

17 AAC 10.100. Land Disposal

(a) Except for a conveyance of land by a commissioner's deed issued under 17 AAC 05.020, or an encroachment permit issued under 17 AAC 10.011, the provisions of 17 AAC 10.100 through 17 AAC 10.120 apply to a disposal of land, or an interest in land, contained within a highway right-of-way, whether the land or interest was acquired by gift, transfer from the federal government, purchase, or the exercise of the power of eminent domain.

(b) The department will prepare a decisional document summarizing its decision to dispose of a particular parcel of land acquired in a right-of-way acquisition. In that document, the department will summarize the conclusion that the particular parcel of land is excess right-of-way and whether the land has a present or potential use for parks, conservation, recreation, or related uses. The department will, in its discretion, find that the land is excess right-of-way, if the land is located outside of the slope limits of a highway, the land is not necessary for the highway's operation or maintenance, and the land is not needed for a public purpose. If the department finds that the land has a present or potential use for parks, conservation, recreation, or related uses, the department will describe in the decisional document the department's efforts to dispose of the land to public agencies for parks, conservation, recreation, or related uses. If the public agencies decline to acquire the parcel, the department will conduct the land disposal according to 17 AAC 10.105 - 17 AAC 10.120.

17 AAC 10.105. Disposal by negotiated sale to an adjoining property owner

(a) The department will, in its discretion, convey the interest that it holds in a parcel of excess right-of-way to an adjoining property owner, if the adjoining property owner applies for the conveyance and pays a \$200 nonrefundable application fee, and if the

(1) adjoining property is the land from which an acquisition of land, in a fee simple interest, for the right-of-way was made; or

(2) right-of-way is held as an easement and the owner of the underlying fee simple interest is also the owner of the adjoining land.

(b) The consideration for a conveyance of a fee simple interest under this section is the fair market value of the land, estimated under commonly accepted appraisal techniques. If the interest the department holds is an easement, the consideration for the transaction is 90 percent of the fair market value of the fee simple interest, not subject to the easement.

(c) A grantee under this section shall provide appraisal services, title insurance, surveying, and platting that are acceptable to the department, or reimburse the department for the cost of these activities if the department provides them.

(d) The department will not make a conveyance under this section without issuing public notice of the pending sale, published at least once in a newspaper of general circulation, in the area where the excess right-of-way is located, at least 30 days before the projected closing date of the transaction. In that notice, the department will describe the land offered for sale, and provide that the department will accept public comments regarding the sale that are received before the projected closing date. The grantee shall reimburse the department for the cost of public notice.

AS 19.30.410. Vacation of Rights-of-Way.

Notwithstanding another provision of law, the Department of Natural Resources, the Department of Transportation and Public Facilities, or another agency of the state may not vacate a right-of-way acquired by the state under former 43 U.S.C. 932 unless

- (1)** a reasonably comparable, established alternate right-of-way or means of access exists that is sufficient to satisfy all present and reasonably foreseeable uses;
- (2)** the right-of-way is within a municipality, the municipal assembly or council has requested the vacation, a reasonable alternative means of access is available, and the vacation is in the best interests of the state; or
- (3)** the vacation is approved by the legislature.

relief program; and relating to financial responsibility for the costs of abortions.

HB 246: Passed! Chapter 110 SLA 97 An Act naming the George W. Palmer Memorial Bridge.

HB 255: An Act relating to subsistence hunting and fishing; and providing for an effective date.

HB 295: An Act relating to enforcement of subsistence hunting and fishing laws.

HB 299: An Act reducing excise tax rates for pipe tobacco and certain cigars, cheroots, and stogies.

HB 309: Passed! Chapter 3 SLA 98 An Act naming the Robert B. Atwood Building.

HB 324: Passed Legislature! Chapter 115 SLA 98 An Act relating to liens for municipal assessments for certain utility improvements.

HB 339: An Act relating to the child support enforcement agency; and providing for an effective date.

HB 363: An Act relating to social security numbers; providing for the limitation of use of social security numbers; and making the improper use of a social security number a prohibited unfair trade practice.

HB 380: Passed! Chapter 29 SLA 98 An Act relating to a temporary reduction of royalty on oil and gas produced for sale from fields within the Cook Inlet sedimentary basin where production is commenced in fields that have been discovered and undeveloped or that have been shut in.

HB 405: Passed Legislature! Chapter 136 SLA 98 An Act relating to failing to stop a vehicle when directed to do so by a peace officer.

HB 412: An Act providing for the transfer of certain land to the City of Whittier; and providing for an effective date.

HJR 1: Proposing an amendment to the Constitution of the State of Alaska relating to the duration of a regular session.

HJR 2: Proposing an amendment to the Constitution of the State of Alaska relating to repeal of regulations by the legislature.

HJR 5: Proposing an amendment to the Constitution of the State of Alaska relating to freedom of conscience.

HJR 21: Relating to amendment of Title VIII of the Alaska National Interest Lands Conservation Act.

HJR 47: Proposing amendments to the Constitution of the State of Alaska relating to the nomination, selection, appointment, and public approval or rejection of justices of the supreme court and of judges of courts established by the legislature that have as an exclusive purpose the exercise of appellate jurisdiction over judicial acts and proceedings, and requiring legislative confirmation of those justices and judges and of the appointed members of the judicial council.

HJR 57: Passed! Legislative Resolve 72 Relating to an amendment to the Constitution of the United States prohibiting federal courts from ordering a state or a political subdivision of a state to increase or impose taxes.

HJR 62: Passed! Legislative Resolve 75 Relating to bringing Balto back to Alaska.

SB 11: Passed Legislature! Chapter 77 SLA 98 Relating to state aid for school construction debt; and providing for an effective date.

SB 77: Passed! Chapter 11 SLA 97 An Act relating to the Alaska Day of Prayer.

SB 141: Passed! Chapter 1 SLA 98 An Act relating to permits to carry concealed handguns; and relating to the possession of firearms.

SB 180: Passed! Chapter 26 SLA 98 An Act relating to state rights-of-way.

SB 209: An Act relating to the Task Force on Privatization; and providing for an effective date.

SCR 2: Passed! Legislative Resolve 51 Relating to management of

CS FOR SENATE BILL NO. 180(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - SECOND SESSION

BY THE SENATE FINANCE COMMITTEE

Offered: 3/12/98

Referred: Rules

Sponsor(s): SENATORS HALFORD, Green, Leman, Sharp, Torgerson, Wilken, Pearce, Ward, Taylor

A BILL

FOR AN ACT ENTITLED

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

2 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

3 * **Section 1.** FINDINGS AND INTENT. The legislature finds that former 43 U.S.C. 932
4 (RS 2477) granted numerous rights-of-way, portions of which cross land held in private
5 ownership. Among those lands affected by RS 2477 routes are sites important to the culture
6 and heritage of Alaska Natives. Respect for and preservation of these culturally significant
7 sites should be afforded careful consideration in determining location and management of
8 RS 2477 rights-of-way. While providing for the public right to access RS 2477 rights-of-way,
9 every effort should be made to minimize the effect on the affected private property owners.
10 Where practicable, that effort should include working with the property owner to re-route a
11 right-of-way to the area least adversely affected, providing that reasonably comparable access
12 is preserved.

13 * **Sec. 2.** AS 19.30 is amended by adding new sections to read:

14 **Article 5. Rights-of-way Acquired under Former 43 U.S.C. 932.**

15 **Sec. 19.30.400. Identification and acceptance of rights-of-way.** (a) The

1 state claims, occupies, and possesses each right-of-way granted under former 43 U.S.C.
 2 932 that was accepted either by the state or the territory of Alaska or by public users.
 3 A right-of-way acquired under former 43 U.S.C. 932 is available for use by the public
 4 under regulations adopted by the Department of Natural Resources unless the right-of-
 5 way has been transferred by the Department of Natural Resources to the Department
 6 of Transportation and Public Facilities in which case the right-of-way is available for
 7 use by the public under regulations adopted by the Department of Transportation and
 8 Public Facilities.

9 (b) The Department of Natural Resources shall conduct the necessary research
 10 to identify rights-of-way that have been accepted by public users under former 43
 11 U.S.C. 932 and that have not been previously identified and shall annually report to
 12 the legislature by the first day of each regular session of the legislature on rights-of-
 13 way that have been identified and that are not listed in this section.

14 (c) The rights-of-way listed in (d) of this section have been accepted by public
 15 users and have been identified to provide effective notice to the public of these rights-
 16 of-way. The failure to include or identify a right-of-way under (d) of this section does
 17 not relinquish any right, title, or interest the public has in a right-of-way.

18 (d) The following rights-of-way are identified by the name of the right-of-way
 19 and the identification number the right-of-way has been assigned by the Department
 20 of Natural Resources in the Historic Trails Database, known as the "RST" number,
 21 which contains a complete description of the right-of-way:

22	RIGHT-OF-WAY NAME	RST NUMBER
23	Cobb Lakes Trail	0001
24	Taylor - Humboldt	0002
25	Hajducovich - Macomb Plateau Trail	0003
26	Jualin Mine Road	0004
27	Marvel Creek Cat Trail	0005
28	Taylor Creek - Serpentine Hot Springs	0006
29	Eureka - Rampart	0007
30	Harrison Creek - Portage Creek	0008
31	Coldfoot - Chandalar Lake Trail	0009

1	Chickaloon - Coal Creek	1896
2	Purgatory - Stevens Village	1897
3	Lost Creek Trail (Yukon Flats)	1898
4	Minook Creek - Pioneer Creek	1899.

5 **Sec. 19.30.410. Vacation of rights-of-way.** Notwithstanding another provision
6 of law, the Department of Natural Resources, the Department of Transportation and
7 Public Facilities, or another agency of the state may not vacate a right-of-way acquired
8 by the state under former 43 U.S.C. 932 unless

9 (1) a reasonably comparable, established alternate right-of-way or
10 means of access exists that is sufficient to satisfy all present and reasonably
11 foreseeable uses;

12 (2) the right-of-way is within a municipality, the municipal assembly
13 has requested the vacation, a reasonable alternative means of access is available, and
14 the vacation is in the best interests of the state; or

15 (3) the vacation is approved by the legislature.

16 **Sec. 19.30.420. Immunity from liability for damages; risk of use of right-**
17 **of-way acquired under former 43 U.S.C. 932.** (a) Notwithstanding AS 09.50.250
18 and AS 09.65.070, the state and its political subdivisions are not liable for damages,
19 injury, or death arising from AS 19.30.400 - 19.30.420 and the recording of any rights-
20 of-way identified in AS 19.30.400 or acquired under former 43 U.S.C. 932.

21 (b) A right-of-way identified under AS 19.30.400 or acquired under former 43
22 U.S.C. 932 that is not designated as part of the state highway system under
23 AS 19.10.020 is traveled and used at the risk of the user. As to those rights-of-way
24 and notwithstanding AS 09.50.250 and AS 09.65.070, the state and a political
25 subdivision of the state are not liable for damages, injury, or death

26 (1) arising from the use of the right-of-way;

27 (2) arising from the failure to inspect, mark, or maintain the right-of-
28 way;

29 (3) occurring in the right-of-way; or

30 (4) associated with the right-of-way.

31 * **Sec. 3.** Not later than January 1, 1999, the Department of Natural Resources shall record

- 1 under AS 40.17 each right-of-way identified in AS 19.30.400(d), added by sec. 2 of this Act.
- 2 In completing the recording, the department and recorder may not require the rights-of-way
- 3 to satisfy the requirements of AS 40.17.030.