authorities manifesting intent to accept.*

In other words, a use or some positive act of proper authorities manifesting intent to use. This is the way I would apply this one-sentence statute [R.S. 2477] enacted in 1866: either there is a an actual existing public use, or there is a manifest intent which could be put into action by an application to the Department of the Interior, and they would say "yes." In other words, it is a two-way proposition. Id.

It is also clear that it was an essential condition of the BLM "organic act" that the full rights under R.S. 2477, as well as other rights, were to be preserved. Senator Haskell, in support of the predecessor bill, said *"I would like to take this opportunity to reassure the various users of the natural resources lands -- and these people include those who graze cattle, it includes people who mine, it includes people who use public lands for recreation -- that none of their rights or privileges are being adversely affected."* Id. at 22280.

It is also clear that Congress understood that R.S. 2477 rights-of-way would not be limited to "significant" roads:

> *MR. STEVENS. Would the Senator from Colorado agree that if a State has accepted an obligation to maintain a road or trail, if it has partially constructed or reconstructed it, or has indicated an exercise of its police authority by virtue of posting signs as to the speed limits, for example, which demonstrate it is a public highway - if the State has taken actions that would normally be taken by a State in furtherance of its normal highway program, and those roads were on such a right-of-way public lands, would the Senator agree that we have no intent of wiping those out, but those would be valid, existing rights under the one-sentence statute the Senator mentioned previously?*
>
> *MR. HASKELL. I agree with the Senator 100 percent.* Id. at 22284.

Furthermore, in response to a concern about *"existing roads and trails from village to village"* and about *"dogsled trails,"* Senator Haskell stated:

> *I am not familiar with dogsled trails, but let me say I agree with the Senator that so long as the intent was for public use, then the right-of-way was established at that time under that 1866 act.* Id.

A review of that debate can leave no doubt that Congress intended R.S. 2477 rights to be exercised fully in accordance with state law after the passage of the BLM "organic act."

IV. FLPMA EXPLICITLY PROTECTS PRIOR VALID EXISTING RIGHTS

> Nothing in this Act, or in any amendment made by this Act, shall be construed as terminating any valid lease, permit, patent, right-of-way, or other land use right or authorization existing on the date of approval of this act. FLPMA § 701(a), 43 U.S.C. § 1701 note (a).

> All actions by the Secretary concerned under this Act shall be subject to valid existing rights. FLPMA § 701(h), 43 U.S.C. § 1701 note (h).

> Nothing in this title [43 U.S.C. §§ 1761 et seq.] shall have the effect of terminating any right-of-way or right-of-use heretofore issued, granted or permitted. FLPMA § 509(a), 43 U.S.C. § 1769(a).

V. DEFINITIONS OF "HIGHWAY" AND "CONSTRUCTION"

In Colorado, the term 'highways' includes footpaths. *Simon v. Pettit*, 651 P.2d 418, 419 (Colo.Ct.App. 1982), *aff'd*, 687 P.2d 1299 (Colo.1984). "Highways" under 43 U.S.C. § 932 can also be roads "formed by the passage of wagons, etc., over the natural soil." *Central Pacific Railway Co. v. Alameda County*, 284 U.S. 463, 467, 52 S.Ct. 225, 226, 76 L.Ed. 402 (1932). The trails and wagon roads over the lands which became part of the Colorado National Monument were sufficient to be "highways" under 43 U.S.C. § 932

[R.S. 2477]. Wilkenson v. Dept. of Interior of United States, 634 F.Supp. at 1272.

"The term highway is the generic name for all kinds of public ways, whether they be carriage-ways, bridle-ways, footways, bridges, turnpike roads, railroads, canals, ferries, or navigable rivers." Bouv. Law Dict., Rowle's Third Rev. p. 1438, Tit. Highway; Elliott, Roads and Streets, p. 1; 25 Am.Jur, 340. Parsons v. Wright, 27 S.E.2d 534 (N.C. 1943)

A highway is commonly defined as a passage, road, or street which every citizen has a right to use. . . . A highway includes every public thoroughfare, "whether it be by carriage way, a horse way, a foot way, or a navigable river." Summerhill v. Shannon, 361 S.W.2d 271 (Ark. 1962).

"Roads" and "highways" are generic terms, embracing all kinds of public ways, such as county and township roads, streets, alleys, township and plank roads, turnpike or gravel roads, tramways, ferries, canals, navigable rivers . . . . Strange v. Board of Com'rs of Grant County, 91 N.E. 42 (Ind. 1910).

Highways, as they were originally developed, were for the convenience and easy passage of persons on foot, on horseback, in vehicles drawn by horses or oxen, and also for the transportation of commodities by the same means. They were open to unrestricted use by all persons. City of Rochester v. Falk, 9 N.Y.S.2d 343 (1939)

The word "highway" as ordinarily used means a way over land open to the use of the general public without unreasonable distinction or discrimination, established in a mode provided by the laws of the state where located. Lovelace v. Hightower, 50 N.M. 50, 168 P.2d 864 (1946).

Travel and transportation of goods by wheeled vehicles is not the only use to which a highway may be put. One walking or riding horseback, or transporting goods by pack horse, over a way which the public is constantly using , is a use of such a way as a highway. Hamp v. Pend Oreille County, 172 P. 869, 870 (Wash. 1918).

"User is the requisite element, and it may be by any who have occasion to travel over public lands, and if the use be by only one, still it suffices." Wilkenson v. Dept. of Interior. 634 F.Supp. 1265, 1272 (D. Colo. 1986).

"Highways" under 43 U.S.C. §932 can also be roads "formed by the passage of wagons, etc., over the natural soil." *Central Pacific Railway Co. v. Alameda County*, 284 U.S. 463, 467, 52 S.Ct. 225, 226, 76 L.Ed. 402 (1932). Id.

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.

THE TRUE STORY ABOUT THE PROPOSED R.S. 2477 REGULATIONS

On August 1, 1994, the Department of the Interior released draft regulations which would unilaterally reverse long-standing court-made law, prior regulations, and state-federal relationships governing public access rights across federally owned lands.

Because federally owned lands constitute as much as 90% or more of some rural counties, the loss of access rights could have substantial impacts on the day-to-day activities of citizens and visitors.

Although the Department touts the new regulations as an effort to settle confusion, in fact the proposed regulations are designed to create confusion and controversy. They would force local governments, who have traditionally owned and maintained thousands of these rights-of-way, to undertake costly procedures, potentially including extensive litigation, to protect public access rights.

These burdensome new procedures will be required in spite of the fact that many of these same rights-of-way have been explicitly recognized by the Department in the past. No prior action of a state or local government or of the Department itself would be honored by the new regulations. In fact, even court rulings where the Department was a party will not be honored unless the holder first undertakes the new process which the Department now proposes.

The regulations do not promote an orderly process, as claimed. They would establish an excessively bureaucratic process clearly designed to burden the holders to the point where they are overwhelmed and give up. This intent is clear from the Department's statement that "[s]ome claimants may find the existing procedures under the Title V of FLPMA [the Federal Land Policy Management Act of 1975 (FLPMA), 43 U.S.C. §§ 1701 et seq.], or other statutory authorities, to be a more familiar and speedy process for resolving their right-of-way claims." This statement is misleading, since FLPMA addresses new applications which create new rights-of-way, while R.S. 2477 addressed rights-of-way which were perfected prior to October 21, 1976. FLPMA rights-of-way require an application which can be denied; R.S. 2477 rights-of-way are already perfected and cannot be denied, *unless the Department succeeds in finalizing these regulations.*

The proposed regulations far exceed any authority of the Department of Interior. In fact, they are explicitly forbidden by Congress, which said:

> (Nothing in this title [FLPMA] shall have the effect of terminating any right-of-way or right-of-use heretofore issued, granted or permitted. However, with the consent of the holder thereof, the Secretary concerned may cancel such a right-of-way or right-of-use and in its stead issue a right-of-way pursuant to the provisions of this title. (43 U.S.C. § 1769(a).)

The Department's hostility to these rights-of-way is made apparent by the fact that it wants to redefine the rights to eliminate many that were perfected under the terms by which the grant was offered, in addition to imposing a substantial burden on state and local governments in the form of documentation requirements and regulatory oversight. The Department would eliminate the

application of state laws which have been accepted for 128 years. After redefining the rights, the Department plans on taking over the role of the courts by determining which rights are valid and which are not, once again eliminating many rights-of-way in the process. In this way, the Department claims it can do a better job than the courts.

Under the new proposal, which mirrors the policies environmentalists have fought for, and lost on, in the courts, a whole new bureaucracy would have to be created just to handle the complex procedures these regulations would impose. And those actions would be conducted primarily by federal employees who have no prior experience with this issue and no knowledge of local history. This arrangement would be logical if the goal is to ignore the institutional knowledge which would support recognition of these rights. Under the new rules, it would be difficult, if not impossible to efficiently document these rights-of-way.

These prior existing R.S. 2477 rights-of-way are no more burdensome to the Department of Interior than any other property right which was granted by Congress. Most of the private property in the west was originally acquired from the federal domain. The Department must undertake its management duties with respect for property rights which were not retained by the federal government.

The State and local governments which manage these rights-of-way do not argue with their obligations to respect adjacent federal lands. Federal resources are protected by statutes governing endangered species, archeology, wetlands and related matters and local governments must honor those protections. Appropriate environmental review processes will also apply to R.S. 2477 improvement projects under the National Environmental Policy Act. The existence of R.S. 2477 rights-of-way does not defeat legitimate federal interests.

An honest presentation by the Department would disclose that continuation of past practices would be inconvenient to the Department of Interior, which desires to close off access whenever and wherever it chooses, regardless of the importance of that access to local economies and cultures. When all of the public relations hyperbole has settled, and the regulations are in place, Americans throughout the West, whether living there or visiting, will find their favorite fishing holes, canyons, hunting camps and hiking and jeep trails closed off.

It would be possible to create a process for determining which claims are valid that, unlike the proposed rules, would be based on a fair treatment of valid existing property rights, honoring long-standing precedent. But the proposed regulations fail to come close to a fair treatment of these rights-of-way and should be withdrawn. Otherwise, given the clear agenda of the Department of the Interior as presented in these draft regulations, the courts are the only forum where a fair treatment of these property rights might be obtained.

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Sponsor Statement

Senate Bill 180

" 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 582 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 582 rights-of-way that appear to qualify and can be supported with appropriate documentation. These 582 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.