

ALASKA LEGISLATURE

1807

HOUSE and SENATE FINANCE COMMITTEE FILES, 1997-1998

**DEPARTMENT OF REVENUE
RECOMMENDATIONS
SB 179**

The proposed bill's financing structure is not based on sound principles of public finance. It anticipates that a private contractor will use the State's credit to arrange long-term, taxable financing and will payoff this long-term debt from the State's lease payments. The private contractor would then own the correctional facilities at the end of the lease term, free of indebtedness.

The Department of Revenue recommends that the financing of the proposed correctional facilities be "unbundled" from the construction and operation of the facilities. That is, the State Bond Committee would arrange the financing through the sale of tax-exempt Certificates of Participation, and the State would pay cash to the private contractor upon completion of construction. The Department of Corrections would enter into an operating agreement with the private contractor as envisioned in the bill. This recommended structure will allow privatization of the essential elements of design, construction and operation of the correctional facilities while allowing the State to realize interest cost savings of \$40-60 million and to own the facilities at the end of twenty years. Following is a brief explanation of how this would be accomplished.

Assuming total capital costs of \$121.0 million, taxable financing provided by a private contractor would require annual lease payments of \$12.5 million or \$250.0 million over twenty years at current interest rates. (See attached Pages 3-4.)

Assuming total capital costs of \$121.0 million, tax-exempt financing provided through the State Bond Committee would require annual lease payments of \$10.4 million or \$207.4 million over twenty years at current interest rates. (See attached Pages 5-6.) This is a savings of \$42.6 million in interest expense to the State.

Additionally, if the State arranges its financing directly in the national financial markets, the State may refinance the outstanding debt periodically when interest rates are favorable. Our experience with refinancing other State debt suggests that interest cost savings of eight to ten percent from refinancing long-term debt can be projected. Assuming \$121 million of debt, cost savings \$10-12 million could reasonably be expected over twenty years through refinancing. If the facilities are financed through a private contractor, that contractor will simply get to pocket the savings from refinancings.

To summarize, cost savings from "unbundling" the financing from the design, construction and operation of the proposed correctional facilities would be as follows:

- | | |
|---|----------------|
| 1. Tax-exempt interest savings over twenty years: | \$42.6 million |
| 2. Interest savings from periodic refinancing: | 10.0 million |
| 3. State ownership of the facilities at the end of twenty years (50% of original cost): | 60.5 million |

Total Estimated Cost Savings: \$113.1 million

Sizing Debt Services Schedule

Taxable

1

Dated: 2/1/98
Delivered: 2/1/98

PRIVATE PRISON

Fiscal Yr	Coupon MYY	Zer Date	Cpn Rate	Maturing Cpn Principal	Periodic Interest	Gross Semi-Annl Dbt Svc	Cap Int	DebtSvcRsv Int&Prin	CntgncyFnd Int&Prin	NetSemi-AnnlDbtSvc	Net Fiscal Dbt Svc
2 99		8/1/98			4,862,654.00	4,862,654.00				4,862,654.00	
8 99	2/1/99	N	6.350	2,775,000.00	4,862,654.00	7,637,654.00				7,637,654.00	12,500,308.00
1 2 0	8/1/99				4,774,547.75	4,774,547.75				4,774,547.75	
8 0	2/1/00	N	6.780	2,950,000.00	4,774,547.75	7,724,547.75				7,724,547.75	12,499,095.50
2 2 1	8/1/00				4,674,542.75	4,674,542.75				4,674,542.75	
8 1	2/1/01	N	7.280	3,150,000.00	4,674,542.75	7,824,542.75				7,824,542.75	12,499,085.50
3 2 2	8/1/01				4,559,882.75	4,559,882.75				4,559,882.75	
8 2	2/1/02	N	7.380	3,380,000.00	4,559,882.75	7,939,882.75				7,939,882.75	12,499,765.50
4 2 3	8/1/02				4,435,160.75	4,435,160.75				4,435,160.75	
8 3	2/1/03	N	7.460	3,630,000.00	4,435,160.75	8,065,160.75				8,065,160.75	12,500,321.50
5 2 4	8/1/03				4,299,761.75	4,299,761.75				4,299,761.75	
8 4	2/1/04	N	7.560	3,900,000.00	4,299,761.75	8,199,761.75				8,199,761.75	12,499,523.50
6 2 5	8/1/04				4,152,341.75	4,152,341.75				4,152,341.75	
8 5	2/1/05	N	7.660	4,195,000.00	4,152,341.75	8,347,341.75				8,347,341.75	12,499,683.50
7 2 6	8/1/05				3,991,673.25	3,991,673.25				3,991,673.25	
8 6	2/1/06	N	7.750	4,515,000.00	3,991,673.25	8,506,673.25				8,506,673.25	12,498,346.50
8 2 7	8/1/06				3,816,717.00	3,816,717.00				3,816,717.00	
8 7	2/1/07	N	7.760	4,865,000.00	3,816,717.00	8,681,717.00				8,681,717.00	12,498,434.00
9 2 8	8/1/07				3,627,955.00	3,627,955.00				3,627,955.00	
8 8	2/1/08	N	7.860	5,245,000.00	3,627,955.00	8,872,955.00				8,872,955.00	12,500,910.00
10 2 9	8/1/08				3,421,826.50	3,421,826.50				3,421,826.50	
8 9	2/1/09	N	7.960	5,655,000.00	3,421,826.50	9,076,826.50				9,076,826.50	12,498,653.00
11 2 10	8/1/09				3,196,757.50	3,196,757.50				3,196,757.50	
8 10	2/1/10	N	8.060	6,105,000.00	3,196,757.50	9,301,757.50				9,301,757.50	12,498,515.00
12 2 11	8/1/10				2,950,726.00	2,950,726.00				2,950,726.00	
8 11	2/1/11	N	8.150	6,600,000.00	2,950,726.00	9,550,726.00				9,550,726.00	12,501,452.00
13 2 12	8/1/11				2,681,776.00	2,681,776.00				2,681,776.00	
8 12	2/1/12	N	8.200	7,140,000.00	2,681,776.00	9,821,776.00				9,821,776.00	12,503,552.00
14 2 13	8/1/12				2,389,036.00	2,389,036.00				2,389,036.00	
8 13	2/1/13	N	8.250	7,725,000.00	2,389,036.00	10,114,036.00				10,114,036.00	12,503,072.00
15 2 14	8/1/13				2,070,379.75	2,070,379.75				2,070,379.75	
8 14	2/1/14	N	8.250	8,360,000.00	2,070,379.75	10,430,379.75				10,430,379.75	12,500,759.50
16 2 15	8/1/14				1,725,529.75	1,725,529.75				1,725,529.75	
8 15	2/1/15	N	8.300	9,050,000.00	1,725,529.75	10,775,529.75				10,775,529.75	12,501,059.50
17 2 16	8/1/15				1,349,954.75	1,349,954.75				1,349,954.75	
8 16	2/1/16	N	8.400	9,800,000.00	1,349,954.75	11,149,954.75				11,149,954.75	12,499,909.50
18 2 17	8/1/16				938,354.75	938,354.75				938,354.75	
8 17	2/1/17	N	8.450	10,625,000.00	938,354.75	11,563,354.75				11,563,354.75	12,501,709.50
19 2 18	8/1/17				489,448.50	489,448.50				489,448.50	
8 18	2/1/18	N	8.490	11,530,000.00	489,448.50	12,019,448.50				12,019,448.50	12,508,897.00

Prepared by: FORREST BROWNE, DOR - TREASURY
Prepared on: 4/21/97 18:32 8.20 Rpt 14
Record ID: PRIVPRIS-1998-AA :MUNIDB

Sizing Debt Services Schedule

2

Dated: 2/1/98
 Delivered: 2/1/98

(Taxable)

PRIVATE PRISON

Fiscal Yr	Coupon MYY	Zer Date	Cpn Rate	Maturing Principal	Periodic Interest	Gross Semi-Annl Dbt Svc	Cap Int	DebtSvcRsv Int&Prn	CntgncyFnd Int&Prn	NetSemi-AnnlDbtSvc	Net Fiscal Dbt Svc
				121.185 030 00	128.818 052 50	250.013 052 50				250.013 052 50	250.013.052 50

True Interest Cost (TIC).....8.1688037
 Net Interest Cost (NIC).....8.2128181
 Arbitrage Yield Limit (AYL).....8.1688037
 Arbitrage Net Interest Cost (ANIC)..... 8.2128181

Prepared by: FORREST BROWNE, DOR - TREASURY
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 Record ID: PRIVPRIS-1998-AA :MUNIDB

(Page 4 of 6)

Sizing Debt Services Schedule

Dated: 2/1/98
 Delivered: 2/1/98

PRIVATE PRISON

Tax-Exempt ¹

Fiscal Yr	Coupon MYY	Zer Date	Cpn Rate	Maturing Principal	Periodic Interest	Gross Semi-Annl Dbt Svc	Cap Int	DebtSvcRsv Int&Prin	CntgncyFnd Int&Prin	NetSemi-AnnlDbtSvc	Net Fiscal Dbt Svc
2 99	8/1/98				3,399,093.75	3,399,093.75				3,399,093.75	
8 99	2/1/99	N	4.300	3,570,000.00	3,399,093.75	6,969,093.75				6,969,093.75	10,368,187.50
1 2 0	8/1/99				3,322,338.75	3,322,338.75				3,322,338.75	
8 0	2/1/00	N	4.550	3,725,000.00	3,322,338.75	7,047,338.75				7,047,338.75	10,369,677.50
2 2 1	8/1/00				3,237,595.00	3,237,595.00				3,237,595.00	
8 1	2/1/01	N	4.750	3,895,000.00	3,237,595.00	7,132,595.00				7,132,595.00	10,370,190.00
3 2 2	8/1/01				3,145,088.75	3,145,088.75				3,145,088.75	
8 2	2/1/02	N	5.050	4,080,000.00	3,145,088.75	7,225,088.75				7,225,088.75	10,370,177.50
4 2 3	8/1/02				3,042,068.75	3,042,068.75				3,042,068.75	
8 3	2/1/03	N	5.150	4,285,000.00	3,042,068.75	7,327,068.75				7,327,068.75	10,369,137.50
5 2 4	8/1/03				2,931,730.00	2,931,730.00				2,931,730.00	
8 4	2/1/04	N	5.250	4,505,000.00	2,931,730.00	7,436,730.00				7,436,730.00	10,368,460.00
6 2 5	8/1/04				2,813,473.75	2,813,473.75				2,813,473.75	
8 5	2/1/05	N	5.350	4,745,000.00	2,813,473.75	7,558,473.75				7,558,473.75	10,371,947.50
7 2 6	8/1/05				2,686,545.00	2,686,545.00				2,686,545.00	
8 6	2/1/06	N	5.450	4,995,000.00	2,686,545.00	7,681,545.00				7,681,545.00	10,368,090.00
8 2 7	8/1/06				2,550,431.25	2,550,431.25				2,550,431.25	
8 7	2/1/07	N	5.550	5,270,000.00	2,550,431.25	7,820,431.25				7,820,431.25	10,370,862.50
9 2 8	8/1/07				2,404,188.75	2,404,188.75				2,404,188.75	
8 8	2/1/08	N	5.550	5,560,000.00	2,404,188.75	7,964,188.75				7,964,188.75	10,368,377.50
10 2 9	8/1/08				2,249,898.75	2,249,898.75				2,249,898.75	
8 9	2/1/09	N	5.650	5,870,000.00	2,249,898.75	8,119,898.75				8,119,898.75	10,369,797.50
11 2 10	8/1/09				2,084,071.25	2,084,071.25				2,084,071.25	
8 10	2/1/10	N	5.700	6,200,000.00	2,084,071.25	8,284,071.25				8,284,071.25	10,368,142.50
12 2 11	8/1/10				1,907,371.25	1,907,371.25				1,907,371.25	
8 11	2/1/11	N	5.700	6,555,000.00	1,907,371.25	8,462,371.25				8,462,371.25	10,369,742.50
13 2 12	8/1/11				1,720,553.75	1,720,553.75				1,720,553.75	
8 12	2/1/12	N	5.750	6,930,000.00	1,720,553.75	8,650,553.75				8,650,553.75	10,371,107.50
14 2 13	8/1/12				1,521,316.25	1,521,316.25				1,521,316.25	
8 13	2/1/13	N	5.850	7,330,000.00	1,521,316.25	8,851,316.25				8,851,316.25	10,372,632.50
15 2 14	8/1/13				1,306,913.75	1,306,913.75				1,306,913.75	
8 14	2/1/14	N	5.900	7,755,000.00	1,306,913.75	9,061,913.75				9,061,913.75	10,368,827.50
16 2 15	8/1/14				1,078,141.25	1,078,141.25				1,078,141.25	
8 15	2/1/15	N	5.950	8,215,000.00	1,078,141.25	9,293,141.25				9,293,141.25	10,371,282.50
17 2 16	8/1/15				833,745.00	833,745.00				833,745.00	
8 16	2/1/16	N	6.000	8,705,000.00	833,745.00	9,538,745.00				9,538,745.00	10,372,490.00
18 2 17	8/1/16				572,595.00	572,595.00				572,595.00	
8 17	2/1/17	N	6.000	9,225,000.00	572,595.00	9,797,595.00				9,797,595.00	10,370,190.00
19 2 18	8/1/17				295,845.00	295,845.00				295,845.00	
8 18	2/1/18	N	6.050	9,780,000.00	295,845.00	10,075,845.00				10,075,845.00	10,371,690.00

Prepared by: FORREST BROWNE, DOR - TREASURY
 Prepared on: 4/21/97 18:53 & 20 Rpt 14
 Record ID: PRIVPRIS-1998-AC :MUNIDB

Sizing Debt Services Schedule

Dated: 2/1/98
 Delivered: 2/1/98

PRIVATE PRISON

Tax-Exempt

Fiscal Yr	Coupon MYY	Zer Date	Cpn Rate	Maturity Cpn Principal	Periodic Interest	Gross Semi-Annl Dbt Svc	C-p Int	DebtSvcRsv Int&Prin	ContingencyFnd Int&Prin	NetSemi-AnnlDbtSvc	Net Fiscal Dbt Svc
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121	195	030	00	86	206	010	00	207	401	010	00	207	401	010	00
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True Interest Cost (TIC).....	5.7695405
Net Interest Cost (NIC).....	5.8006655
Arbitrage Yield Limit (AYL).....	5.7695405
Arbitrage Net Interest Cost (ANIC).....	5.8006655

Prepared by:	FORREST BROWNE, DOR - TREASURY
Prepared on:	4/21/97 18:53 8.20 Rpt 14
Record ID:	PRIVPRIS-1998-AC :MUNIDB

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. SB 179

Revision Date: _____ Dept. Affected: Corrections
 Title: "An Act authorizing the Department of Corrections BRU: ALL
for the benefit of the State, to enter into an agreement to use space... Component: ALL
 Sponsor: Senate Finance Committee
 Requester: Senate Finance Committee COMPONENT SERIAL NO. #0694

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES	421.0	421.0	2,536.5	2,536.5	2,536.5	2,536.5
TRAVEL	20.0	20.0	150.0	20.0	20.0	20.0
CONTRACTUAL	690.6	690.6	37,990.2	37,952.6	37,952.6	37,952.6
SUPPLIES	2.0	2.0	20.0	20.0	20.0	20.0
EQUIPMENT	5.0	5.0	38.6	38.6	38.6	38.6
LAND & STRUCTURES						
GRANTS, CLAIMS			876.0	876.0	876.0	876.0
MISCELLANEOUS						
TOTAL OPERATING	1,138.6	1,138.6	41,611.3	41,443.7	41,443.7	41,443.7

CAPITAL EXPENDITURES	8,546.7					
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CHANGE IN REVENUES ()						
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FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	9,685.3	1,138.6	40,611.3	40,443.7	40,443.7	40,443.7
1005 GF/Program Receipts						
1037 GF/Mental Health			1,000.0	1,000.0	1,000.0	1,000.0
Other						
TOTAL	9,685.3	1,138.6	41,611.3	41,443.7	41,443.7	41,443.7

Estimate of any current year (FY97) cost: \$ 0.0

POSITIONS

FULL-TIME	7	7	53	53	53	53
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Please see attached analysis.

Prepared by: Bruce Richards Phone: 465-3307
 Division: Commissioner's Office Date: 4/19/97
 Approved by: Commissioner Margaret M. Pugh Date: 4/19/97
 Agency: Department of Corrections

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Preface: Because of the short amount of time available to analyze the budgetary implications of this legislation, many of the estimates contained in this fiscal note may have to be modified. The Department has made every attempt, however, to give the best estimate based on the information at hand.

Assumptions

1. The Department assumes the \$85 per day cost of beds mentioned in the press release accompanying this legislation is accurate.

$\$85 \times 1,200 \text{ prisoners} \times 365 \text{ days} = \$37,230.0$ annually

2. Assuming the 700-bed facility in the Mat-Su Valley would serve as an overflow pretrial facility for Anchorage, will result in substantially increased transportation costs.

\$391.0 (four new prisoner transportation officers, vehicles, radios and other necessary equipment)

3. It is assumed that the Department would be required to let a Professional Services Contract to draft the operational standards, financial and legal requirements necessary for State oversight of the two facilities.

\$500.0

4. It is assumed this legislation would require closing the Sixth Avenue Jail in Anchorage. Three labor contracts are in force at this facility, and each would require completion of separate feasibility studies in advance of closing the jail.

\$150.0

5. RSA to the Department of Administration for the following services:

(A) Assist in development, advertisement, evaluation and award of one or more RFPs which will result in a professional services contract or contracts for the development of operational and performance criteria that can be applied to a long-term lease solicitation and subsequent agreement for use of a correctional facility in the Mat-Su Borough.

(B) In FY 98 and FY 99, one half-time Contracting Officer will assist the Department in the preparation, advertisement, evaluation and award of an RFP which will, under the requirements of AS 36.30, result in an agreement (long-term lease) for correctional

facility services in the Mat-Su Borough.

\$ 32.6 Contracting Officer (annual)
5.0 travel

6. State oversight of the facilities would require the annual cost of adding the following staff positions to the Department's budget for the life of the contract:

Facilities Manager	\$68.7
Criminal Justice Planner	\$73.7
Clerk	\$34.1
Contract Manager	\$65.0
Internal Auditor	\$55.0
Classification Probation Officer	\$65.0
Staff support	\$30.0
RSA to Department of Law, half-time attorney position	<u>\$60.0</u>

Total \$451.0

7. This legislation states that the Department will ensure that all correctional officers in these private facilities are trained and certified under AS 18.65.130 (Alaska Police Standards Council). This fiscal note assumes that the cost of this training is reflected in the \$85 per day cost-of-care per prisoner that the Lessor would charge the State of Alaska.

8. This legislation would have major implications for future operation of the Cook Inlet Pretrial Facility once the private facilities are opened. It would require all functions currently taking place at Sixth Avenue to be shifted to Cook Inlet Pretrial. Under this scenario, Cook Inlet would:

- Intake (booking) and release all felons, male and female;
- intake and release all misdemeanants, male and female;
- serve the medical/clinic needs for all inmates and Anchorage-area Community Residential Center residents;
- intake all Title 47 (alcohol/mentally ill incapacitation 12-hour holds);
- provide classification and case management for all Community Residential Center placements; and
- provide mental services to all prisoners, male and female.

Such dramatic changes to Cook Inlet's operating mission would require substantial renovation and remodeling capital costs, including:

● Modification of intake area	\$2,998.1
● Modifications for court services	\$ 674.5
● Convert module to female mental health unit	\$1,000.0
● Medical/clinic	\$2,760.1
● Estimated contingencies and RSAs to DOT/PF	<u>\$1,114.0</u>
Total	\$8,546.7

Changes to Cook Inlet's operating mission would require the following additional annual operating costs:

● 3 clerical staff	\$ 102.3
● 4 Probation Officers	\$ 250.0
● 10 Correctional Officer II positions	\$ 532.0
● Education Coordinator	\$ 59.0
● Mental health staff, including psychiatrist, clinicians, nurses, psychiatric nursing ass'ts (GF)	<u>\$1,000.0</u>
Total	\$1,943.3

9. It is assumed that the increased prisoner population served by the two new facilities would result in an additional cost for contractual medical specialty care:

\$600.0

10. One-time transportation costs to return an estimated 250 prisoners to Alaska from the private facility where they are currently housed in Florence, Arizona:

\$130.0.

11. Reduced cost from ceasing operations at Sixth Avenue Jail:

<\$3,900.0>

12. Reduced cost through terminating contract with private facility in Arizona:

<\$6,400.0>

Revision Date: February 11, 1998 Dept. Affected: Revenue
 Title: Mat-Su and Seward Prisons BRU: Revenue Operations
 Component: Treasury
 Sponsor: (S) FIN
 Requestor: (S) FIN COMPONENT SERIAL NO. 121

Expenditures/Revenues:	(Thousands of Dollars)					
	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
OPERATING EXPENDITURES						
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
DEBT SERVICE	2,955.0	11,400.0	15,000.0	15,000.0	15,000.0	15,000.0
TOTAL OPERATING	2,955.0	11,400.0	15,000.0	15,000.0	15,000.0	15,000.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ()						

FUND SOURCE	(Thousands of Dollars)					
1002 Federal Receipts						
1003 GF Match						
1004 GF	2,955.0	11,400.0	15,000.0	15,000.0	15,000.0	15,000.0
1001 CBRF						
1048 University of AK receipts						
Other						
TOTAL	2,955.0	11,400.0	15,000.0	15,000.0	15,000.0	15,000.0

Estimate of any current year cost \$ 0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Authorizes lease/purchase financing of \$98.5 million for expansion of the Spring Creek Correctional and Palmer Correctional Facilities and for construction of a new Anchorage jail.

Authorizes lease financing of \$60.0 million for a Palmer Private Prison, to be owned and operated by a private contractor.

Department of Revenue's comments and a recommendation on the Palmer Private Prison are attached.

Debt Service/Lease payments (See attached schedule)

Prepared by: Forrest Brown
 Division: Treasury
 Approved by Commissioner: Wilson L. Condon
 Agency: Revenue

Phone: 465-3750
 Date: February 11, 1998
 Date: February 11, 1998

DRAFT

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Revision Date: 2/13/98 Dept. Affected: Revenue
 Title: Mat-Su and Seward Prisons BRU: Revenue Operations
 Component: Treasury
 Sponsor: (S) FIN
 Requestor: (S) FIN COMPONENT SERIAL NO. 121

Expenditures/Revenues: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
DEBT SERVICE	4,173.0	14,908.0	18,505.0	18,503.0	18,500.0	18,500.0
TOTAL OPERATING	4,173.0	14,908.0	18,505.0	18,503.0	18,500.0	18,500.0

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	4,173.0	14,908.0	18,505.0	18,503.0	18,500.0	18,500.0
1001 CBRF						
1048 University of AK receipts						
Other						
TOTAL	4,173.0	14,908.0	18,505.0	18,503.0	18,500.0	18,500.0

Estimate of any current year cost \$ _____

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Authorizes lease/purchase financing of \$98.5 million for expansion of the Spring Creek Correctional and Palmer Correctional Facilities and for construction of a new Anchorage jail and \$40.6 for the North Slope Borough Correctional Facility in Barrow.

Authorizes lease financing of \$60.0 million for a Plamer Private Prison, to be owned and operated by a private contractor.

Department of Revenue's comments and a recommendation on the Palmer Private Prison are attached.

Debt Service/Lease payments (See attached schedule)

Prepared by: Ross A. Kinney
 Division: Treasury
 Approved by Commissioner: Wilson L. Condon
 Agency: Revenue

Phone: 465-4860

Date: February 13, 1998

Date: February 13, 1998

DRAFT

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Revision Date: _____ Dept. Affected: Revenue
 Title: Mat-Su and Seward Prisons BRU: Revenue Operations
 Component: Treasury
 Sponsor: (S) FIN
 Requestor: (S) FIN COMPONENT SERIAL NO. 121

Expenditures/Revenues: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
DEBT SERVICE		12,500.0	12,500.0	12,500.0	12,500.0	12,500.0
TOTAL OPERATING	0.0	12,500.0	12,500.0	12,500.0	12,500.0	12,500.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ()						

FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
1002 Federal Receipts						
1003 GF Match						
1004 GF		12,500.0	12,500.0	12,500.0	12,500.0	12,500.0
1001 CBRF						
1048 University of AK receipts						
Other						
TOTAL	0.0	12,500.0	12,500.0	12,500.0	12,500.0	12,500.0

Estimate of any current year cost \$ 0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Authorizes approximately \$135 million of capital costs to construct correctional facilities in the Mat-Su Borough and in Seward, to be built, owned and operated by a private contractor. The maximum lease payments are \$250 million or \$12.5 million per year, assuming a twenty-year lease term. There is no provision for State ownership at the end of the lease term when the related debt has been paid off. The estimated lease payments are reflected above and on the attached pages 3-4.

The Department of Revenue recommends "unbundling" the financing from the private construction and operation of the prisons to save the state tens of millions of dollars, see attached page 2.

Prepared by: Forrest Browne *Forrest Browne*
 Division: Treasury
 Approved by Commissioner: Wilson L. Condon *Wilson L. Condon*
 Agency: Revenue

Phone: 465-3750
 Date: January 14, 1998
 Date: January 14, 1998

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There are new fiscal notes but not the new version of bill. We will need updates from Corrections & Revenue.

*5
(1)
170*

**DEPARTMENT OF REVENUE'S
FINANCING RECOMMENDATIONS
SB 179**

The proposed bill's financing structure is not based on sound principles of public finance. It anticipates that a private contractor will use the State's credit to arrange long-term, taxable financing and will payoff this long-term debt from the State's lease payments. The private contractor would then own the correctional facilities at the end of the lease term, free of indebtedness.

The Department of Revenue recommends that the financing of the proposed correctional facilities be "unbundled" from the construction and operation of the facilities. That is, the State Bond Committee would arrange the financing through the sale of tax-exempt Certificates of Participation, and the State would pay cash to the private contractor upon completion of construction. The Department of Corrections would enter into an operating agreement with the private contractor as envisioned in the bill. This recommended structure will allow privatization of the essential elements of design, construction and operation of the correctional facilities while allowing the State to realize interest cost savings of \$30-42 million and to own the facilities at the end of twenty years. Following is a brief explanation of how this would be accomplished.

Assuming total capital costs of \$135.0 million, taxable financing provided by a private contractor would require annual lease payments of \$12.5 million or \$250.0 million over twenty years at current interest rates. (See attached Pages 3-4.)

Assuming total capital costs of \$135.0 million, tax-exempt financing provided through the State Bond Committee would require annual lease payments of \$11.0 million or \$220.4 million over twenty years at current interest rates. (See attached Pages 5-6.) This is a savings of \$29.6 million in interest expense to the State.

Additionally, if the State arranges its financing directly in the national financial markets, the State may refinance the outstanding debt periodically when interest rates are favorable. Our experience with refinancing other State debt suggests that interest cost savings of eight to ten percent from refinancing long-term debt can be projected. Assuming \$135 million of debt, cost savings \$11-13 million could reasonably be expected over twenty years through refinancing. If the facilities are financed through a private contractor, that contractor will simply get to pocket the savings from refinancings.

To summarize, cost savings from "unbundling" the financing from the design, construction and operation of the proposed correctional facilities would be as follows:

- | | |
|--|----------------|
| 1. Tax-exempt interest savings over twenty years: | \$29.6 million |
| 2. Interest savings from periodic refinancing: | 12.0 million |
| 3. State ownership of the prisons at the end of twenty years (50% of original cost): | 67.5 million |

Total Estimated Cost Savings from State Ownership and Financing: \$109.1 million

Sizing Debt Services Schedule

Taxable ¹

Dated: 2/1/99
Delivered: 2/1/99

PRIVATE PRISON

Fiscal Yr	Coupon MYY	Zer Cpn Date	Cpn Rate	Maturing Principal	Periodic Interest	Gross Semi-Annl Dbt Svc	Cap Int	DebtSvcRsv Int&Prin	CntgncyFnd Int&Prin	NotSemi-AnnlDbtSvc	Net Fiscal Dbt Svc
2	0	8/1/99			4,557,600.00	4,557,600.00				4,557,600.00	
8	0	2/1/00	N	3,385,000.00	4,557,600.00	7,942,600.00				7,942,600.00	12,500,200.00
1	2	1	8/1/00		4,443,356.25	4,443,356.25				4,443,356.25	
8	1	2/1/01	N	3,615,000.00	4,443,356.25	6,058,356.25				8,058,356.25	12,501,712.50
2	2	2	8/1/01		4,321,350.00	4,321,350.00				4,321,350.00	
8	2	2/1/02	N	3,855,000.00	4,321,350.00	8,176,350.00				8,176,350.00	12,497,700.00
3	2	3	8/1/02		4,191,243.75	4,191,243.75				4,191,243.75	
8	3	2/1/03	N	4,120,000.00	4,191,243.75	8,311,243.75				8,311,243.75	12,502,487.50
4	2	4	8/1/03		4,052,193.75	4,052,193.75				4,052,193.75	
8	4	2/1/04	N	4,395,000.00	4,052,193.75	8,447,193.75				8,447,193.75	12,499,387.50
5	2	5	8/1/04		3,903,862.50	3,903,862.50				3,903,862.50	
8	5	2/1/05	N	4,690,000.00	3,903,862.50	8,593,862.50				8,593,862.50	12,497,725.00
6	2	6	8/1/05		3,745,575.00	3,745,575.00				3,745,575.00	
8	6	2/1/06	N	5,010,000.00	3,745,575.00	8,755,575.00				8,755,575.00	12,501,150.00
7	2	7	8/1/06		3,576,487.50	3,576,487.50				3,576,487.50	
8	7	2/1/07	N	5,345,000.00	3,576,487.50	8,921,487.50				8,921,487.50	12,497,975.00
8	2	8	8/1/07		3,396,093.75	3,396,093.75				3,396,093.75	
8	8	2/1/08	N	5,710,000.00	3,396,093.75	9,106,093.75				9,106,093.75	12,502,187.50
9	2	9	8/1/08		3,203,381.25	3,203,381.25				3,203,381.25	
8	9	2/1/09	N	6,095,000.00	3,203,381.25	9,298,381.25				9,298,381.25	12,501,762.50
10	2	10	8/1/09		2,997,675.00	2,997,675.00				2,997,675.00	
8	10	2/1/10	N	6,505,000.00	2,997,675.00	9,502,675.00				9,502,675.00	12,500,350.00
11	2	11	8/1/10		2,778,131.25	2,778,131.25				2,778,131.25	
8	11	2/1/11	N	6,945,000.00	2,778,131.25	9,723,131.25				9,723,131.25	12,501,262.50
12	2	12	8/1/11		2,543,737.50	2,543,737.50				2,543,737.50	
8	12	2/1/12	N	7,415,000.00	2,543,737.50	9,958,737.50				9,958,737.50	12,502,475.00
13	2	13	8/1/12		2,293,481.25	2,293,481.25				2,293,481.25	
8	13	2/1/13	N	7,915,000.00	2,293,481.25	10,208,481.25				10,208,481.25	12,501,962.50
14	2	14	8/1/13		2,026,350.00	2,026,350.00				2,026,350.00	
8	14	2/1/14	N	8,445,000.00	2,026,350.00	10,471,350.00				10,471,350.00	12,497,700.00
15	2	15	8/1/14		1,741,331.25	1,741,331.25				1,741,331.25	
8	15	2/1/15	N	9,015,000.00	1,741,331.25	10,756,331.25				10,756,331.25	12,497,662.50
16	2	16	8/1/15		1,437,075.00	1,437,075.00				1,437,075.00	
8	16	2/1/16	N	9,625,000.00	1,437,075.00	11,062,075.00				11,062,075.00	12,499,150.00
17	2	17	8/1/16		1,112,231.25	1,112,231.25				1,112,231.25	
8	17	2/1/17	N	10,275,000.00	1,112,231.25	11,387,231.25				11,387,231.25	12,499,462.50
18	2	18	8/1/17		765,450.00	765,450.00				765,450.00	
8	18	2/1/18	N	10,970,000.00	765,450.00	11,735,450.00				11,735,450.00	12,500,900.00
19	2	19	8/1/18		395,212.50	395,212.50				395,212.50	
8	19	2/1/19	N	11,710,000.00	395,212.50	12,105,212.50				12,105,212.50	12,500,425.00

Prepared by: FORREST BROWNE, DOR - TREASURY
 Preparation: 1/13/98 15:48 8.20 Rpt 14
 Record ID: PRIVPRIS-1998-A2 :MUNIDB

Sizing Debt Services Schedule

Dated: 2/1/99
 Delivered: 2/1/99

PRIVATE PRISON

Fiscal Yr	Coupon M YY	Zer Date	Cpn Rate	Maturing Prncplal	Periodic Interest	Gross Semi-Annl Dbt Svc	Cap Int	DebtSvcRsv Int&Prin	CntgncyFnd Int&Prin	NetSemi-AnnlDbtSvc	Net Fiscal Dbt Svc
				135,040,000.00	114,963,637.50	250,003,637.50				250,003,637.50	250,003,637.50

<i>True Interest Cost (TIC)</i>	6.8514423
<i>Net Interest Cost (NIC)</i>	6.8134301
<i>Arbitrage Yield Limit (AYL)</i>	6.7500000
<i>Arbitrage Net Interest Cost (ANIC)</i>	6.7500000

<i>Prepared by:</i>	FORREST BROWNE, DOR - TREASURY
<i>Prepared on:</i>	1/13/98 15:48 8.20 Rpt 14
<i>Record ID:</i>	PRIVPRIS-1998-A2 :MUNIDB

Sizing D Services Schedule

Tax-Exempt¹

Dated: 2/1/99
Delivered: 2/1/99

PRIVATE PRISON

Fiscal Yr	Coupon MYY	Zer Date	Cpn Rate	Maturing Principal	Periodic Interest	Gross Annl Dbt Svc	Semi- Dbt Svc	Cap Int	Debt Svc Rsv Int & Prin	Cntgncy Fnd Int & Prin	Net Semi- Annl Dbt Svc	Net Fiscal Dbt Svc
2 0	8/1/99				3,511,040.00	3,511,040.00					3,511,040.00	
8 0	2/1/00	N	5.200	4,000,000.00	3,511,040.00	7,511,040.00					7,511,040.00	11,022,080.00
1 2	1 8/1/00				3,407,040.00	3,407,040.00					3,407,040.00	
8 1	2/1/01	N	5.200	4,205,000.00	3,407,040.00	7,612,040.00					7,612,040.00	11,019,080.00
2 2	2 8/1/01				3,297,710.00	3,297,710.00					3,297,710.00	
8 2	2/1/02	N	5.200	4,425,000.00	3,297,710.00	7,722,710.00					7,722,710.00	11,020,420.00
3 2	3 8/1/02				3,182,660.00	3,182,660.00					3,182,660.00	
8 3	2/1/03	N	5.200	4,655,000.00	3,182,660.00	7,837,660.00					7,837,660.00	11,020,320.00
4 2	4 8/1/03				3,061,630.00	3,061,630.00					3,061,630.00	
8 4	2/1/04	N	5.200	4,895,000.00	3,061,630.00	7,956,630.00					7,956,630.00	11,018,260.00
5 2	5 8/1/04				2,934,360.00	2,934,360.00					2,934,360.00	
8 5	2/1/05	N	5.200	5,150,000.00	2,934,360.00	8,084,360.00					8,084,360.00	11,018,720.00
6 2	6 8/1/05				2,800,460.00	2,800,460.00					2,800,460.00	
8 6	2/1/06	N	5.200	5,420,000.00	2,800,460.00	8,220,460.00					8,220,460.00	11,020,920.00
7 2	7 8/1/06				2,659,540.00	2,659,540.00					2,659,540.00	
8 7	2/1/07	N	5.200	5,700,000.00	2,659,540.00	8,359,540.00					8,359,540.00	11,019,080.00
8 2	8 8/1/07				2,511,340.00	2,511,340.00					2,511,340.00	
8 8	2/1/08	N	5.200	6,000,000.00	2,511,340.00	8,511,340.00					8,511,340.00	11,022,680.00
9 2	9 8/1/08				2,355,340.00	2,355,340.00					2,355,340.00	
8 9	2/1/09	N	5.200	6,310,000.00	2,355,340.00	8,665,340.00					8,665,340.00	11,020,680.00
10 2	10 8/1/09				2,191,280.00	2,191,280.00					2,191,280.00	
8 10	2/1/10	N	5.200	6,640,000.00	2,191,280.00	8,831,280.00					8,831,280.00	11,022,560.00
11 2	11 8/1/10				2,018,640.00	2,018,640.00					2,018,640.00	
8 11	2/1/11	N	5.200	6,985,000.00	2,018,640.00	9,003,640.00					9,003,640.00	11,022,280.00
12 2	12 8/1/11				1,837,030.00	1,837,030.00					1,837,030.00	
8 12	2/1/12	N	5.200	7,345,000.00	1,837,030.00	9,182,030.00					9,182,030.00	11,019,060.00
13 2	13 8/1/12				1,646,060.00	1,646,060.00					1,646,060.00	
8 13	2/1/13	N	5.200	7,730,000.00	1,646,060.00	9,376,060.00					9,376,060.00	11,022,120.00
14 2	14 8/1/13				1,445,080.00	1,445,080.00					1,445,080.00	
8 14	2/1/14	N	5.200	8,130,000.00	1,445,080.00	9,575,080.00					9,575,080.00	11,020,160.00
15 2	15 8/1/14				1,233,700.00	1,233,700.00					1,233,700.00	
8 15	2/1/15	N	5.200	8,555,000.00	1,233,700.00	9,788,700.00					9,788,700.00	11,022,400.00
16 2	16 8/1/15				1,011,270.00	1,011,270.00					1,011,270.00	
8 16	2/1/16	N	5.200	9,000,000.00	1,011,270.00	10,011,270.00					10,011,270.00	11,022,540.00
17 2	17 8/1/16				777,270.00	777,270.00					777,270.00	
8 17	2/1/17	N	5.200	9,465,000.00	777,270.00	10,242,270.00					10,242,270.00	11,019,540.00
18 2	18 8/1/17				531,180.00	531,180.00					531,180.00	
8 18	2/1/18	N	5.200	9,960,000.00	531,180.00	10,491,180.00					10,491,180.00	11,022,360.00
19 2	19 8/1/18				272,220.00	272,220.00					272,220.00	
8 19	2/1/19	N	5.200	10,470,000.00	272,220.00	10,742,220.00					10,742,220.00	11,014,440.00

Prepared by: FORREST BROWNE, DOR - TREASURY
 Prepared on: 1/13/98 16:10 8.20 Rpt 14
 Record ID: PRIVPRIS-1998-A3 :MUNIDB

Sizing Debt Services Schedule

Dated: 2/1/99
 Delivered: 2/1/99

PRIVATE PRISON

Fiscal Yr	Coupon M YY	Zer Date	Cpn Cpn Rate	Maturing Prncplal	Periodic Interest	Gross Semi-Annl Dbt Svc	Cap Int	DebtSvcRsv Int&Prln	CntgncyFnd Int&Prln	NetSemi-AnnlDbtSvc	Net Fiscal Dbt Svc
-----------	-------------	----------	--------------	-------------------	-------------------	-------------------------	---------	---------------------	---------------------	--------------------	--------------------

	135,040,000.00	85,369,700.00	220,409,700.00							220,409,700.00	220,409,700.00
--	----------------	---------------	----------------	--	--	--	--	--	--	----------------	----------------

True Interest Cost (TIC).....	5.2949208
Net Interest Cost (NIC).....	5.2658040
Arbitrage Yield Limit (AYL).....	5.2000000
Arbitrage Net Interest Cost (ANIC).....	5.2000000

Prepared by: FORREST BROWNE, DOR - TREASURY Prepared on: 1/13/98 16:10 8.20 Rpt 14 Record ID: PRIVPRIS-1998-A3 :MUNIDB
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(Page 6 of 6)

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	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)

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

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

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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
-----------------------------	------------	------------	------------	------------	------------	------------

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 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: ~~WATSU~~
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

LEGISLATIVE TELECONFERENCE NETWORK SYSTEM
PARTICIPANT LIST (ALL PARTICIPANTS)
TCN:80683 SCHEDULED FOR:04/15/98 08:00 TO 10:00
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
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 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	99707	452-6157	463-3830	<input checked="" type="checkbox"/>	<input type="checkbox"/>	SB 180
	VP.					<input type="checkbox"/>	<input type="checkbox"/>	
	AK OUTFITTERS	Council				<input type="checkbox"/>	<input type="checkbox"/>	
						<input type="checkbox"/>	<input type="checkbox"/>	
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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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- Gerald G. Booth, Vice President
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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". The signature is written in dark ink and is positioned above the printed name and title.

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.

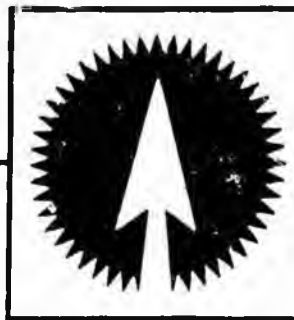
Thank you for the opportunity to comment on this important bill. Please contact me if you have any questions or if there is anything we can do to assist this legislation in become law.

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.

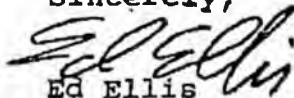
Our RS2477 rights-of-ways are the correct legal authority to provide access to our rural areas. It should be noted that this authority is now necessary, in addition to federal and private lands, for state lands also.

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

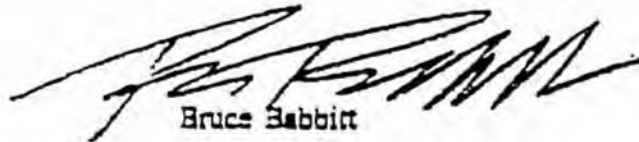
determines that construction did not occur, the agency will recommend the Secretary deny the claim.

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



Official Business

Alaska State Legislature

Senate

**RICK
HALFORD**

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600 E. Railroad Avenue
Wasilla, Alaska 99654
Phone (907) 376-4958

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.

SB

180

SFIN

FILE

FISCAL NOTE

REPORTED OUT OF
3/12/98

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. CSSB180(FIN)

Revision Date: 13-Mar-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	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)

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

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FISCAL NOTE

No. 1
 Bill Version: CSSB1902ES
 (S) Publish Date: 2/24/98

**STATE OF ALASKA
 1998 LEGISLATIVE SESSION**

BILL NO.

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)				
	FY99	FY00	FY01	FY02	FY03	FY04
OPERATING EXPENDITURES						
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)				
	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						
	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

FISCAL NOTE 3/11/98

No. 2
 Bill Version: SSB180(RES)
 (S) Publish Date: 2/24/98

STATE OF ALASKA
 1998 LEGISLATIVE SESSION

BILL NO.

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

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)

FUND SOURCE	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
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 <u>Dennis Poshard</u> Legislative Liaison	Phone <u>465-3904</u>
Division <u>Office of the Commissioner</u>	Date <u>2/5/98</u>
Approved by: <u><i>Joseph L. Halbur</i></u> , Commissioner	Date <u>2/5/98</u>
Agency <u>Department of Transportation and Public Facilities</u>	

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A M E N D M E N T

SENATE FINANCE
COMMITTEE

Amendment Number: 1

BY Bill Number: SB 180

Sponsor: Torgerson Date: 3/11/98

Logged In By: Beltrami

OFFERED IN THE SENATE
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 Villiage	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

AMENDMENT

0-LS0817H.2

Luckhaupt -

3/10/98

OFFERED IN THE SENATE

TO: CSSB 180(23S)

BY SENATOR ADAMS - *Mew*

Sen Jorgensen - object

fails 1-85

(Sen Adams yes)

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:

- 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:**
- same title
 - new title
- House Bill:**
- same title
 - technical title
 - new: SCR# _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>[Signature]</i>	✓	<i>[Signature]</i>	X		
<i>[Signature]</i>	✓				
<i>[Signature]</i>	✓				
Co-Chair: <i>[Signature]</i>	✓	Co-Chair:			
Co-Chair: <i>[Signature]</i>	✓	Co-Chair:			

NEW FISCAL NOTE(S):

Department Date Zero Fiscal

Department	Date	Zero	Fiscal

PREVIOUS FISCAL NOTE(S):*

Department Date Zero Fiscal

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: Interior 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

000/000

BLK R.O.

2002 422002

16:17 01/23/97

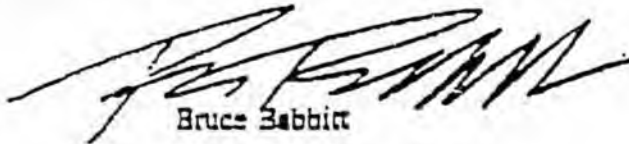
determines that construction did not occur, the agency will recommend the Secretary deny the claim.

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



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 its 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.

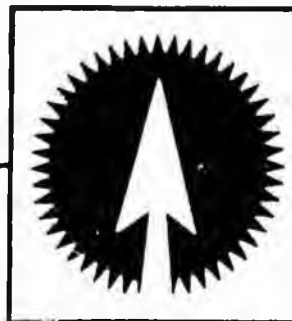
Thank you for the opportunity to comment on this important bill. Please contact me if you have any questions or if there is anything we can do to assist this legislation in become law.

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



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, Chairman
AAR Legislative Group

cc: Senate Finance Committee
Senator Rick Halford





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 some concerns about the section regarding vacations. RS 2477 routes are hard to vacate, and the language is unclear. I had a conversation with one of the bill drafters regarding the proposed **SEC. 19.05.410 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

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 propriety 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-way:

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. Lindsay 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 reserved 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

CORRECTION

THE FOLLOWING DOCUMENT(S)
HAVE BEEN REFILMED TO
ASSURE LEGIBILITY OR PAGINATION



Rev. 6/98

Central Microfilm Services
Department of Education
State of Alaska

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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' 3
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).

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By this act [R.S. 2477] the government consented that any of its lands not reserved 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.)

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.

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 *Koloer 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).

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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 1976 (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.