

SJR

13



Official Business

Alaska State Legislature

Senate

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Senate Joint Resolution 13 Sponsor Statement

" Opposing the Department of the Interior's R.S. 2477 policy "

Revised Statute 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Although Congress repealed R.S. 2477 in 1976 with the adoption of the Federal Land Policy and Management Act, they specifically acknowledged the legal existence of R.S. 2477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)

Disregarding the published federal regulations of his own Department, and the clear congressional prohibition to regulatory change, on January 22, Secretary of the Interior Bruce Babbitt issued an interim departmental policy on R.S. 2477. This "new policy" contains many of the bureaucratic roadblocks and "newly created" definitions present in the Department's 1994 proposed regulations that Congress specifically prohibited.

R.S. 2477 rights-of-way are crucial to the future of our young and still largely undeveloped state. R.S. 2477 rights-of-way 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 Secretary of the Interior. Passage of SJR 13 provides the Alaska Legislature an opportunity to express our staunch support of this important state right and our strong opposition to what appears to be a continuing "War on the West" waged by Secretary Babbitt and the Clinton Administration.

- **State's Rights Posturing:** The Alaska Legislature's posturing on this issue, with its overtones and undercurrents of Sagebrush Rebellion and Wise Use rhetoric, is clearly another example of state's rights sword-rattling. By embracing the Utah county approach of "exert your 'rights' first, get asked questions later," the Legislature is promoting an approach that is the antithesis of reasoned statesmanship.

The Alaska Environmental Lobby urges the promoters of SJR 13 to call off their declaration of war on thousands of their fellow Alaskans. State-Federal discourse and negotiation is needed, not a quick-fix scheme costing the State and landowners staggering sums of money and time. Should this misguided resolution pass, AEL urges the Governor to ignore it in favor of calm and rationale discussions with the Department of Interior on how Title XI can be implemented in the best interests of Alaska and the nation.

Susan E. Schrader, Executive Director
2/17/97



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Twentieth Legislature ~ First Session

SJR 13: Relating to RS 2477 Rights-of-Way

This Resolution and Secretary of Interior Babbitt's newly-stated policy for administering RS 2477 claims continue to fuel the controversy over this 120 year old statute. The Alaska Environmental Lobby, representing 22 environmental organizations with a combined membership of over 10,000 Alaskans, strongly opposes SJR 13 for the following reasons:

- **No panacea:** RS 2477 right-of-ways (ROW'S) are no panacea for the perceived inadequacy of the state's road system. Supporters of SJR 13 are misleading the public when they claim that these ROW's are the answer to public access across the federal lands. The routes of primitive trails and dirt roads alleged to be RS 2477 ROW's are inadequate for modern highway alignments even if the courts were ultimately to determine that these ROW's can be used for modern highways - a determination that is by no means assured.
- **War on Alaskans:** An attempt to secure RS 2477 routes by the State will engender intense controversy and impose staggering litigation costs on private property owners, homesteaders, Allotment owners, mining claim owners, and Native landowners who will need to defend their private property rights against the State's ROW claim that they likely had no idea existed. If SJR 13 is adopted and the Knowles Administration follows through on its instructions, Alaska will go to war with thousands of its own citizens.
- **A Major Threat to Conservation and Subsistence Interests of Alaskans:** State acquisition of these ROW's through national conservation system units and across millions of acres of Native and other private lands will lead to a multitude of undesirable impacts, such as: destruction of fish and wildlife habitat, disturbance of wildlife and other quiet users, increased hunting pressure in competition with rural residents, poaching, and off-road vehicle (ORV) trespass.
- **Other less contentious options exist:** The state has other avenues it can pursue to obtain right-of-way across much of the federal land in Alaska, such as ANILCA's Title XI provisions for establishing transportation corridors. These alternative approaches for the state to establish ROW's are far less contentious that asserting RS 2477 claims and provide the opportunity to obtain the necessary alignments needed for construction of a modern road or highway.

(OVER)



- **State's Rights Posturing:** The Alaska Legislature's posturing on this issue, with its overtones and undercurrents of Sagebrush Rebellion and Wise Use rhetoric, is clearly another example of state's rights sword-rattling. By embracing the Utah county approach of "exert your 'rights' first, get asked questions later," the Legislature is promoting an approach that is the antithesis of reasoned statesmanship.

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Susan E. Schrader, Executive Director
2/17/97

FISCAL NOTE

No. 1
 Bill Version: SJR 13
 (S) Publish Date: 2/27/97

STATE OF ALASKA
 1997 LEGISLATIVE SESSION

Revision Date 2/5/97 Dept. Affected _____
 Title Oppose DOI policy on RS 2477 BRU _____
 Component _____
 Sponsor Halford _____
 Requester _____ Component Serial No. _____

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

FUND SOURCE	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1091 Designated Program Receipts						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

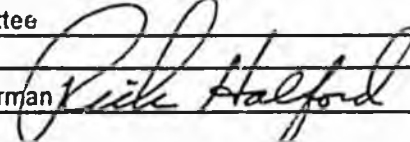
Estimate of any current year (FY97) cost: 0.0

POSITIONS

POSITIONS	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This resolution will have no fiscal impact on state departments.

Prepared by Senate Resources Committee
 Division _____
 Approved by Senator Rick Halford, Chairman 
 Agency _____

Phone 465-4907
 Date _____
 Date 2/21/97

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