SENATE BILL NO. 94

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-EIGHTH LEGISLATURE - FIRST SESSION

BY SENATOR OLSON

Introduced: 3/29/13
Referred: Transportation, Judiciary

A BILL

FOR AN ACT ENTITLED

"An Act vacating a portion of the Copper Center-Valdez right-of-way; and relating to rights-of-way acquired under former 43 U.S.C. 932 that cross land owned by an Alaska Native corporation."

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

*** Section 1.** The uncodified law of the State of Alaska is amended by adding a new section to read:

LEGISLATIVE FINDINGS AND INTENT. (a) The legislature finds that

(1) the federal mining law of 1866 granted a "right-of-way for the construction of highways over public lands, not reserved for public uses"; this right-of-way provision was codified in sec. 2477 of the Revised Statutes of the United States, and is referred to as R.S. 2477;

(2) rights-of-way were established in the state under R.S. 2477 through use and development until virtually all federal land in the state was withdrawn when Public Land Order 4582 was issued on January 17, 1969, which placed all federal land in the state in a

reserved status for the determination and protection of the rights of Alaska Natives;

(3) when sec. 706 of the Federal Land Policy and Management Act (43 U.S.C. 1701) repealed R.S. 2477 on October 21, 1976, valid existing rights under R.S. 2477 were preserved;

(4) in 1998, the Alaska State Legislature recognized claims to 602 rights-of-way, and the Department of Natural Resources has identified 67 additional R.S. 2477 rights-of-way;

(5) a significant number of the claimed R.S. 2477 rights-of-way in the state cross land now owned by private individuals or corporations established under the Alaska Native Claims Settlement Act;

(6) R.S. 2477 rights-of-way that cross private property have resulted in increased trespass to private land, resource damage to the servient estate, and conflicts between the public users, private landowners, and state right-of-way managers, all of which can lead to time-consuming and costly litigation;

(7) among the land affected by R.S. 2477 rights-of-way are areas important to the culture, heritage, and economic development of Alaska Natives; those areas are particularly deserving of respect and preservation; the width, scope, location, and management of R.S. 2477 rights-of-way that cross land owned by corporations established under the Alaska Native Claims Settlement Act deserve careful consideration;

(8) while providing for the public right to access R.S. 2477 rights-of-way, every effort should be made to minimize the effect on the affected property owners, including individuals and corporations established under the Alaska Native Claims Settlement Act;

(9) in many instances, access to public land beyond property owned by corporations established under the Alaska Native Claims Settlement Act is provided by federal easements reserved to the United States under sec. 17(b) of the Alaska Native Claims Settlement Act; most of those 17(b) easement trails follow coastlines or rivers along traditional travel routes; approximately 529 miles of the state's claimed R.S. 2477 rights-of-way overlap with existing 17(b) easements;

(10) one overlap of an R.S. 2477 right-of-way and 17(b) easement involves a road and all-terrain vehicle trail that roughly parallel the Klutina River from the New Richardson Highway to partway around Klutina Lake; the road and trail form a portion of the

claimed Copper Center-Valdez right-of-way, referred to as RST 633 in statute; the road and trail are also supported by 17(b) easements known as EIN 11 C3, C5, D1, D9, L (Klutina Lake Road), and EIN 5, C5, D1, and D9 (Klutina Lake Trail), which were reserved to the public when the federal government conveyed the land underlying the road and trail to Ahtna, Incorporated; and

(11) those reserved 17(b) easements are reasonably comparable to the claimed R.S. 2477 rights-of-way and provide sufficient public access to satisfy all present and reasonably foreseeable future needs; therefore, the overlapping Copper Center-Valdez R.S. 2477 right-of-way should be vacated.

(b) It is the intent of the legislature that this Act resolve issues relating to the width and scope of R.S. 2477 rights-of-way that cross land owned by corporations established under the Alaska Native Claims Settlement Act and minimize conflict between public right-of-way users, Native corporations, and state and local land managers.

*** Sec. 2.** AS 19.30.400 is amended by adding a new subsection to read:

(e) The Copper Center-Valdez right-of-way, RST 633, identified in (d) of this section is vacated for those portions that overlap public easements established under 43 U.S.C. 1616(b) (Alaska Native Claims Settlement Act).

*** Sec. 3.** AS 19.30 is amended by adding a new section to read:

Sec. 19.30.430. Rights-of-way acquired under former 43 U.S.C. 932 that cross land conveyed to a Native corporation. (a) Notwithstanding AS 19.10.015(a), a right-of-way granted under former 43 U.S.C. 932 (R.S. 2477) that crosses land owned by a Native corporation is limited to the uses of the route established on October 21, 1976, and may not exceed a width of 60 feet.

(b) A right-of-way granted under former 43 U.S.C. 932 (R.S. 2477) that crosses land owned by a Native corporation may be used only for transportation purposes and may not be used for rest areas, parking lots, overnight camping, boat launches, recreation sites, or other similar uses.

(c) A right-of-way granted under former 43 U.S.C. 932 (R.S. 2477) that crosses land owned by a Native corporation shall include a secondary easement to enter, inspect, repair, maintain, and improve the right-of-way under the following conditions:

(1) routine maintenance and repair may only preserve the condition of the right-of-way as it existed on October 21, 1976;

(2) the state may make reasonable and necessary improvements to a right-of-way for the transportation uses preserved by the right-of-way;

(3) before improvements, other than routine maintenance and repair, the state shall consult with and gain the permission of the Native corporation that owns the land subject to the right-of-way established under former 43 U.S.C. 932 (R.S. 2477) and give the Native corporation an opportunity to

(A) determine whether the proposed improvements are reasonable in light of the traditional uses of the right-of-way as it existed on October 21, 1976;

(B) study the potential effect of the proposed improvements on the surrounding land; and

(C) determine whether modifications to the proposed improvements should be made to protect the surrounding land and propose modifications, if appropriate;

(4) in the event of a dispute between the Native corporation and state about proposed improvements, the dispute shall be submitted to mediation directed by a mediator who is mutually agreeable to the parties and who is not employed by either party; each party shall bear its proportionate share of the cost of mediation, including the mediator fees; if, after a period of 60 days following commencement of mediation, the parties are unable to resolve the dispute, either party may bring suit in superior court; the proposed improvements may not proceed until resolution of the suit.

(d) Notwithstanding any other provision of law, if a right-of-way established under former 43 U.S.C. 932 (R.S. 2477) has been damaged beyond repair by natural causes and the state plans to realign the right-of-way as provided in (c)(3) of this section, the state shall consult with the Native corporation that owns the underlying land and pay just compensation for any additional land that will be burdened by the realigned right-of-way.

(e) In this section,

(1) "Native corporation" means a corporation established under 43

U.S.C. 1601 et seq. (Alaska Native Claims Settlement Act);

(2) "routine maintenance and repair" includes preservation of an existing road or trail by physical upkeep, repair of wear or damage from natural or other causes, maintenance of the shape of the road, grading or blading to preserve the character of the road, maintenance to ensure proper drainage, and any other activities necessary to preserve the condition of the road as it existed on October 21, 1976.