HJR

26

SENATE COMMITTEE REPORT

DATE: 2/17/10

FURTHER: Rules

DATE TURNED IN TO OFFICE: 4/9/10

Resources Committee considered HOUSE JOINT RESOLUTION NO. 26

HJR 26 STATEHOOD/ANCSA LAND SURVEY FUNDING

Urging the United States Congress to adequately fund land surveys in Alaska in order to issue patents to the State of Alaska and Alaska Native corporations.

and recommends:

[ ] be **replaced** with [ ] **SCS** or [ ] **CS** _____ (_____)

[ ] adopt **previous** [ ] **SCS** or [ ] **CS** _____ (_____)

[ ] attached amendment(s)

[ ] adopt _____ Letter of Intent

[ ] further referral to _____ Committee

SENATE BILL:
[ ] Same Title
[ ] New Title

HOUSE BILL:
[ ] Same Title
[ ] Technical Title Change
[ ] New Title w/ SCR #_____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#
H. RLS	2/15			✓	2

[ ] **APPROPRIATION - no fiscal note**

SIGNATURES AND RECOMMENDATIONS:	PRINTED LAST NAME	DO PASS	DO NOT PASS	NO REC	AMEND
	Stevens			✓	
	French			✓	
	WAGONER	X			
CO-CHAIR:	Wielechowski			✓	
CO-CHAIR:	McGuire	✓			

5010

PASSED

26-LS0739\R.2
Bullock
3/16/10

AMENDMENT #1

OFFERED IN THE SENATE

TO: HJR 26

Page 2, line 8:

Delete "December 31, 2008, more than 66,000,000"

Insert "January 31, 2010, more than 57,000,000"

Page 2, line 9:

Delete "40,000,000"

Insert "42,000,000"

Page 2, line 10:

Delete "14,000,000"

Insert "15,000,000"

Page 2, line 11:

Delete "12,000,000"

Insert "7,000,000"

5011

Alaska State Legislature

Representative Anna Fairclough – House District 17

House Joint Resolution 26

"Urging the United States Congress to adequately fund land surveys in Alaska in order to issue patents to the State of Alaska and Alaska Native corporations."

House Joint Resolution 26 urges the United States Congress to adequately fund land surveys in Alaska in order to issue patents to the State of Alaska and Alaska Native Corporations. This is critical concern in Alaska because surveys and subsequent land patents issued to the State and Native Corporations are critical to the future use and development of land in Alaska.

At Statehood, Alaska was granted a land entitlement from the federal government of 103,350,000 acres. Alaska Natives, through the Alaska Native Claims Settlement Act (ANCSA), were granted a land entitlement from the federal government of over 45 million acres. In 2004, Congress passed the Alaska Land Transfer Acceleration Act (ALTAA) with the intent of largely completing state and ANCSA land entitlements by 2009.

The United States Bureau of Land Management (BLM) has aggressively and diligently worked to implement the ALTAA, however, despite BLM's efforts, considerable land conveyance work remains to be accomplished, particularly in the area of land survey. Land surveys are necessary to issue patents to the state and ANCSA Corporations, and are essential to determining with certainty what lands are owned by the state and ANCSA corporations. This certainty regarding boundaries and ownership is needed long term for land use and development.

Congress provided interim title to the state and ANCSA corporations by granting Tentative Approval (TA) to the State and Interim Conveyance (IC) to ANCSA Corporations, but with the understanding that the land would eventually be surveyed and patent issued. Under both the Statehood Act and ANCSA, the federal government is responsible for preparing these land surveys. As of December 31, 2008, over 66 million acres of land still awaits patent in Alaska, including more than 40 million acres of land that has been TA'd to the State and 14 million acres IC'd to ANCSA corporations, and over 12 million additional acres await conveyance.

This resolution asks the United States Congress to budget sufficient funds to BLM to ensure the timely completion of land surveys in Alaska in order that land promised to Alaska Natives and the State of Alaska can be patented. This is especially important with current federal budget constraints.

I urge your support on the passage of this legislation.

Session: Alaska State Capitol • Juneau, AK 99801 • 907-465-3777 • Fax 907-465-2819
Interim: 10928 Eagle River Road, Suite 238 • Eagle River, AK 99577 • 907-694-8944 • Fax 907-694-8945
Representative_Anna_Fairclough@legis.state.ak.us

FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: HJR 26
(H) Publish Date: 4/7/2009

Identifier (file name):
Title STATEHOOD/ANCSA LAND SURVEY FUNDING
Sponsor REPRESENTATIVE FAIRCLOUGH, Joule, Foster, Thomas...
Requester

Dept. Affected:
RDU
Component
Component Number

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2010**	**FY 2010**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2009) cost:

POSITIONS

Full-time							
Part-time							
Temporary							

ANALYSIS: *(Attach a separate page if necessary)*

Prepared by: House Resources Committee
Division
Phone 465-3715
Date/Time

Approved by: Representative Craig Johnson, Co-Chair
House Resources Committee
Date 4/3/2009

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: HJR 26
() Publish Date: 2/15/2010

Identifier (file name):
Title STATEHOOD/ANCSA LAND SURVEY FUNDING
Sponsor REPRESENTATIVE FAIRCLOUGH, Joule, Foster, Thomas
Requester

Dept. Affected:
RDU
Component
Component Number

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2011**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**	**FY 2016**
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2010) cost:

POSITIONS

Full-time							
Part-time							
Temporary							

ANALYSIS: *(Attach a separate page if necessary)*

Prepared by: House Rules Committee
Division
Phone
Date/Time

Approved by: Representative Nancy Dahlstrom, Chair
House Rules
Date 2/15/2010

(Revised 11/6/2009 OMB)

5014

Order Code RL32734

CRS Report for Congress
Received through the CRS Web

The Alaska Land Transfer Acceleration Act: Background and Summary

January 14, 2005

Nathan Brooks
Legislative Attorney
American Law Division

5015

The Alaska Land Transfer Acceleration Act: Background and Summary

Summary

On December 10, 2004, the President signed into law P.L. 108-452, the Alaska Land Transfer Acceleration Act. The act represents an attempt to clear up the conflicting land claims of three distinct parties in Alaska – the State, Alaska Native Corporations, and Native allottees – in time for the fiftieth anniversary of Alaska's statehood in 2009. These claims are grounded in the Alaska Statehood Act, the Alaska Native Claims Settlement Act, and the Native Allotment Act of 1906. This report provides a background on these Acts, the claims they support, and a summary of the provisions of the Alaska Land Transfer Acceleration Act.

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5017

The Alaska Land Transfer Acceleration Act: Background and Summary

Introduction

On December 10, 2004, the President signed into law P.L. 108-452, the Alaska Land Transfer Acceleration Act. The act represents an attempt to clear up the land claims of various groups in Alaska in time for the fiftieth anniversary of Alaska's statehood in 2009. This report provides a background on these claims and a summary of the act's provisions.

Background

The Alaska Statehood Act ("the Statehood Act") was passed in 1958 and allowed the State to select for ownership approximately 104 million acres of unclaimed and unreserved federal land.[1] Soon after passage of the Statehood Act, however, Alaska natives began to challenge many of the State's selections, arguing that native lands were not available for State selection under the Statehood Act. In 1969, the Ninth Circuit ruled in favor of the Alaska natives,[2] making it difficult for the State to continue the selection process without clarification as to the specific boundaries of Alaska native lands. Congress attempted to resolve this problem in 1971 with the Alaska Native Claims Settlement Act[3] (ANCSA), which was designed to settle the aboriginal claims of the Alaska natives. ANCSA authorized the transfer of over 45 million acres of land and the payment of nearly $1 billion to Alaska Natives.

The ANCSA approach to the native land transfers is unique in its reliance on the corporate form. To manage the lands transferred to the Alaska natives, ANCSA created two tiers of Native Corporations: the Village Corporations, of which there are over 200; and the larger Regional Corporations, of which there are thirteen.[4] A Village Corporation files an application selecting certain lands and, if this application is approved, then the Village Corporation is conveyed title to the surface estate, while the Regional Corporation is generally conveyed title to the subsurface estate. The conveyance process is similar to the state application process, in that the Corporations first file applications for selections of land, which BLM then reviews and, if approved, surveys, transfers, and issues a final patent to the land to the appropriate Native Corporation.

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[1] P.L. 85-508 (72 Stat. 339). Alaska became a state the following year.

[2] *Alaska v. Udall*, 420 F.2d 938 (9th Cir. 1969).

[3] P.L. 92-203 (codified, as amended, at 43 U.S.C. §§ 1601-1629).

[4] ANCSA granted natives 100 shares of the Village and Regional Corporations in which they were enrolled.

The conveyance process has proven difficult to complete, due in large part to complications in the surveying of lands. Neither the Statehood Act conveyance process nor the ANCSA conveyance process has been completed. BLM estimates that, of the 104.5 million acres to which the State is entitled under the Statehood Act, BLM has completed the survey, transfer, and patent process for about 43 million acres. An additional 47 million acres have been transferred, but the State is still awaiting patent of those lands. This leaves 15 million acres on which, according to BLM, the conveyance process has not even begun.[5]

BLM further estimates that, of the 45.6 million acres to which the Native Corporations are entitled under ANCSA, BLM has issued final patents on approximately 18 million acres. BLM has transferred an additional 19 million acres that are still awaiting final patents. BLM officials say that they cannot complete the survey and conveyance process on the remaining 8.4 million acres of land for a variety or reasons, the primary one being that many of the Native Corporations have overselected lands beyond their entitlements.[6] The Native Corporations were encouraged to do this so that they would receive their full entitlement even if certain lands were not approved for transfer, but these overselections require BLM to determine which of the overselected lands will be used to fulfill the Corporations' entitlements.

Further complicating the land transfer process is the Native Allotment Act of 1906.[7] Under this act, Alaska Natives were authorized to acquire individual allotments of up to 160-acre parcels of unreserved and unappropriated land. Alaska Natives filed roughly 10,000 applications for 16,000 parcels of land before the Allotment Act was repealed by ANCSA.[8] In 1998, Congress passed the Alaska Native Veterans Allotment Act,[9] which allowed those Vietnam veterans who missed the opportunity to apply for allotments under the 1906 Act the chance to do so. BLM estimates that it still has pending applications for 3,256 acres of land under these two Acts,[10] all of which must be finalized before the State and ANCSA entitlements can be filled.

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[5] *See* S. Hrg. 108-416, *Alaska Native Subdivision Act; Alaska Land Transfer Facilities* (sic) *Act; Ojito Wilderness Act; and Inventory and Management Program for Public Domain Lands: Hearing Before the Subcommittee on Public Lands and Forests of the Committee on Energy and Natural Resources, United States Senate*, 108th Cong., 14 (2003) [hereinafter S. Hrg. 108-416] (prepared statement of Kathleen Clarke, Director, Bureau of Land Management).

[6] *Id.*

[7] 34 Stat. 197.

[8] *See* S. Hrg. 108-163, *Alaska Native Allotment Subdivision Act; Cape Fox Entitlement Act; Alaska Land Transfer Acceleration Act: Hearing Before the Subcommittee on Public Lands and Forests of the Committee on Energy and Natural Resources, United States Senate*, 108th Cong., 20 (2003) [hereinafter S. Hrg. 108-163] (testimony of Henri Bisson, State Director, Bureau of Land Management, Department of the Interior).

[9] 43 U.S.C. § 1629g.

[10] S. Hrg. 108-163, at 20 (testimony of Henri Bisson, State Director, Bureau of Land Management, Department of the Interior).

The entitlements created by the Statehood Act, ANCSA, and the Native Allotment Act have resulted in a tangled web of interests vying for a finite amount of land -- land which also happens to be the subject of very bitter, long-running disputes between environmental groups and private oil, timber, and mining interests. In 2001, BLM came up with a plan to complete the land transfer process by 2020. Many have expressed the strong desire, however, that the process be completed by 2009, the 50th anniversary of Alaska's statehood. In order to meet this deadline, BLM and the Department of the Interior requested legislative action to streamline a process that has traditionally moved very slowly. The Alaska Land Transfer Acceleration Act is Congress's response.

The Alaska Land Transfer Acceleration Act

Title I. Title I represents an attempt to speed up the State selection process. Under section 6(a) of the Statehood Act, the State is allowed to select 400,000 acres of national forest land and 400,000 acres of other public lands, all adjacent to existing communities. Approval authority for these community development grants is vested in the Secretary of Agriculture for national forest lands and in the Secretary of the Interior for all other public lands.[11] The Statehood Act requires BLM to convey tracts of at least 160 acres, but many pending applications for selections of public lands are in violation of this minimum tract requirement. Further, because the statutory application deadline has passed, these applications cannot be amended, giving the Secretary of the Interior no alternative but to reject the applications.[12] The act waives the minimum tract requirement for five grant applications totaling almost 400 acres.[13] In addition, the act approves any community grant applications for other public lands on file with the Interior Secretary on the date of enactment.[14]

Many of the State's current community grant selections are in areas likely to be conveyed to ANCSA corporations, which could leave the State without sufficient remaining selections to fulfill its community grant entitlement to 400,000 acres. To remedy this problem, the act allows the State to convert selection applications from its much larger general entitlement under section 6(b) of the Statehood Act[15] into community grant selection applications.[16] These 6(b) entitlements amount to more than 102 million acres of vacant, unappropriated, and unreserved federal lands, and cannot be selected from national forests.

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[11] P.L. 85-508, § 6(a) (note preceding 43 U.S.C. § 21).

[12] This information was provided to the author in phone interviews with BLM officials.

[13] P.L. 108-452, § 101(a). The five areas are: Yakutat Airport; Bear Valley (Portage); hyder-Fish Creek; Elfin Cove; Edna Bay Admin Site; and Point Hilda. *Id.*

[14] *Id. See* S. Hrg. 108-163, at 20 (testimony of Henri Bisson, State Director, Bureau of Land Management, Department of the Interior).

[15] P.L. 85-508, § 6(b) (72 Stat. 340).

[16] P.L. 108-452, § 101(b)

When Congress enacted the Alaska National Interests Land Conservation Act[17] (ANILCA) in 1980, Congress granted the State the ability to prioritize its selections. The act clarifies the State's responsibilities as to these prioritizations.[18] Some of the lands prioritized by the State have a reversionary interest vested in the United States, as the statutes under which the lands were conveyed to the State require the federal government to retain such an interest to ensure the lands are used consistent with the respective purposes of the conveyances. The act allows the State to fulfill its land entitlement by selecting these reversionary interests.[19] This would have the effect of removing the federal government's control and oversight of these lands, and possibly allowing development inconsistent with any surrounding federal lands. In testimony before a Senate Subcommittee, a BLM official conceded that much of these lands are within National Wildlife Refuges, but argued that the lands are generally adjacent to towns and villages and are already developed in ways beneficial to the local communities (e.g., they have schools or community centers built on them).[20]

Since the passage of ANILCA, the State has been allowed to fulfill its 6(a) and 6(b) entitlements by selecting lands that are presently withdrawn for some other purpose but may become open for selection at a future date.[21] The State is still waiting for much of the land selected according to these so-called "top filings" to become available. The act makes available eight parcels of land top-filed for selection that were previously reserved for power projects or withdrawn as hot or medicinal springs.[22] The act excludes land within conservation system units (CSUs)[23] from availability under this provision.[24]

Congress in 1929 granted a 100,000-acre land entitlement to the University of Alaska,[25] but disputes abound as to just how much land remains to be conveyed under this entitlement. The act sets the remaining entitlement at 456 acres, and allows the State, on behalf of the University, to fulfill the University's entitlement by selecting mineral interests in land, the unreserved portion of which is held by the University,

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[17] P.L. 96-487 (codified, as amended, at 16 U.S.C. § 3101 et seq; 43 U.S.C. §§ 1631-1641).

[18] P.L. 108-452, § 102.

[19] *Id.* at § 103.

[20] S. Hrg. 108-163, at 20 (2003) (testimony of Henri Bisson, State Director, Bureau of Land Management, Department of the Interior).

[21] 43 U.S.C. § 1635(e). The State cannot, however, select land within a conservation system unit or the Alaska National Petroleum Reserve. *Id.*

[22] P.L. 108-452, § 104(a). These parcels are in the following areas: Bradley Lake; Eagle River/Ship Creek/Peters Creek; Salmon Creek; Nenana River; Solomon Gulch at Valdez; and Kruzgamepa River Pass Creek. *Id.*

[23] ANILCA defines CSUs as any unit of Alaska land within the National Park System, National Wildlife Refuge System, National Wild and Scenic Rivers System, National Trails System, National Wilderness Preservation System, or a National Forest Monument. 16 U.S.C. § 3102(4).

[24] P.L. 108-452, § 104(b).

[25] Act of January 21, 1929, Chap. 92 (45 Stat. 1091).

or the United States' reversionary interests in land, the unreserved portion of which is held by the University.[26]

The act grants the Secretary of the Interior the flexibility to enter into binding agreements with the State to finalize Alaska's entitlements under the Statehood Act.[27] In addition, the act allows the State to select or top-file specific parcels of land in the Chugach National Forest and the Trans-Alaska Pipeline System that were mistakenly omitted from previous applications or top-filings.[28]

The act institutes a streamlined procedure for the conversion of certain federal mining claims to state mining claims.[29] Some lands selected by the State are encumbered by federal mining claims, making the lands unavailable for selection. The surrounding lands can be conveyed to the State, but that creates isolated tracts of federal land which BLM has complained are very difficult to manage.[30] The act allows for the holder of a valid federal mining claim on State-selected or top-filed lands to relinquish that claim and have it converted to a state mining claim. The lands attached to the mining claim are then transferred to the State so long as the land was selected or top-filed as of January 3, 1994.[31]

Title II. Title II of the act attempts to finalize the Regional and Village Corporation land selections under ANCSA. Under ANCSA, Regional and Village Corporations had a limited time in which to select lands, and could only select lands that were available during that period. In other words, they did not have the option to "top-file" withdrawn lands for future selection when they became available. Title II of the act allows the Corporations to select previously unavailable land that is part of or adjacent to a town in which a Village Corporation is located.[32]

Section 12 of ANCSA gave the Village Corporations two separate selections of land: selections of land within which the Native Villages were located ("12(a) selections"); and excess land reallocable to the Village Corporations by the Regional Corporations on an equitable basis ("12(b) selections").[33] The Regional Corporations have been slow to reallocate the 12(b) lands, and the act requires the Regional Corporations to complete the process by October 1, 2005.[34] The act also attempts to counter the effects of overselections and ease BLM's surveying duty by allowing the 12(a) and 12(b) selections to be combined for the purpose of surveying and

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[26] P.L. 108-452, § 105.

[27] *Id.* at § 106.

[28] *Id.* at § 108.

[29] *Id.* at § 107.

[30] *See* S. Hrg. 108-163, at 10 (prepared statement of Henri Bisson, State Director, Bureau of Land Management, Department of the Interior).

[31] P.L. 108-452, § 107.

[32] *Id.*, at § 201(a).

[33] 43 U.S.C. § 1611(a), (b).

[34] P.L. 108-452, § 202(1).

conveying those lands.[35] If a village has overselected its 12(a) lands, for example, it can take a smaller amount of 12(b) lands to fulfill its entitlement.

BLM has argued that one of the primary obstacles to completing the conveyance process is the requirement that BLM survey down to the very last acre to ensure that conveyances do not exceed the Corporation's entitlement. According to BLM, this often takes more than one field survey season to accomplish.[36] The act addresses this problem by allowing the Interior Secretary to enter into an agreement with the affected Corporation, according to which the Secretary conveys some or all of the next whole prioritized section (640 acres) of land if doing so would satisfy that Corporation's entitlement.[37] Exactly how much the Secretary is allowed to "round up" under this provision depends on the status of the land:

- If the land is managed by BLM and is not within a CSU, then the Secretary can convey the next whole section;
- If the land is not within a CSU and is managed by an agency other than BLM, then the Secretary can convey the next quarter-section (with the concurrence of the other agency); and
- If the land is within a CSU, then the Secretary can convey the next quarter of a quarter-section (if managed by an agency other than BLM, then the concurrence of that agency is also required).[38]

ANCSA authorized the Secretary of the Interior to withdraw 2 million acres of unreserved and unappropriated public lands and convey them to Corporations and Native groups for special situations and purposes, such as cemetery land and reserved mineral charges against Regional Corporation entitlements.[39] Delays in finalizing these conveyances have, according to BLM, created significant delays in enabling Regional Corporations to know their final entitlements.[40] The act creates an expedited process for the conveyance of roughly 1,800 existing cemetery and historical sites.[41] According to ANCSA, any of these 2 million acres of special purpose land left over are to be distributed among the Regional Corporations

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[35] *Id.* at § 202(2).

[36] *See* S. Hrg. 108-163, at 11 (prepared statement of Henri Bisson, State Director, Bureau of Land Management, Department of the Interior).

[37] P.L. 108-452, § 203.

[38] *Id.*

[39] 43 U.S.C. § 1613(h).

[40] *See, e.g.*, S. Hrg. 108-163, at 11 (prepared statement of Henri Bisson, State Director, Bureau of Land Management, Department of the Interior).

[41] P.L. 108-452, § 204. The act also requires that Regional Corporations filing applications for historic sites under this provision must include statements of the historical significance of the site within one year of the bill's passage. *Id.*

according to population.[42] Determining just how much remains of that 2 million acres has proved difficult, however, and so the act deems there to be 200,000 acres remaining to be divided.[43]

The act provides that if a Regional Corporation does not have sufficient land selected to fulfill its entitlement under the remainder provision, then the Secretary may withdraw land to fulfill that entitlement, so long as the land is vacant, unappropriated, and unreserved.[44]

Section 17(d)(1) of ANCSA gave the Secretary of the Interior the authority to withdraw lands for further study and reclassify them for various uses in the public interest.[45] Much of this land remains withdrawn today but has yet to be reclassified, and the question of what to do with these "lingering withdrawals" - estimated by BLM to comprise over 53 million acres of land - proved to be one of the most controversial aspects in the debates leading to the passage of the act.[46] Of this 53 million acres, BLM estimates that roughly 28 million acres are selected by the State, a Native Corporation, or both, leaving 25.3 million acres potentially open for economic activities under federal law should the lands withdrawn under 17(d)(1) be opened up.[47] The act requires that, within 18 months of its enactment, the Interior Secretary must conduct a review of these lingering withdrawals and submit a report to the Senate Energy Committee and the House Resources Committee identifying portions that can be opened up for appropriation.[48]

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[42] 43 U.S.C. § 1613(h)(8)(A).

[43] P.L. 108-452, § 205. There are two minor exceptions: the Chugach Native Corporation's portion of the 200,000 acres is determined according to a 1982 agreement with the Corporation; and Cook Inlet Region's portion is held by the United States. *Id.*

[44] *Id.* at § 206.

[45] 43 U.S.C. § 1616(d)(1).

[46] The first few versions of S. 1466, which eventually became P.L. 108-452, would have vested the Interior Secretary with varying degrees of discretion to open and/or close these lands, touching off a debate between the mining and environmental communities. While the mining interests argued that the Secretary should only have the authority to *open* these lands, environmental groups countered that the Secretary should only be able to *close* them. In addition, the environmental groups did not want the Interior Secretary to be able to open these lands without going through the process mandated by the Federal Land Policy Management Act (FLPMA) (43 U.S.C. § 1701 et seq.). FLPMA requires that the Secretary develop land use plans governing management of public lands considering, among other things, present and potential uses, principles of sustained yield, long term vs. short-term benefits to the public, and compliance with applicable pollution control laws (43 U.S.C. § 1712(c)). For both sides of these debates, *see* S. Hrg. 108-163, at 32 (prepared statement of Steven C. Borrell, Executive Director, Alaska Miners Association, Inc.); and S. Hrg. 108-163, at 60 (statement of Eleanor Huffines, Alaska Regional Director, and Allen E. Smith, Alaska Senior Policy Analyst, the Wilderness Society).

[47] These statistics were provided to CRS by BLM's Alaska Office.

[48] P.L. 108-452, § 207. In conducting this review, the Secretary must provide for public notice and comment. *Id.*

While overselection of lands by Native Corporations presents practical obstacles to the completion of the land transfer process, there is also a relatively small number of Corporations that have not selected enough lands to fulfill their entitlements. Federal officials have been grappling with these "underselections" for years; Congress included in ANILCA a process for dealing with underselections,[49] but BLM argued that this process is too cumbersome.[50] This process includes two steps. First, the Secretary issues a Public Land Order (PLO) withdrawing twice the amount of land necessary to fulfill the Corporation's entitlement. Then, the Corporation has ninety days in which to file an application selecting from that amount enough land to fulfill its entitlement.[51] The act allows the parties to agree in advance which lands are to be selected. The Secretary may then withdraw the agreed-upon amount of land, which the Corporation would formally select.[52]

Similar to the authority that granted to the Secretary of the Interior to negotiate with the State to finalize its entitlements, the act grants the Secretary that same authority with regards to the Native Corporations.[53]

Title III. In 2003, BLM estimated that the remaining pending allotment applications totaled 3,256 acres of land, approximately 1,100 acres of which were erroneously conveyed to the State or to Native Corporations, and so no longer belong to the United States.[54] Recovery of title[55] of these lands has proven especially difficult, and the act seeks to ameliorate this problem by allowing the Secretary of the Interior to either correct erroneous conveyances (i.e., the conveyances that caused the lands to pass from the federal government's ownership in the first place) to exclude allotment land[56] or enter into agreements with Native Corporations whereby the Corporations reconvey the land to the United States.[57]

If the parties cannot agree to use the processes described above, then the act allows the State or Native Corporation to enter into an agreement with the applicant in which the applicant would receive substitute Native Corporation lands in place of

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[49] 43 U.S.C. § 1621(j)(2).

[50] *See* S. Hrg. 108-163, at 10 (prepared statement of Henri Bisson, State Director, Bureau of Land Management, Department of the Interior).

[51] 43 U.S.C. § 1621(j)(2).

[52] P.L. 108-452, § 208.

[53] *Id.* at § 209.

[54] *See* S. Hrg. 108-163, at 9 (prepared statement of Henri Bisson, State Director, Bureau of Land Management, Department of the Interior).

[55] For many years, the Department of the Interior routinely denied allotment applications for land conveyed to the State or Village Corporations. In 1979, however, a federal District Court ruled this was illegal, and ordered the Department to recover title to such lands. *Ethel Aguilar v. United States*, 474 F. Supp. 840 (D. Alaska 1979).

[56] P.L. 108-452, § 301.

[57] *Id.* at § 302.

those originally included in the allotment application.[58] If, as a result of any of the processes described above or any other effort to accelerate the Alaska land transfers, the State or a Native Corporation loses land in relation to its entitlement, then the Secretary of the Interior is empowered to adjust the remaining entitlement accordingly.[59]

The act allows for the reinstatement or reconstruction of previously closed allotment applications, and authorizes the Interior Secretary to seek the voluntary reconveyance of the land described in the application.[60] Native Veterans are allowed to amend their applications to include land valuable for its sand and gravel deposits, unless that land is part of a National Park.[61] In addition, the act amends the process for determining cause of death for applications filed on behalf of deceased Native Veterans to ensure that such determinations are supported by sufficient evidence.[62]

Title IV. In order to complete the land transfers by 2009, the act establishes sequential deadlines for prioritizing selections, with six-month intervals in between to allow the next group in line to know what the preceding group chose. The deadlines would expire in the following order: 1) Village Corporations;[63] 2) Regional Corporations;[64] and 3) the State.[65]

Title V. The act authorizes the Secretary of the Interior to establish a field office of DOI's Office of Hearings and Appeals in Alaska to handle disputes related to the Alaska land transfers.[66]

Title VI. The act requires the Secretary of the Interior, within three years of the bill's passage, to submit to Congress a report including a statement of progress on the Alaska land transfers and recommendations for completing the conveyances.[67] Finally, the act authorizes the appropriation of the sums necessary to carry out the purposes of the act.[68]

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[58] *Id.* at § 303.

[59] *Id.* at § 304.

[60] *Id.* at § 305.

[61] *Id.* at § 306.

[62] *Id.*

[63] *Id.* at § 403(a)(1).

[64] *Id.* at § 403(a)(2).

[65] *Id.* at § 404.

[66] *Id.* at § 501.

[67] *Id.* at § 601.

[68] *Id.* at § 602.

HOUSE COMMITTEE REPO

(9)
Date Referred to Committee: March 18, 2009 **FURTHER REFERRALS:**

Date of Committee Action: 4/6/09

The RESOURCES Committee considered: **HOUSE JOINT RESOLUTION NO. 26**

Urging the United States Congress to adequately fund land surveys in Alaska in order to issue patents to the State of Alaska and Alaska Native corporations.

HJR 26 STATEHOOD/ANCSA LAND SURVEY FUNDING

Recommends it be replaced with [ ] HCS *or* [ ] CS *for* _____ (_____)
For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR_____ **[ ] Same Title [ ] New Title**

[ ] attach amendments
[ ] add new referral to _____ Committee
[ ] Letter of Intent _____ Committee

List of Abbrev for Depts:
ADM
CED
COR
CRT
EED
DEC
DFG
GOV
DHS
LWF
LAW
LEG
MVA
DNR
DPS
REV
DOT
UA

NEW **FISCAL NOTES** *Assigned by Chief Clerk's Office				
List by Dept(s):	*FN#	Fiscal	Indet.	Zero
LEG				

PREVIOUS **FISCAL NOTES**				
List by Dept(s):	FN#	Fiscal	Indet.	Zero

Signing with recommendations	Printed Last Name	DP	DNP	NR	AM
	OLSON			✓	
	SEATON			✓	
	TUCK			✓	
	WILSON	✓			
Chair:	JOHNSON	✓			
Chair:	C. ELKINS	✓			