

STATE OF ALASKA
THE LEGISLATURE

1997

Source
SJR 13

Legislative
Resolve No.
11



Relating to RS 2477 rights-of-way.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

WHEREAS Revised Statute 2477 (RS 2477) provided, "the right-of-way for the construction of highways over public lands, not reserved for public uses, is hereby granted"; and

WHEREAS the Congress repealed RS 2477 in 1976 in the Federal Land Policy and Management Act, but the Act expressly reserved existing rights-of-way created under RS 2477; and

WHEREAS the Alaska State Legislature funded a \$1,200,000 project conducted by the Alaska Department of Natural Resources to document the RS 2477 rights-of-way in Alaska; and

WHEREAS the project found more than 560 routes that qualified as RS 2477 rights-of-way; and

WHEREAS RS 2477 rights-of-way resulted from the public's use of routes to travel between settlements and to gain access to resource areas in the state from the late 1800's until 1976; and

WHEREAS it is in the best interests of the state to preserve this historical and traditional rural transportation system because these routes form the transportation network for surface travel between rural settlements, provide access to mineralized and other natural resource use areas, and

create significant entrepreneurial, recreational, and tourism opportunities; and

WHEREAS Alaska is committed to a balanced philosophy of development and wise use of state resources; and

WHEREAS the surface transportation system in the state is inadequate to meet the economic and social demands of the state and its citizens; and

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

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States Department of the Interior remained unchanged until the repeal of the statute, when the regulations were also repealed; and

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

WHEREAS the United States Department of the Interior is attempting to administratively rescind the longstanding and widely accepted interpretation of RS 2477 by adopting regulations that would reverse prior regulations and court-made law by forcing states and local governments to follow an excessively bureaucratic process, to undertake costly procedures, and to enter into extensive litigation that could severely restrict or eliminate many RS 2477 rights-of-way in Alaska; and

WHEREAS Alaska's congressional delegation successfully derailed implementation of Department of the Interior's regulations by inserting language prohibiting implementation in the fiscal year 1996 budget; and

WHEREAS fiscal year 1997 appropriations allow for the publication of regulations but specifically prohibit the regulations from taking effect unless "expressly authorized by an Act of Congress"; and

WHEREAS Secretary of the Interior Bruce Babbitt issued a new policy on January 22, 1997, revoking a 1988 policy and establishing a new revised policy "for carrying out any determinations the Department might be called upon to make regarding RS 2477"; and

WHEREAS the new policy by Secretary Babbitt essentially requires that each RS 2477 right-of-way in Alaska be established through lengthy and costly litigation; and

WHEREAS Secretary Babbitt's new policy establishes new requirements essentially

requiring the Department of the Interior's approval before RS 2477 rights-of-way assertions will be acceptable; and

WHEREAS Secretary Babbitt's new policy is designed to create a bureaucratic impediment to the State of Alaska's legitimate claims to RS 2477 rights-of-way; and

WHEREAS this new policy illustrates again the continuing and escalating "War on the West" being waged by Secretary Babbitt;

BE IT RESOLVED that the Alaska State Legislature endorses continuing efforts of the Alaska delegation in Congress to preserve and protect the original meaning of Revised Statute 2477 to provide adequate access to the state's land and resources and to provide Alaska the same privileges extended to every other state in the Union; and be it

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

FURTHER RESOLVED that the Alaska State Legislature respectfully requests the Congress to include a reasonable period and a reasonable process for the assertion, recognition, and determination of RS 2477 rights-of-way as part of any legislation addressing RS 2477 rights-of-way; and be it

FURTHER RESOLVED that the Alaska State Legislature respectfully requests that Governor Tony Knowles direct the appropriate state departments to implement a proactive and aggressive program to assert the state's ownership of RS 2477 rights-of-way.

COPIES of this resolution shall be sent to the Honorable Tony Knowles, Governor of Alaska; and to the Honorable Ted Stevens and the Honorable Frank Murkowski, U.S. Senators, and the Honorable Don Young, U.S. Representative, members of the Alaska delegation in Congress.