

HOUSE JOINT RESOLUTION NO. 40

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SEVENTH LEGISLATURE - SECOND SESSION

BY REPRESENTATIVES KELLER, Tammie Wilson, Pruitt, Thompson, Millett, Costello, Johansen

Introduced: 2/22/12

Referred: Resources, Judiciary

A RESOLUTION

1 Commending the governor and the administration for aggressively working to enforce
2 the rights of the state in R.S. 2477 rights-of-way; urging the governor and the attorney
3 general to develop a working alliance with other western states to protect and enforce
4 the states' interests in ensuring access using rights-of-way authorized by R.S. 2477;
5 urging the governor and the attorney general to support the State of Utah and the
6 southern counties of Utah in a lawsuit against the federal government concerning R.S.
7 2477 rights-of-way, including filing an amicus brief in support of Utah; urging the
8 governor to dedicate state resources to establish, protect, and enforce the state's
9 interests in R.S. 2477 rights-of-way and to preserve state rights-of-way against
10 encroachment by the federal government; urging the governor to reestablish a
11 federalism section in the Department of Law and sections in the Department of Natural
12 Resources and the Department of Fish and Game to support the preservation of the
13 state's rights and powers in compact cases; and urging the governor to prepare an

1 **appropriation request to fund an aggressive effort by the state to resolve issues relating**
2 **to R.S. 2477 rights-of-way, including possible litigation, and to continue to work to**
3 **preserve the rights of the state in regard to R.S. 2477 rights-of-way.**

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

5 **WHEREAS**, in 1866, R.S. 2477 granted rights-of-way across unappropriated federal
6 land to encourage the development of western land; and

7 **WHEREAS** R.S. 2477 rights-of-way were perfected by simple use or development;
8 and

9 **WHEREAS** R.S. 2477 rights-of-way were established in the state through use or
10 development until virtually all federal land in the state was withdrawn in 1969; and

11 **WHEREAS**, when R.S. 2477 was repealed in 1976 under the Federal Land Policy
12 Management Act (43 U.S.C. 1701), valid existing rights under R.S. 2477 were expressly
13 protected; and

14 **WHEREAS** the Alaska State Legislature has recognized 602 rights-of-way in statute,
15 and the Department of Natural Resources has identified 67 additional valid R.S. 2477 rights-
16 of-way; and

17 **WHEREAS** historic R.S. 2477 rights-of-way represent a key component of the
18 mandate in art. VIII, sec. 1, of the Constitution of the State of Alaska to encourage the
19 settlement of the state's land and the development of the state's land and resources; and

20 **WHEREAS** the United States Department of Interior and the United States Forest
21 Service refuse to recognize an R.S. 2477 right-of-way unless adjudicated and validated in a
22 decision by a court of competent jurisdiction; and

23 **WHEREAS** unilateral resistance by the federal government to the existence of the
24 state's rights-of-way causes great harm to the ability of the state to execute its duty to manage
25 state resources by making them accessible and available for maximum use consistent with the
26 public interest, as required in art. VIII, sec. 1, of the Constitution of the State of Alaska; and

27 **WHEREAS** the State of Utah recently filed notices of intent to sue to enforce its
28 interests in more than 18,000 R.S. 2477 rights-of-way in that state; and

29 **WHEREAS** the State of Alaska and the State of Utah share similar objections to the
30 large withdrawals of Federal Conservation Units that are managed by the United States

1 Department of the Interior and the United States Forest Service, agencies that both
2 unilaterally deny the existence of valid state easements; and

3 **WHEREAS** virtually all of the state's natural resource development projects are
4 unnecessarily burdened by numerous federal laws, including the Endangered Species Act, the
5 Clean Water Act, and myriad arbitrary federal regulators and policies implementing and
6 enforcing those and other federal laws;

7 **BE IT RESOLVED** that the Alaska State Legislature commends the governor and the
8 administration for aggressively working to protect the interests of the state in rights-of-way
9 under R.S. 2477 and urges the governor and the attorney general to develop a working
10 alliance with the governors, attorneys general, and legislatures in other western states to
11 protect and enforce the states' interests in ensuring access using rights-of-way authorized by
12 R.S. 2477; and be it

13 **FURTHER RESOLVED** that the Alaska State Legislature urges the governor and the
14 attorney general to support the State of Utah and southern counties of Utah in a lawsuit to
15 enforce Utah's interests in R.S. 2477 rights-of-way, including filing an amicus curiae brief in
16 support of Utah against the federal government; and be it

17 **FURTHER RESOLVED** that the Alaska State Legislature urges the governor and the
18 attorney general to develop a strategy for resolving the dispute over the right to continued
19 access using R.S. 2477 rights-of-way in the state, including the possibility of bringing a
20 lawsuit against the federal government to preserve the state's interest in each right-of-way;
21 and be it

22 **FURTHER RESOLVED** that the Alaska State Legislature urges the governor to
23 further strengthen the resources of the state for protecting the state's rights by reestablishing a
24 federalism section within the Department of Law that will focus on defending the state's rights
25 and powers in compact cases and by establishing sections in the Department of Natural
26 Resources and the Department of Fish and Game to work with the Department of Law to
27 support the preservation of the state's rights and powers in compact cases; and be it

28 **FURTHER RESOLVED** that the Alaska State Legislature asks the governor to
29 submit to the 28th Alaska Legislature a request for an appropriation specifically to fund an
30 aggressive effort by the state to resolve issues relating to the state's right to use R.S. 2477
31 rights-of-way and to preserve the rights of the state against federal encroachment on the state's

1 rights in regard to R.S. 2477 rights-of-way.