



SENATE RESOLUTION 04-004

BY SENATOR(S) Andrews, Chlouber, Isgar, and Johnson S..

CONCERNING THE ADOPTION OF POLICIES AND PROCESSES
THAT INVOLVE THOROUGH PUBLIC INPUT TO IDENTIFY AND
ASSERT RIGHTS-OF-WAY OVER FEDERALLY MANAGED
PUBLIC LANDS.

WHEREAS, The United States Congress, for the purpose of promoting the settlement of the western United States by the construction of roads, granted a right-of-way for the construction of highways over public lands not reserved for public uses in Section 8 of the Mining Act of 1866, reenacted and recodified as Revised Statutes 2477 (R.S. 2477), 43 U.S.C. sec. 932 (repealed October 21, 1976); and

WHEREAS, The above-mentioned right to construct highways across public lands, except those withdrawn from public use, effected a grant that was accepted whenever and wherever roads were constructed over unreserved federal land, and these public roads remain available to this day for public use; and

WHEREAS, Secretary of the Interior Gale Norton negotiated a Memorandum of Understanding for Acknowledging R.S. 2477 rights-of-way in Utah in 2003 without input from stakeholders; and

WHEREAS, Identifying, asserting, maintaining, and protecting legitimate rights-of-way can be useful to protect the state of Colorado's social and economic resources and to promote public health and safety, including but not limited to search and rescue, fire protection, health and law enforcement, and other emergency services; and

WHEREAS, The state of Colorado and its counties have a critical role to play regarding the inventorying, maintenance, and abandonment of roads, including R.S. 2477 rights-of-way, in manners that protect or enhance each

local jurisdiction's socio-economic status; and

WHEREAS, Colorado's national parks, national monuments, national wildlife refuges, wilderness, wilderness study areas, and other pristine wildlands provide a wealth of valuable resources and services, including fish and wildlife, drinking water, recreation, scenery, and tourism, and pride in natural heritage that benefit our state and local economies; and

WHEREAS, The wise management of these national parks, national monuments, national wildlife refuges, wilderness, wilderness study areas, and other pristine wildlands is in the best interest of the state and its counties; and

WHEREAS, R.S. 2477 rights-of-way across such lands could impact these enumerated values; and

WHEREAS, Entities can gain rights-of-way to cross millions of acres of Bureau of Land Management and U.S. Forest Service lands using the process and powers outlined in Title V of the "Federal Land Policy and Management Act of 1976"; and

WHEREAS, Federal public lands are generally open to pedestrian and equestrian travel, and thousands of miles of existing motor vehicle trails and roads currently traverse federal public lands; and

WHEREAS, The issue of outstanding R.S. 2477 rights-of-way has created uncertainty and confusion regarding county jurisdiction over and management of affected public lands in part because asserted rights-of-way traverse private, county, state, tribal, and federal land management boundaries, and all such claims should be resolved expeditiously within a set time; and

WHEREAS, When enacted, R.S. 2477 provided access across intervening federal land to the owners of landlocked parcels of private land, including farmers, miners, and homesteaders, but the statute has been illegitimately used in recent years to force roads across private land for public access to federal lands, including lands accessible by alternative routes; and

WHEREAS, The issue of outstanding R.S. 2477 rights-of-way has also resulted in conflicts concerning passage over private property that have in

some cases resulted in litigation, allegations of trespass, and property damage; and

WHEREAS, Maintenance across private property for these R.S. 2477 rights-of-way has remained the sole responsibility of the original private property owners even upon use by the public; and

WHEREAS, Congress has previously asserted its prerogative that it, and not any agency of the federal government, is the best venue for balancing the competing values involving R.S. 2477; now, therefore,

Be It Resolved by the Senate of the Sixty-fourth General Assembly of the State of Colorado:

That we, the members of the Senate of the Sixty-fourth General Assembly:

1. Recommend that legislation be adopted by Congress to resolve and address issues related to R.S. 2477 rights-of-way on federal, state, tribal, and private lands;
2. Urge that any such legislation should reflect input from the states and should carefully consider the numerous competing values at issue;
3. Acknowledge a county's right, title, and interest in legitimate and established R.S. 2477 rights-of-way, including the need to clarify the extent of a county's obligation to maintain any such right-of-way declared to be public; and

4. Support R.S. 2477 rights-of-way being identified and asserted as desired by counties after thorough public input processes that involve all stakeholders, including the owners of any affected lands.

Be It Further Resolved, That copies of this Resolution be sent to President George W. Bush, Secretary of the Interior Gale Norton, and the members of Colorado's congressional delegation.

John Andrews
PRESIDENT OF
THE SENATE

Mona Heustis
SECRETARY OF
THE SENATE