11690 HOUSE STATE AFFAIRS

HJR

25

HOUSE COMMITTEE REPO[illegible]

(7)
Date Referred to Committee: February 17, 2006 **FURTHER REFERRALS:**

Date of Committee Action: 3/2/06

The STATE AFFAIRS Committee consi[illegible]ed: **HJR 25**

HOUSE JOINT RESOLUTION [illegible]O. 25 **SUPPORTING VETERANS HOME OWNERSHIP ACT**

Urging the United States Congress to enact the American Veterans Homeownership Act of 2005.

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
HSS
LEG
LAW
LWF
MVA
DNR
DPS
REV
DOT
UA

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

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

Signing with recommendations	Print Last Name	DP	DNP	NR	AM
Betta Gardner	Gardner	X			
[illegible]	LYNN	X			
[illegible]	Gatto	X			
Chair: Paul K Seaton	SEATON	X			
Chair:					

CS FOR HOUSE JOINT RESOLUTION NO. 25(MLV)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - SECOND SESSION

BY THE HOUSE SPECIAL COMMITTEE ON MILITARY AND VETERANS' AFFAIRS

Offered: 2/17/06
Referred: State Affairs

Sponsor(s): REPRESENTATIVES KERTTULA, Gruenberg, Gara, Dahlstrom, Lynn

A RESOLUTION

Urging the United States Congress to adopt the United States House of Representatives version of the Tax Relief Extension Reconciliation Act of 2005, ~~including~~ sec. 303.

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

WHEREAS a large number of Alaskans are currently serving or have served in the military; and

WHEREAS the Alaska veterans mortgage program is currently restricted by a 1986 federal tax code provision that provides tax-exempt bonds for housing loans for veterans to only those veterans who served before January 1, 1977; and

WHEREAS, in 2005, the number of veterans in Alaska who qualified for and applied for loans funded by tax-exempt bonds for housing loans for veterans has decreased to fewer than 60; and

WHEREAS the courageous men and women of Alaska who serve in the armed forces and make sacrifices for our country should all be entitled to low-cost veterans' housing loans;

BE IT RESOLVED that the Alaska State Legislature requests that the United States Congress include in the final conference report of the Tax Relief Extension Reconciliation Act of 2005, H.R. 4297, sec. 303, repealing the requirement that a veteran must have served

in the military before January 1, 1977, in order to qualify for a veterans' housing loan.

COPIES of this resolution shall be sent to the Honorable George W. Bush, President of the United States; the Honorable Richard B. Cheney, Vice-President of the United States and President of the U.S. Senate; the Honorable Bill Frist, Majority Leader of the U.S. Senate; the Honorable Harry Reid, Minority Leader of the U.S. Senate; the Honorable J. Dennis Hastert, Speaker of the U.S. House of Representatives; the Honorable John Boehner, Majority Leader of the U.S. House of Representatives; the Honorable Nancy Pelosi, Minority Leader of the U.S. House of Representatives, the Honorable Larry Craig, Chair of the U.S. Senate Committee on Veterans' Affairs; the Honorable Steve Buyer, Chair of the U.S. House of Representatives Committee on Veterans' Affairs; the Honorable Frank H. Murkowski, Governor of Alaska; the Honorable Ted Stevens and the Honorable Lisa Murkowski, U.S. Senators, and the Honorable Don Young, U.S. Representative, members of the Alaska delegation in Congress; and, by electronic transmission, all other members of the U.S. Senate and the U.S. House of Representatives serving in the 109th United States Congress.

Representative Beth Kerttula

Alaska State Legislature District 3

Sponsor Statement
House Joint Resolution 25
Supporting Veterans Home Ownership Act

Alaska is one of five states participating in the Veterans Homeownership Program, which makes low-interest home loans available to veterans who served before 1977 and apply within 30 years of leaving active military duty. Unless Congress takes action to extend the program, its effectiveness will dwindle as less and less veterans qualify.

With about 70,500 veterans, Alaska has the largest per capita population of veterans in the United States. Approximately 11,700 Alaskan veterans have benefited from the program since 1983. During the first three years of the program, over 1,000 veterans per year qualified for the loan. Last fiscal year, the number was down to 57.

The American Veterans Homeownership Act, repealing the pre-1977 service requirement, was inserted into the Tax Reconciliation Bill last year. The U.S. House of Representatives approved a version of the Tax Reconciliation Bill with the language, but the U.S. Senate's version doesn't have the language.

HJR 25 urges Congress to approve the American Veterans Homeownership Act language in the U.S. House version of the Tax Reconciliation Bill. This program is a way for our nation to express its gratitude to those who have served in the armed forces and should be extended to benefit current and future veterans.

State Capitol ⋄ Juneau, Alaska 99801-1182 ⋄ (907) 465-4766 ⋄ Fax (907) 465-4788
E-mail: Rep.Beth.Kerttula@legis.state.ak.us ⋄ http://www.kerttula.net

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: CSHJR 25(MLV)
(H) Publish Date: 17/2006

Revision Date/Time (Note if correction):
Dept. Affected:
Title: Supporting Veterans Homeownership
RDU
Component
Sponsor: Representative Kerttula
Requester: House Military & Veterans' Affairs
Component No.

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
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
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 (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2005) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

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

Prepared by: Nancy Manly, Committee Aide
Phone 907-465-2794
Division: House Special Committee on Military and Veterans' Affairs
Date/Time 2/17/06 10:21 AM
Approved by: Representative Lynn
Date 2/17/2006
Agency: Chairman

(Revised 9/23/2004 OMB)

Available Combinations

In addition to possible use of FHA, VA, or RD, this program may be combined with other AHFC programs, including Energy Efficiency Interest-Rate Reduction (EEIRR) Program, Interest-Rate Reduction for Low-Income Borrowers (IRRLIB) Program, and Affordable Housing Enhanced Loan Program (AHELP), provided both borrower and property meet all the program criteria for any combined programs used.

Alaska Housing Finance Corporation
4300 Boniface Parkway
PO Box 101020
Anchorage, AK 99510-1020
907-338-6100
1-800-478-AHFC (2432)

Interest Rate Hotline
907-330-8400
1-888-854-3884
(toll-free statewide)

www.ahfc.us

1/05

How To Apply

To apply for an AHFC mortgage, contact any AHFC-approved lender. **Note: Other lenders may originate AHFC loans in partnership with an AHFC-approved lender.**

AHFC Lenders

- Alaska First Bank & Trust
- Alaska Pacific Bank
- Alaska USA Mortgage Company
- Central Pacific Mortgage Company
- Countrywide Home Loans
- Denali State Bank
- First Bank
- First National Bank Alaska
- GMAC
- Guild Mortgage
- Homestate Mortgage Company
- Kodiak Island Housing Authority
- Mt. McKinley Mutual Savings Bank
- Northern Schools Federal Credit Union
- Pacific Alaska Mortgage
- Residential Mortgage
- Seattle Mortgage Company
- Tlingit-Haida Regional Housing Authority
- Wells Fargo Home Mortgage

Veterans Mortgage Program (VMP)

Veterans Mortgage Program (VMP)

Please note: This program is not the same as a Veterans Administration (VA) Guaranteed Loan. However, a VA Guarantee may be used with this program.

Under this program, certain eligible veterans may obtain financing at a lower interest rate, because the funds come from tax-exempt bonds.

Eligible Properties

Owner-occupied, single-family residences, condos, PUDs, Type 1 mobile homes, and duplex, triplex, and four-plex dwellings are eligible for this program. On multi-family dwellings, all units must have been in existence and initially occupied as a multi-family dwelling at least five years immediately preceding execution of the new mortgage.

Terms

Loan is a fixed interest rate and may be either a 15-year or 30-year loan.

Interest Rates

Interest rates for this program fluctuate. For the current rate, contact an AHFC-approved lender, or AHFC's interest rate hotline or Web site.

Loan Limits

Loan limits periodically change. For the most current loan limits, contact any AHFC-approved lender.

Borrowers' Eligibility

A person is a qualified veteran for purposes of this program if the person satisfies the following requirements:

The person has served on full-time duty, other than for training, in a branch of the Armed Forces; AND

- **was on active duty* prior to January 1, 1977; AND**
- **was not discharged from active duty more than 30 years prior to the date of submission of the loan file to AHFC; AND**
- **if retired, discharged, or released, separation was under conditions other than dishonorable.**

*** Active duty which began after 1/1/77 is ineligible, even if the veteran enlisted under a deferred entry prior to that date.**

This program is also available to certain individuals in the Public Health Service and military academies, or certain individuals in NOAA or CGS. Contact your lender for qualifying criteria if you are in one of these career fields.

If there is more than one borrower and the applicants are unmarried, then both borrowers must be qualified veterans.

Documentation Required

The following two items must be submitted to determine the borrower's eligibility: (1) DD-214 or Statement of Service and (2) Certificate of Veteran Eligibility or Title 38 Letter.

Down Payment Required

Conventional loans require a minimum down payment of 5% on a single-family residence and 10% on a duplex. A minimum of 20% down is required on all triplex and four-plex residences for conventional financing.

If the loan is federally insured or guaranteed—Veterans Administration (VA), USDA Rural Development (RD), or Federal Housing Administration (FHA)—the down payment required is generally lower.

Assumptions

Loans made under VMP are assumable by buyers who qualify under this program.

Feb 2, 2006

To: Hannah
From: Dennis

QVMB program statistics FY 1998 – FY 2006

FY Year	number of loans	dollar volume
1998	597	93,885,910
1999	540	91,249,038
2000	496	85,877,200
2001	430	73,184,764
2002	315	59,339,089
2003	187	38,782,068
2004	125	25,472,549
2005	57	12,260,899
2006 (thru 01/31)	27	7,291,794

United States Senate

WASHINGTON, DC 20510

January 13, 2006

The Honorable Charles Grassley
Chairman
Committee on Finance
Subcommittee on Defense
219 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Max Baucus
Ranking Member
Committee on Finance
Subcommittee on Defense
219 Dirksen Senate Office Building
Washington, DC 20510

Dear Senator Grassley and Senator Baucus:

We are writing to request your support for Section 303 (Veterans' Mortgage Bonds) of the House's version of the Tax Reconciliation bill. We strongly urge you to support its inclusion in the final conference report.

Under current law, California, Texas, Wisconsin, Oregon, and Alaska have the ability to issue tax-exempt bonds, the proceeds of which are used to finance mortgage loans to veterans. These loans can only be made to veterans who served on active duty before 1977 and who applied for the financing within 30 years of the last date of their active service. As a result of these limits, veterans of Operation Iraqi Freedom, Operation Enduring Freedom, Kosovo, Bosnia, Haiti, Somalia and the 1991 Persian Gulf War are not eligible for these mortgage loans.

Section 303 of the House bill would repeal the requirement that veterans receiving loans must have served in the military before 1977. This change would ensure that we can continue to honor and reward our veterans by offering them low-cost home loans. Our veterans deserve this benefit, and we urge you to work to see that Section 303 is retained in the final conference agreement.

Thank you for working with us on this important issue.

Sincerely,

Gordon H. Smith
United States Senate

Lisa Murkowski
United States Senate

Herb Kohl
United States Senate

Dianne Feinstein
United States Senate

Ron Wyden
United States Senate

John Cornyn
United States Senate

Barbara Boxer
United States Senate

Russell D. Feingold
United States Senate

Statement of
Congressman Paul Ryan (WI-01)
On the introduction of
The American Veterans Homeownership Act of 2005
June 16, 2005

Mr. Speaker, I, along with Congressman Wally Herger, introduced today, the American Veterans Homeownership Act of 2005, and I ask my colleagues to support this legislation.

As you know, under current law, the States of Alaska, California, Oregon, Texas and my home state of Wisconsin, have the authority to issue tax-exempt bonds, which are called Qualified Veterans Mortgage Bonds (QVMBs). The proceeds of these bonds are used to finance mortgage loans to veterans who served on active duty before 1977 and who applied for the financing before the date of 30 years after the last date of which the veteran left active service.

As a result of the limits under current law, veterans of Operation Iraqi Freedom, Operation Enduring Freedom, Kosovo, Bosnia, Haiti, Somalia and the 1991 Persian Gulf War are not eligible for these mortgage loans that are financed by QVMBs. In addition, the QVMB program has, in effect, ended or is ending in the five affected states due to the current 30-year time limitation.

My legislation, the American Veterans Homeownership Act of 2005, would allow all veterans in these five States to be eligible for QVMB-financed mortgage loans by repealing the requirement that veterans receiving loans financed by QVMBs must have served before 1977 and would provide new State limits for these bonds. These veterans deserve the homeownership opportunities this program provides. I ask my colleagues to join me in supporting these veterans and cosponsor this important legislation.

American Veterans Homeownership Act of 2005 (Introduced in House)

HR 2952 IH

109th CONGRESS

1st Session

H. R. 2952

To amend the Internal Revenue Code of 1986 with respect to the eligibility of veterans for mortgage bond financing, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

June 16, 2005

Mr. RYAN of Wisconsin (for himself and Mr. HERGER) introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To amend the Internal Revenue Code of 1986 with respect to the eligibility of veterans for mortgage bond financing, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the `American Veterans Homeownership Act of 2005'.

SEC. 2. ALL VETERANS ELIGIBLE FOR STATE HOME LOAN

PROGRAMS FUNDED BY QUALIFIED VETERANS' MORTGAGE BONDS.

(a) In General- Section 143(l)(4) of the Internal Revenue Code of 1986 (defining qualified veteran) is amended--

(1) by striking 'at some time before January 1, 1977' in subparagraph (A), and

(2) by striking subparagraph (B) and inserting the following:

'(B) who applied for the financing before the date 25 years after the last on which such veteran left active service.'.

(b) Effective Date- The amendments made by this section shall apply to financing provided and mortgage credit certificates issued after June 30, 2005.

SEC. 3. REVISION OF STATE VETERANS LIMIT.

(a) In General- Subparagraph (B) of section 143(l)(3) of the Internal Revenue Code of 1986 (relating to volume limitation) is amended to read as follows:

'(B) STATE VETERANS LIMIT- A State veterans limit for any calendar year is the amount equal to--

'(I) $215,000,000 for the State of Texas,

'(ii) $265,000,000 for the State of California,

'(iii) $100,000,000 for the State of Oregon,

'(iv) $100 000,000 for the State of Wisconsin, and

'(v) $100,000,000 for the State of Alaska.'.

(b) Effective Date- The amendment made by this section shall apply to bonds issued after December 31, 2005.

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H.R.4297

Tax Relief Extension Reconciliation Act of 2005 (Engrossed as Agreed to or Passed by House)

SEC. 303. VETERANS' MORTGAGE BONDS.

(a) All Veterans Eligible for State Home Loan Programs Funded by Qualified Veterans' Mortgage Bonds-

(1) IN GENERAL- Paragraph (4) of section 143(l) (defining qualified veteran) is amended--

(A) by striking 'at some time before January 1, 1977' in subparagraph (A), and

(B) by striking subparagraph (B) and inserting the following:

'(B) who applied for the financing before the date 25 years after the last date on which such veteran left active service.'.

(2) EFFECTIVE DATE- The amendments made by this subsection shall apply to financing provided after the date of the enactment of this Act.

(b) Revision of State Veterans Limit-

(1) IN GENERAL- Subparagraph (B) of section 143(l)(3) (relating to volume limitation) is amended to read as follows:

'(B) STATE VETERANS LIMIT-

'(i) IN GENERAL- A State veterans limit for any calendar year is the amount equal to--

'(I) $53,750,000 for the State of Texas,

`(II) $66,250,000 for the State of California,

`(III) $25,000,000 for the State of Oregon,

`(IV) $25,000,000 for the State of Wisconsin, and

`(V) $25,000,000 for the State of Alaska.

`(ii) PHASEIN- In the case of calendar years beginning before 2010, clause (i) shall be applied by substituting for each of the dollar amounts therein by the applicable percentage. For purposes of the preceding sentence, the applicable percentage shall be determined in accordance with the following table:

Applicable

`Calendar Year:

percentage is:

2006

20 percent

2007

40 percent

2008

60 percent

2009

80 percent.

`(iii) TERMINATION- The State veterans limit for any calendar year after 2010 is zero.'.

(2) EFFECTIVE DATE- The amendment made by this subsection shall apply to bonds issued after December 31, 2005.

SEC. 304. CAPITAL GAINS TREATMENT FOR CERTAIN SELF-CREATED MUSICAL WORKS.

(a) In General- Subsection (b) of section 1221 (relating to capital asset defined) is amended by redesignating paragraph (3) as paragraph (4) and by inserting after paragraph (2) the following new paragraph:

HJR

27

FILE 1

Concerning the Land for "NATIVE Veterans", (what the Article says IN ONM) really its FOR VeitNAM VETS., WHO Deserve the Land NO MORE then many other "Natives", WHO Couldnt Apply, DIDNT FOR a # OF "Reasons" - THIS IS JUST ANOTHER way these vets are Play the, AFRim. Action/ diversity 1st/ "Special Intrest Group Card, as they Have FOR many years w/ GOUT JOBS, Favorable treatment AT Vet Centers, ETC, AND NOW EVEN Pres. OF The USA (Dont Let them WIN) (FM Native, USMC VET LIFETIME AC, Soberlgyr

24-LS0291\F.3
Bullock
4/17/06

AMENDMENT

OFFERED IN THE HOUSE BY REPRESENTATIVE SEATON

TO: CSHJR 27(MLV)

Page 2, line 24, following "States;":

Insert "and

WHEREAS the policy of the federal government over the past several decades has been to acquire inholdings in national parks and national monuments to provide for contiguous and manageable units; and

WHEREAS it is in the interest of national security to reserve and maintain for tactical purposes a system of federal military bases and training land in Alaska that does not contain private inholdings; and

WHEREAS it is in the long-term economic interest of the state to ensure that the construction of the proposed Alaska natural gas pipeline is not stalled or otherwise slowed because of the establishment of private allotments in the proposed Alaska natural gas pipeline right-of-way;"

Page 2, following line 27:

Insert a new clause to read:

"**FURTHER RESOLVED** that the United States Congress is urged to prohibit the selection of allotments in national parks, national monuments, military bases or installations, or the right-of-way for a proposed Alaska natural gas pipeline; and be it"

ALASKA STATE HOUSE OF REPRESENTATIVES

Session Contact:
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FAX# (907)-465-3258
North Pole, AK 99705
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(907)-488-5725
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Fax# (907)-488-4271

REPRESENTATIVE JOHN COGHILL

HJR 27
"The Alaska Native Vietnam Veterans Allotment Act"

SPONSOR STATEMENT

This Act urges Congress to reopen the legislatively approved allotments in the Tongass National Forest, which were closed under the court case, Shields v. United States.

This Act also urges Congress to amend the Alaska Native Vietnam Veterans Allotment Act to give a fair opportunity to obtain allotments.

My reason for introducing this resolution is twofold.

First, a promise made to Natives from 1906 through 1998 that allotments were going to be offered under certain circumstances has not been fulfilled. The slow, cumbersome, and unwilling behavior of the federal government to perform on legitimate claims filed properly by people who have watched family members die while the government would not act cannot go unchecked.

Secondly, land that should be in private hands has been kept for government purposes only. This is a matter of fairness that has too long been unresolved for the Natives of Alaska. Applications have been lost, denied, sat on for decades, and finally the repealing of the Act in 1971 was swift and confusing because of the last ditch efforts by the federal government to inform people of their opportunity.

The reopening of the Act in 1998 did allow certain Vietnam Veterans to apply for allotments, giving some credibility to the argument that the last year was confusing. However, the restrictions on the reopening were unfair and very difficult for applicants. We simply ask Congress to give a fair opportunity to revisit a reopening only possible through legislation.

(24-LS1543/A)

LSC

ALASKA LEGAL SERVICES CORPORATION
ANCHORAGE AND STATEWIDE OFFICE

1016 WEST SIXTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501-1963
TELEPHONE (907) 272-9431
FAX (907) 279-7417
www.AlaskaLawHelp.org

March 29, 2006

Honorable John Coghill, Jr.
Alaska Legislature
House of Representatives
State Capitol Room 204
Juneau, Alaska 99801-1182

Dear Representative Coghill:

I am writing to provide you with additional information concerning the Vietnam veterans allotments and to clarify the legislation now pending in the United States Congress. I am familiar with the legislation pending in Congress because I drafted the original version of these bills at the request of a group of about 200 veterans. I have worked full time for over seven years on numerous Native allotment issues as an attorney with the Native Allotment Program of Alaska Legal Services Corporation. I am the supervising attorney in charge of that program which consists of three attorneys, two paralegals, a legal secretary, and a clerical assistant. We provide free legal services to those seeking allotments including veterans. It is with pleasure and gratitude that I provide the information your office requested. In addition, I will be telephonically present on March 30, 2006 during the House State Affairs Committee hearing on HJR 27 to answer any questions that the committee may have.

CLARIFICATION OF S. 2000 AND HR 1811

The legislation introduced into Congress as S. 2000 and HR 1811 will amend the existing Alaska Native Vietnam Veterans Allotment Act in the following ways:

- Only qualified veterans will obtain allotments. A qualified veteran must prove he or she served during the Vietnam era (August 1964 to 1975), was honorably discharged, is a certified Alaska Native, is a resident of Alaska upon application, and did not apply for and receive an allotment under the Alaska Native Allotment Act of 1906. In contrast, existing law defines a qualified veteran as one who honorably served from Jan. 1, 1969 to Dec. 31, 1971.

- An heir of a veteran who is now deceased will be allowed to apply in the place of a qualified veteran. Only one allotment will be allowed for each deceased veteran no matter how many heirs that veteran had. In contrast, under existing law an heir of deceased veterans cannot obtain an allotment unless the veteran died in the Vietnam War or from a war related injury. Like S. 2000 and HR 1811, the existing law allows heirs of a veteran who died in the war or from war injuries to only apply for one allotment. This is currently done under federal regulations (43 CFR §2568.60) which require a state court appointed personal representative to make an allotment application for all heirs.
- Veteran allotments will be allowed on all vacant federal land. This means that all federal land will be available for veteran allotments as long as it is vacant. Vacant federal land is without buildings, roads, bridges, existing and proposed pipelines, existing and proposed rights-of-ways and easements, designated campsites, boat launches, logging areas or any improvements or proposed improvements that would exclude land as not being vacant. In contrast, under existing law most federal land is not available because it is specifically excluded (all national forest land is excluded) or it was withdrawn before the veteran used it.
- Federal land that is vacant and available for veteran allotments include all of the 222 million acres of land under federal ownership in Alaska. S. 2000 and HR 1811 do not discriminate concerning the type of vacant federal land available for veteran allotments. Thus, veteran allotments would be allowed in all national forests and national parks in Alaska. For example, vacant federal land in the Tongass National Forest will be available to the 500 to 600 Alaska Native Vietnam veterans in southeast Alaska that have been excluded under existing law.
- S. 2000 and HR 1811 do not contain provisions to reopen the Shields allotments which are all located in southeast Alaska.
- Land conveyed to the State of Alaska or to Native Corporations is also available for veteran allotments but only if the State or Corporation voluntarily relinquishes that land.

I estimate that about 1200 veterans will apply under an amended Act. Some of the 1200 will be veterans who applied and were rejected under the existing Veterans Allotment Act. This estimate is based upon the following factors: the number of applications filed under the existing Veterans Allotment Act, the number of veterans that received allotments under the Act of 1906, the number of veterans that reside outside of Alaska, and the estimated number of Alaska Natives that would be qualified under an amended Act.

Again, thank you for the offorts you and others in the State legislature are making on behalf of the many deserving veterans who served their country instead of making allotment applications.

Sincerely,

Carol Yeatman

NATIVE ALLOTMENT PROGRAM
ALASKA LEGAL SERVICES CORPORATION
1016 West Sixth Avenue, Suite 200, Anchorage, AK 99501
(907) 272-9431
1-800-478-9431
Fax: (907) 258-2266

Fax

TO: CHAIRMAN PAUL SEATON FROM: CAROL FEATHMAN

FAX: 465-3472 PAGES INCLUDING COVER SHEET:

PHONE: DATE: 3/21/06

RE: ACCT. CODE:

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• COMMENTS:

BLM STATS re Veteran Allotment Applications Filed between July 31, 2000 and JAN. 31, 2002 (when veteran applications Closed)

Alaska Native Veteran Allotment Application Statistics as of November 22, 2002

Applications Received	748
Number of Parcels	992
Number of Applications without Land Descriptions	243
Number of Parcels Rejected	176
Number of Parcels Appeals have been Filed On	40
Number of Parcels Appeals have been Dismissed On	10
Number of Parcels Field Exams Requested for	85

Reasons for Rejections (Some parcels were rejected for more than one reason):

Land Applied for was Previously Conveyed	62
Non-Resident	14
Tongass N.F. (U/O doesn't predate withdrawal)	14
Numivak Island (U/O doesn't predate withdrawal)	3
Katmai National Preserve (U/O doesn't predate)	3
Kenai Moose Rnge (U/O doesn't predate withdrawal)	2
Chugach N.F. (U/O doesn't predate withdrawal)	3
Denali N.P. (U/O doesn't predate withdrawal)	1
St Lawrence Island (U/O doesn't predate withdrawal)	1
Failure to Correct Application Deficiencies	2
Ineligible Military Service Dates	42
Inactive National Guard Service	14
Less Than Honorable Military Service	1
Applicant has a pending 1906 NA Apln/Allotment	2
Cause of Death	2

Alaska Federation of Natives
1577 C Street, Suite 300
Anchorage, AK 99501
Phone: (907) 274-3611
Fax: (907) 276-7989

Date: March 23, 2006

To: Honorable Paul Seaton, Chairman; House State Affairs Committee
Alaska State House of Representatives

Fax: 907-465-3472

Honorable John Coghill, Majority Leader
Alaska State House of Representatives

Fax: 907-465-3258

From: Nelson N. Angapak, Sr.

Subject: Written Statement on HJR 27

Pages: 3, Including Cover

Attached, herewith, please find my written statement on HJR 27. I request that this statement be incorporated into the record of HJR 27.

I originally intended to testify in person because I thought the plane I was flying on would be in Juneau in time for me to testify in front of your committee.

Thank you for your kind consideration

TESTIMONY OF NELSON N. ANGAPAK, SR.,
VICE PRESIDENT ALASKA FEDERATION OF NATIVES
ALASKA STATE HOUSE STATE AFFAIRS COMMITTEE
HEARING ON HJR 27
MARCH 21, 2006

Mr. Chairman, and Honorable members of the State Affairs Committee:

My name is Nelson N. Angapak, Sr., and I am the Vice President of the Alaska Federation of Natives (AFN). I am also a Vietnam-era veteran; honorably discharged. I was unable to testify before you this morning because I was on an airplane heading to Juneau during your meeting. However, I request that my written testimony be accepted.

On behalf of AFN, its Board of Directors and membership, I thank you for your consideration of HJR 27. AFN is a statewide Native organization formed in 1966 to represent Alaska's 100,000 plus Natives on concerns and issues affecting their rights and property.

AFN supports House Joint Resolution number 27 and we urge this Committee to act favorably on this resolution.

Alaska Natives, on a per capita basis, have one of the highest, if not the highest, record of service in the United States Armed Forces since the founding of this Nation. This service held true during the Vietnam era too. Those veterans deserve better than the existing Alaska Native Vietnam Veterans Allotment Act allows and so do the heirs of those veterans who are now deceased.

The historical background of Native allotments in Alaska contains many examples of lost opportunities, lack of notice, and many competing interests for land that Native people needed to survive. When the Alaska Native Allotment Act of 1906 was repealed in 1971, only a fraction of those that could have applied did so even with the year long effort by the Bureau of Indian Affairs to notify and take applications before the Allotment Act was repealed in 1971. Many did not apply because they did know about allotments. BIA did not reach many of the small rural villages. Many were mistakenly told by BIA employees they were too young to apply, or could not apply because they were female. Many who would have been eligible were already deceased in 1970 and this is especially true in Southeast Alaska. Many others were absent from Alaska bravely heeding the call for military service. For those veterans, we want a fair chance for allotments. They do not have this under existing law.

The amendments to the Veterans Allotment Act now before the United States Congress will afford our veterans a fair chance to obtain an allotment. The time it will take to process the additional veteran applications that we hope are filed under an amended law will be shortened to months by the legislative approval provision. This provision will also allow veterans to apply for land that would not be available to them under current law.

Although we recognize the previous federal and state administrations opposed opening vacant federal land for veteran allotments, we hope this administration will not. It is both fair and reasonable that veterans be afforded the opportunity to obtain an allotment located on vacant federal land because after all, the federal government owns 222 million acres of land in Alaska. Veteran allotments would hardly cause a dent in this amount of land. And, even if some of the allotments chosen were in National Parks or National Forest, those allotments would not be the only privately owned inholdings as all our national parks and national forests contain numerous privately owned land that originated from old homestead or mining patents, which were opportunities Alaska Natives never had. Often privately owned land within our parks and forests

are highly beneficial to the area and to the entire State's economy. The lodges and other recreational facilities within privately owned inholdings draw tourists, provide unique and valuable recreational opportunities to both Alaskans and non-Alaskan visitors. Opening all vacant federal land for veteran allotments serves basic fairness and serves Alaska's best interest.

Nevertheless, it does not appear that allotments in national parks should be a cause for concern because out of the 743 veteran allotment applications BLM received, it is my understanding that only two applications were for land in a national park. The explanation for this may be that applicants generally want their allotments to be close enough to their villages so they can travel to them within a reasonable time such as a few hours or so.

Reopening the allotments in Southeast Alaska closed under the Shields decision would also serve basic fairness. Under the Shields decision about 200 allotment applicants from southeast Alaska were denied allotments because they could not prove they used the land before the land was withdrawn for the Tongass National Forest. The applicants in Shields were born after the Tongass withdrawals which occurred for the most part between 1902 and 1909. Since the language of the statue was not clear, these applicants hoped the prior use of the land they applied for by their ancestors would count. It did not. The court ruled only personal use of the applicant counted. As a result, today there are only 50 allotments certified in Southeast Alaska. The disparity is obvious: the 26,000 members of Central Council of Tlingit and Haida have only 22 certified allotments; the 3,950 members of the Sitka Tribe have only 13 certified allotments.

It is clear from the Allotment Act's legislative history that Congress did not intend this result. After all, Congress passed the Allotment Act in 1906 during the same time period that land was being withdrawn for the Tongass but the Allotment Act does not prohibit allotments in national forests. The legislative history of the Allotment Act of 1906 contains numerous references to the Tlingit and Haida people. Those references make it clear that Congress intended and even assumed allotments would be granted in the Tongass. The original Act contained no restrictions on allotments in the national forest; the land only had to be nonmineral. The 1956 amendment to the Allotment Act also allows allotments in the Tongass but now requires proof of occupancy of the land prior to the Tongass withdrawals. That would be no big deal except very few knew about allotments until 1970 which means about three generations lost the right to apply for allotments. Draft legislation to reopen the Shields allotments have been provided to Senator Murkowski and Congressman Don Young but this legislation does not allow new applications, it only reopens those denied under Shields.. We hope it will soon be added to S. 2000 and HR 1811.

I thank the members of this Committee for its consideration of HJR 27.

Louie Flora

From: Charlie Hubbard [charlieh2@gci.net]

Sent: Wednesday, March 29, 2006 1:45 PM

To: Rep. Paul Seaton; Rep. John Coghill; Rep. Carl Gatto; Rep. Bob Lynn; Rep. Berta Gardner; Representative_Max_Gruenburg@legis.state.ak.us; Rep. Jay Ramras; Rep. Jim Elkins; Representative_David_Guttenburg@legis.state.ak.us; Rep. Nancy Dahlstrom; Rep. Bill Thomas

Cc: Karen Lidster; Louie Flora

Subject: HJR 27 - Statement of Support

Testimony on HJR 27
March 30, 2006

Let me begin by thanking you for allowing public testimony on HJR-27.

My name is Charles Hubbard, I live in Sterling, Alaska and I am a Vietnam veteran, honorably discharged.
A do pass recommendation from this committee on HJR-27 would be a step in the right direction to correct a wrong committed by federal employees in the 60's and up through 1971.

Prior to the passage of ANCSA, Alaska Natives who tried to submit applications for allotments were told by Bureau of Land Management that no applications were being accepted pending ANCSA. Some were told they were too young to apply, others were told that the land wasn't available and to tell others this. Alaska Natives are by nature a trusting culture and non-confrontational, so not knowing the law or regulations, they believed and trusted what was told them.

I know that my statements are true, for I am one of the natives that was turned away by BLM when submitting an application. Time does not allow for the whole truth to be told this day, but I will tell you about what my mother went through, when she tried to get approval for her allotment. My mother's allotment was in Sterling. She had built a small cabin and was actively using it, when BLM adjudicators told her she had to clear the land if she wanted the land approved. She was also told that the file had been lost, but if she would only claim 40 acres it would be approved. After many trials and tribulations and the passage of about 30+ years, a federal judge in Sacramento approved her allotment. I

am sad to say she was not alive to celebrate her victory over BLM.

Again, I thank you for allowing this testimony.

Charles Hubbard
PO Box 88
Sterling, AK 99672
252-3155

-----Original Message-----
From: Nelson Angapak [mailto:nangapak@nativefederation.org]
Sent: Wednesday, March 29, 2006 2:42 PM
To: Carol Yeatman
Subject: RE: consistency decision

Dear Ms. Yeatman:

I did not understand the consistency decision meant; I am happy to hear that this is good news for now.

You are free to use my application and the determination that made concerning my allotment application during the House Affairs Committee hearing.

Please allow me to share something that you are probably already know to be true. When you look at the location of the Native Allotments that eligible Alaska Natives closely, you will note that, for the most part, they are relatively close to the villages in which Alaska Native applicants live. I grew up in the village of Tuntutuliak, Alaska and when you see the location of Native allotments that Alaska Natives applied living at Tuntutuliak, they are relatively close to the village.

Very seldom will you find a an allotment applied for farther than two days time by dog team from Tuntutuliak at the most for the most part. Another factor to consider is this: in the spring time, we used to use kayaks and canoes to hunt muskrats and water fowl and other resources we used for subsistence purposes. For the most part, the Native allotments applied for by Alaska Natives from Tuntutuliak are relatively close to riverine systems or lakes or other water bodies. These allotments are located close to riverine systems so that we will have an easier time in accessing our allotments. These allotments, just like the village of Tuntutuliak, are located where we can find the greatest amount of resources that we use for subsistence purposes. For the most part, the allotments that qualified Alaska Natives applied for from the village of Tuntutuliak, again, generally speaking, may be located up to two days, some less and some more than two days, time from the village of Tuntutuliak by kayak or canoe. The idea that Alaska Native veterans will run to National Parks or National Forests, in my humble opine, to apply for their allotments really is not a very strong argument when one has a historical understanding of Alaska Native people and their cultures.

The tie that the Alaska Natives have to their land is more than the quality of land; take for example, the Partial Description that the field examiner used in describing the allotment I applied for as an Alaska Native Veteran of the Nam era. The description states:

GPS Coordinates for POB 60 28.039N 162 51.759 32 W NAD 27, Alaska Point of beginning for this allotment. This is a quarter section 160 acres accessed from the village of Tuntutuliak via Kuskokwim River and Kiatik River. Primarily marshy tundra with sawgrasses, berry bushes, and shallow lakes.

This decryption of the tract of land I applied for as my allotment would be less than ideal for people growing up in Western Society, I believe. For me, this tract of land is one of the most precious tracts of land in this whole nation, more important to me than Denali National Park or any forest lands in this nation. This is a tract of land that I can hunt muskrats and the plentiful waterfowl that is present in this area. I can pick berries from it! What more does one want?

You may use my allotment consistency determination and my e-mail to you if you feel this will help the cause of the Alaska Native Veterans of the Nam Era in their quest of becoming eligible to apply for allotments such as one I applied for if Congress passes legislation allowing this.

Ms. Yeatman, thank you from the bottom of my heart for explaining what this letter means.

I am unable to attend this public hearing on HJR 27 as I have a doctor's appointment that is personally very important for me.

Sincerely,

Nelson Angapak, Sr.

Louie Flora

From: Dee Hubbard [chubbard@alaska.net]
Sent: Wednesday, March 22, 2006 8:21 AM
To: Louie Flora; Rynnieva Moss
Cc: Rep. Max Gruenberg; Rep. Bill Thomas; Rep. David Guttenberg; Rep. Bob Lynn; Rep. Nancy Dahlstrom
Subject: HJR 27 - Allotments for Native Vietnam Veterans

Hi Louie and Rynnieva.....While I wasn't able to listen to the testimony yesterday in the House State Affairs Committee, my husband told me that there were questions about what types of land could be included in an allotment and how many Alaska Natives would be affected.

As my husband would be directly affected by the passage of either HR 1811 or S 2000, I thought I'd do a little research on the federal documents associated with HJR 27.

All of the following will be attached to this e-mail:

1. S 2000 – introduced by Sen. Murkowski
2. HR 1811 – introduced by Rep. Young
3. CRS summary of S 2000
4. CRS summary of HR 1811
5. Native Allotment Act of 1906
6. Title 43, Section 1629g
7. ANILCA definition of Conservation System Unit
8. ANCSA Section 11 (a)(1)(C) and 11 (a)(3)

Both S 2000 and HR 1811 require that the allotee be eligible under the Native Allotment Act of 1906. This requires proof of substantial use and occupancy of the land for a period of five years.

Both bills allow the Secretary to consult with the allotee, if the allotee's land selection is within a Conservation System Unit. The Secretary may convey an alternate piece of land, if he determines that the allotment would be incompatible with the purpose of that Conservation System Unit.

The definition of a Conservation System Unit is quite broad and would probably satisfy Committee members' questions about which land would be available for selection.

S 2000 makes allowance for the possibility that the allotee's land selection may be within the Alyeska Pipeline right-of-way or the inner or outer corridor of the right-of-way. It allows the allotee to select land that
1. is contiguous to or corners on a township that encloses all or part of a Native Village, and
2. was not selected, or relinquished after selection, by the Secretary of Interior to fulfill the total amount of land a Native Village or Regional Corporation is entitled to.

Both bills allow an allotee to reselect an allotment, if the original selection was made prior to enactment of either bill and had not yet been conveyed to the allotee.
In Title 43, Section 1629g (c) the Secretary of Interior was required to report on the number of Vietnam era veterans who did not serve between January 1, 1969 through December 31, 1971. The Secretary was to determine how many of these veterans were eligible for an allotment and how many did not apply.

I have calls in to Rep. Young's and Sen. Murkowski's offices to see if this report might be in either of the offices. It is not in the archived reports of the House Committee on Resources. Once I receive any information about this report, I will call you.

I hope this will help answer the Committee's questions from yesterday. If you need to reach me, please call 907-252-3155.

Talk to you soon.....Dee

Before you make a decision,
think about how that decision will affect the children living during the seventh generation from today.

LSC

ALASKA LEGAL SERVICES CORPORATION
ANCHORAGE AND STATEWIDE OFFICE

1016 WEST SIXTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501-1963
TELEPHONE (907) 272-9431
FAX (907) 279-7417
www.AlaskaLawHelp.org

March 29, 2006

Honorable John Coghill, Jr.
Alaska Legislature
House of Representatives
State Capitol Room 204
Juneau, Alaska 99801-1182

Dear Representative Coghill:

I am writing to provide you with additional information concerning the Vietnam veterans allotments and to clarify the legislation now pending in the United States Congress. I am familiar with the legislation pending in Congress because I drafted the original version of these bills at the request of a group of about 200 veterans. I have worked full time for over seven years on numerous Native allotment issues as an attorney with the Native Allotment Program of Alaska Legal Services Corporation. I am the supervising attorney in charge of that program which consists of three attorneys, two paralegals, a legal secretary, and a clerical assistant. We provide free legal services to those seeking allotments including veterans. It is with pleasure and gratitude that I provide the information your office requested. In addition, I will be telephonically present on March 30, 2006 during the House State Affairs Committee hearing on HJR 27 to answer any questions that the committee may have.

CLARIFICATION OF S. 2000 AND HR 1811

The legislation introduced into Congress as S. 2000 and HR 1811 will amend the existing Alaska Native Vietnam Veterans Allotment Act in the following ways:

- Only qualified veterans will obtain allotments. A qualified veteran must prove he or she served during the Vietnam era (August 1964 to 1975), was honorably discharged, is a certified Alaska Native, is a resident of Alaska upon application, and did not apply for and receive an allotment under the Alaska Native Allotment Act of 1906. In contrast, existing law defines a qualified veteran as one who honorably served from Jan. 1, 1969 to Dec. 31, 1971.

1906 use + 1956 occupancy Anilca legislation approach of both

- An heir of a veteran who is now deceased will be allowed to apply in the place of a qualified veteran. Only one allotment will be allowed for each deceased veteran no matter how many heirs that veteran had. In contrast, under existing law an heir of deceased veterans cannot obtain an allotment unless the veteran died in the Vietnam War or from a war related injury. Like S. 2000 and HR 1811, the existing law allows heirs of a veteran who died in the war or from war injuries to only apply for one allotment. This is currently done under federal regulations (43 CFR §2568.60) which require a state court appointed personal representative to make an allotment application for all heirs.

- Veteran allotments will be allowed on all vacant federal land. This means that all federal land will be available for veteran allotments as long as it is vacant. Vacant federal land is without buildings, roads, bridges, existing and proposed pipelines, existing and proposed rights-of-ways and easements, designated campsites, boat launches, logging areas or any improvements or proposed improvements that would exclude land as not being vacant. In contrast, under existing law most federal land is not available because it is specifically excluded (all national forest land is excluded) or it was withdrawn before the veteran used it.

- Federal land that is vacant and available for veteran allotments include all of the 222 million acres of land under federal ownership in Alaska. S. 2000 and HR 1811 do not discriminate concerning the type of vacant federal land available for veteran allotments. Thus, veteran allotments would be allowed in all national forests and national parks in Alaska. For example, vacant federal land in the Tongass National Forest will be available to the 500 to 600 Alaska Native Vietnam veterans in southeast Alaska that have been excluded under existing law.

- S. 2000 and HR 1811 do not contain provisions to reopen the Shields allotments which are all located in southeast Alaska.

- Land conveyed to the State of Alaska or to Native Corporations is also available for veteran allotments but only if the State or Corporation voluntarily relinquishes that land.

I estimate that about 1200 veterans will apply under an amended Act. Some of the 1200 will be veterans who applied and were rejected under the existing Veterans Allotment Act. This estimate is based upon the following factors: the number of applications filed under the existing Veterans Allotment Act, the number of veterans that received allotments under the Act of 1906, the number of veterans that reside outside of Alaska, and the estimated number of Alaska Natives that would be qualified under an amended Act.

Again, thank you for the efforts you and others in the State legislature are making on behalf of the many deserving veterans who served their country instead of making allotment applications.

Sincerely,

Carol Yeatman

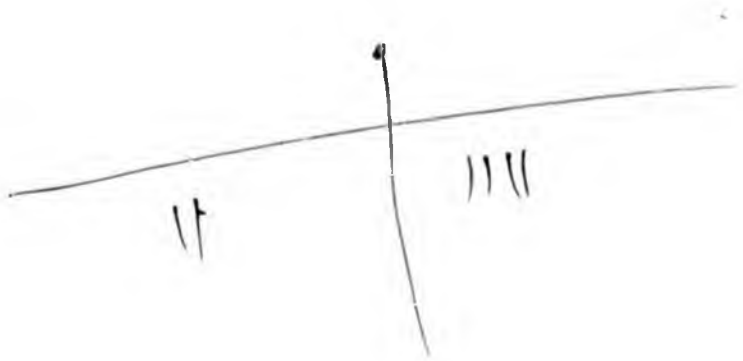
#1

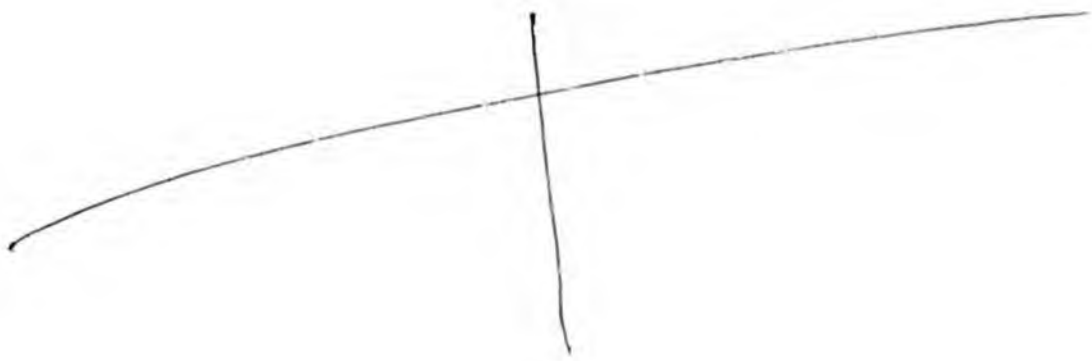
Conceptual Amendment _____ to HJR 27 version F
by Seator

Insert at page 2 line 25

WHEREAS, the policy of the United States of America over the past several decades has been to acquire in-holdings in our National Park, Refuge, and Monument systems to provide a contiguous manageable entity; and

WHEREAS, acquisition by numerous private parties of parcels that will be necessary for the right-of-way and construction of the Alaska North Slope Natural Gas Pipeline could complicate and delay the construction of such a vital facility,





24-LS0291\F.1
Bullock
3/29/06

AMENDMENT

OFFERED IN THE HOUSE BY REPRESENTATIVE SEATON

TO: CSHJR 27(MLV)

Page 2, following line 27:

Add a new clause to read:

"**FURTHER RESOLVED** that the United States Congress is urged to prohibit the selection of allotments in a national park, a national wildlife refuge, a national monument, or the right-of-way for a proposed Alaska natural gas pipeline; and be it"

ALASKA STATE HOUSE OF REPRESENTATIVES

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(907)-488-5725
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Fax# (907)-488-4271

Legislatively Approved Allotments

Primarily Fed land

REPRESENTATIVE JOHN COGHILL

HJR 27
"The Alaska Native Vietnam Veterans Allotment Act"

SPONSOR STATEMENT

This Act urges Congress to reopen the legislatively approved allotments in the Tongass National Forest, which were closed under the court case, Shields v. United States.

This Act also urges Congress to amend the Alaska Native Vietnam Veterans Allotment Act to give a fair opportunity to obtain allotments.

My reason for introducing this resolution is twofold.

First, a promise made to Natives from 1906 through 1998 that allotments were going to be offered under certain circumstances has not been fulfilled. The slow, cumbersome, and unwilling behavior of the federal government to perform on legitimate claims filed properly by people who have watched family members die while the government would not act cannot go unchecked.

Secondly, land that should be in private hands has been kept for government purposes only. This is a matter of fairness that has too long been unresolved for the Natives of Alaska. Applications have been lost, denied, sat on for decades, and finally the repealing of the Act in 1971 was swift and confusing because of the last ditch efforts by the federal government to inform people of their opportunity.

The reopening of the Act in 1998 did allow certain Vietnam Veterans to apply for allotments, giving some credibility to the argument that the last year was confusing. However, the restrictions on the reopening were unfair and very difficult for applicants. We simply ask Congress to give a fair opportunity to revisit a reopening only possible through legislation.

64-74
(68-71)

(24-LS1543/A)

Representative_John_Coghill@LEGIS.state.ak.us

24-LS0291\F.1
Bullock
3/29/06

AMENDMENT

OFFERED IN THE HOUSE BY REPRESENTATIVE SEATON

TO: CSHJR 27(MLV)

Page 2, following line 27:

Add a new clause to read:

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Conceptual Amendment ________________ to HJR 27 version F
by Seaton

Insert at page 2 line 25

WHEREAS, the policy of the United States of America over the past several decades has been to acquire in-holdings in our National Park, ~~Refuge,~~ and Monument systems to provide a contiguous manageable entity; and

WHEREAS, acquisition by numerous private parties of parcels that will be necessary for the right-of-way and construction of the Alaska North Slope Natural Gas Pipeline could complicate and delay the construction of such a vital facility,

→ 43 CFR 2360 [2560] (2...)

Allotments – only have surface rights
cannot restrict pipeline/etc.

1999 → report sent to Congress by Dept of Interior

(possibility of finding out how many not posted)

C.S.U. w/in existing regulations → Gives C.S.U. Manager veto power over all Native Allotments
BLM. n. like
rejected allotments

~~Provisions in F~~

# of positions Allotments

~~Can~~ till [can] reapply — "Any federal land that has not ... till ... years

Natural parks – Many

1,200
1,200 × 1,200 × 160
72000
1200
192,000

→ No use – occupancy Requirements in original act

→ only restrict — – Non-mineral use/occupancy request in 1950s

→ Reason – didn't want them in Natl forests

↓ Congress find out how to determine

~~X~~ you approval to finding/[illegible] in ANILCA

as long as no interests/easements/improvements

→ federal definition of land vacant

Propert improvements → Propert rights of whom

Quot[illegible]

→ No court case

Add a provision that 9:10

— No trustees for an ~~estate~~ (?)

Generally has ... an heir

"Reversal repossession" – 1 death, to rule on application

B.I.A. (?) authority to rule on application

→ Both pgs - on Amend #1

Conceptual Amendment ___ to HJR 27 version F
by Seaton

Insert at page 2 line 25

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→ Amend #1 to Amend #1 passes

Gates V
Elk N
Lynx V
Rev V
Gulf V
Sea V

ANILCA – Title 8

D2 Selection under Antiquities Act take off the table

Am #1
Elk - No
Lynx - No
Rev No
Gulf ~~yes~~ —
Gates - No
Sea - yes —

Rural CAP — educat + Legal svcs.

ALASKA STATE HOUSE OF REPRESENTATIVES

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REPRESENTATIVE JOHN COGHILL

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This Act also urges Congress to amend the Alaska Native Vietnam Veterans Allotment Act to give a fair opportunity to obtain allotments.

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Secondly, land that should be in private hands has been kept for government purposes only. This is a matter of fairness that has too long been unresolved for the Natives of Alaska. Applications have been lost, denied, sat on for decades, and finally the repealing of the Act in 1971 was swift and confusing because of the last ditch efforts by the federal government to inform people of their opportunity.

The reopening of the Act in 1998 did allow certain Vietnam Veterans to apply for allotments, giving some credibility to the argument that the last year was confusing. However, the restrictions on the reopening were unfair and very difficult for applicants. We simply ask Congress to give a fair opportunity to revisit a reopening only possible through legislation.

(24-LS1543/A)

Representative_John_Coghill@LEGIS.state.ak.us

179

24-LS0291\F

CS FOR HOUSE JOINT RESOLUTION NO. 27(MLV)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - SECOND SESSION

BY THE HOUSE SPECIAL COMMITTEE ON MILITARY AND VETERANS' AFFAIRS

Offered: 3/3/06
Referred: State Affairs

Sponsor(s): REPRESENTATIVES COGHILL, Gruenberg, Thomas, Guttenberg, Lynn, Dahlstrom

A RESOLUTION

Urging the United States Congress to pass legislation amending the Alaska Native Vietnam Veterans Allotment Act to allow deserving veterans to obtain allotments of vacant land within the State of Alaska; and to reopen and legislatively approve allotments in the Tongass National Forest.

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

WHEREAS, since 1906, Alaska Natives have had the right to obtain allotments of land under the Alaska Native Allotment Act that was repealed in 1971 by the Alaska Native Claims Settlement Act, but with a saving clause for pending applications; and

WHEREAS, before the 1971 repeal of the Alaska Native Allotment Act, few allotment applications had been filed or approved because most rural Alaska Natives did not learn of the opportunity for an allotment until 1970 when the federal government initiated an effort to inform and assist potential allotment applicants; and

WHEREAS many Alaska Native Vietnam era veterans did not have the opportunity to apply for allotments before the Alaska Native Allotment Act was repealed because they were serving in the military before, during, and after the period when the government

informed Alaska Natives about the opportunity for allotments; and

WHEREAS the United States Congress enacted 43 U.S.C. 1629g, commonly referred to as the Alaska Native Vietnam Veterans Allotment Act, in 1998 to allow certain veterans a chance to apply for allotments, but the numerous restrictions in this Act, restrictions that were not in the Alaska Native Allotment Act, have unfairly disqualified the majority of the applications filed and discouraged many from applying; and

WHEREAS amendments to the Alaska Native Vietnam Veterans Allotment Act that provide a fair opportunity for Alaska Native Vietnam veterans to obtain allotments were previously introduced in the United States Congress to remove many of the obstacles preventing Alaska Native Vietnam veterans from obtaining an allotment; and

WHEREAS basic justice will also be served by the Congress's enacting legislation that will allow approximately 300 allotment cases closed under the federal court decision in Shields v. United States, 698 F.2d 987 (9 Cir., 1983), to be reopened and approved; and

WHEREAS, given that land in Southeast Alaska was withdrawn for the Tongass National Forest by 1909 and that allotment applications are required to "use" land claimed for an allotment before that land was withdrawn has resulted in a unfair distribution of allotments statewide, with few in Southeast Alaska; and

WHEREAS the federal court, in Shields v. United States, decided that the "use" requirement meant the applicant's personal use of the land before it was withdrawn, not use by the applicant's ancestors; and

WHEREAS the Congress did not define the word "use" in the Alaska Native Allotment Act but could do so now by legislation that defines use to include ancestral use, which would be applicable to those allotments in Southeast Alaska closed under the decision in Shields v. United States;

BE IT RESOLVED by the Alaska State Legislature that the United States Congress is urged to pass legislation that amends the Alaska Native Vietnam Veterans Allotment Act to allow a fair opportunity for Alaska Native Vietnam veterans to obtain allotments; and be it

FURTHER RESOLVED that the United States Congress is urged to enact legislation that would reopen and legislatively approve allotments in the Tongass National Forest that were closed under the decision in Shields v. United States.

COPIES of this resolution shall be sent to the Honorable Pete Domenici, Chair of the

"Indian Cosmic signs" → Fabric →

U.S. Senate Committee on Energy and Natural Resources; the Honorable Richard Pombo, Chair of the U.S. House Committee on Resources; and the Honorable Ted Stevens and the Honorable Lisa Murkowski, U.S. Senators, and the Honorable Don Young, U.S. Representative, members of the Alaska delegation in Congress.

DD 214 = AK Residents drafted

other veterans too?

→ remove recent # 5

2) questions → BLM legislation patented? Short circuit two allotments?

- New whereas

→ Heirs apply for valuable land → Criteria may be diff't for

→ 1997 # 5 → up to date After 2,000

Cont Veteran Alaska Legal services

SC 2000
HR181

- Murkowski

Young

Native include reopen claim in Tongass

→ to allow legislative approval

Stevens puts short-cut to ANILCA 1980 to get around

B.L.M. process

→ State given veto power → DNR Ak. filed protest

~~Defeat~~

No state veto power in current proposal law

Reducing time — 6 months vs. 20 years

approx 200 allotments pending.

→ BLM require hearing

# of eligible Veteran applicants

if open to all Vietnam era

2,800 (some will not apply for allotments — already

received) —

— Next step look for state or Corporation to allow for

2000 more DNR — allotments

Distance required?

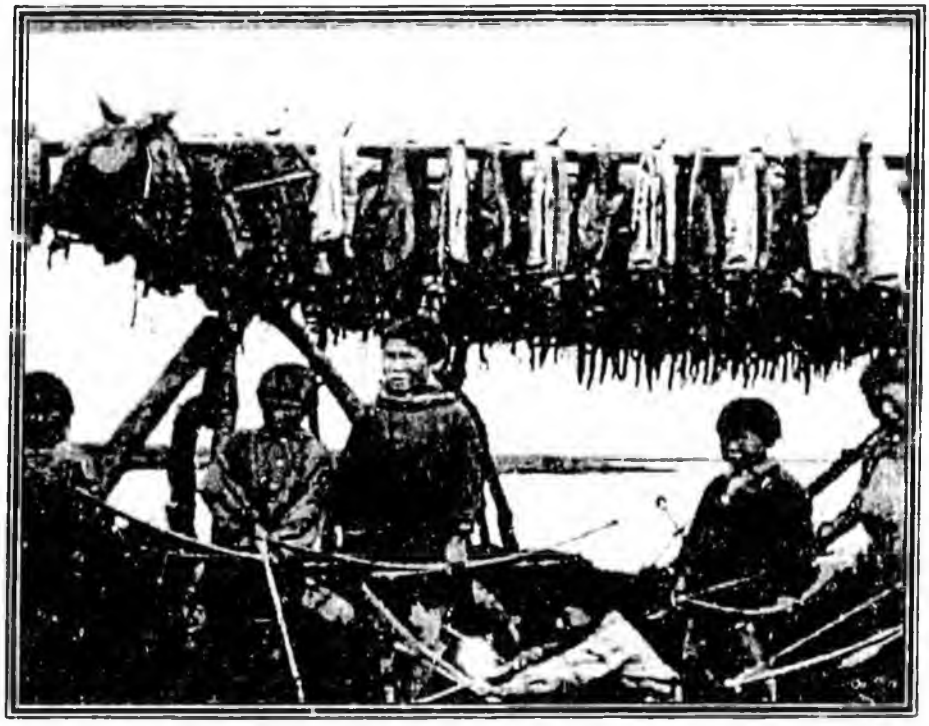
HJR

27

FILE 2

VOLUME I

A REPORT CONCERNING ALASKA NATIVE ALLOTMENTS AND ALASKA NATIVE VIETNAM VETERAN ALLOTMENTS



This young but accomplished Yup'ik hunter was photographed in 1924 holding a goose he speared on the Kashunuk Slough near the Village of Marshall, Alaska.

Prepared for the Honorable John Coghill Jr. in support of the Alaska Legislature's Joint Resolution to encourage the United States Congress to amend the Alaska Native Vietnam Veterans Allotment Act and to reopen and approve previously rejected allotments in the Tongass National Forest.

SUBMITTED BY

ALASKA LEGAL SERVICES CORPORATION
NATIVE ALLOTMENT PROGRAM
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VOLUME I: TABLE OF CONTENTS

ALASKA NATIVE ALLOTMENT AND ALASKA LAND OWNERSHIP FACT SHEET #1

This fact sheet provides information about land ownership in Alaska. BLM's statistics used in this report are difficult if not impossible to convert into a total of allotment applications or a total of allotment acres. This is true because BLM records its Native allotments information by the number of parcels in each allotment application, not by the number of allotment applications or the number of acres in each claim. However, on average, there are 1.6 parcels for each allotment.[1] There is no accurate method to determine how many acres each parcel or each application represents because many allotment applications claimed far less than 160 acres of land.[2] Thus, BLM's record keeping practices do not allow a determination of the exact number of acres involved in some of the information reported below.

Federal Government records show:

- Since 1906, 15,000 allotment parcels have been filed with BLM.[3]
- In 1955, only 79 allotments had been certified and 64 allotments were pending.[4]
- In 1970, only 245 parcels had been approved.[5]
- In 1971 with the imminent repeal of allotments, 10,000 applications were filed for 15,000 parcels.[6]
- In 1991 8,013 allotment parcels were pending; 4,352 parcels were certified; 2,662 parcels were rejected and closed.[7]
- In February 1999, there were 4,482 allotment parcels pending; 9,010 parcels certified, and 2,475 parcels rejected and closed.[8]
- A March 1999 BLM document shows that within the Tongass National Forest there were only 509 Native allotment applications filed, 61 parcels pending; 49 parcels certified; and

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[1] A Report Concerning Open Season for Certain Native Alaska Veterans for Allotments, Prepared for Congress by the Department of the Interior in Response to Section 106 of Public Law 104-42, p. 6 (June 1997). A copy of this report is attached hereto as Attachment # 1.

[2] Testimony during a U.S. Senate markup session indicates it had information that 12,000 allotment parcels equaled 800,000 acres. Markup session on Alaska National Interest Lands bills, Senate Energy and Natural Resources Committee, July 11, 1978, reprinted in XXIX Alaska Department of Fish and Game, Public Law 96-487, Alaska National Interest Lands Conservation Act: Legislative History 334 (1981). See also, *Dividing Alaska, 1867-2000: Changing Land Ownership and Management, University of Alaska*, Institute of Social and Economic Research, Volume XXXII, No. 1, at 9 November 2000 (reporting that the total acreage of all Native allotments in Alaska is 850,000 acres). This report is attached hereto as Attachment #2.

[3] Attachment # 3.

[4] H.R. Rep. No. 2534, 84th Cong., 2d Sess. (1956). Attached hereto as Attachment #4.

[5] DAVID CASE & DAVID VOLUCK, ALASKA NATIVES AND AMERICAN LAWS 110 (2d ed. 2002) (citing Bureau of Indian Affairs 1956-1993 Annual Caseloads Report, Summary of Native Allotment Numbers (Juneau 1994)). Relevant portions of this book are attached hereto as Attachment #5.

[6] Attachment #3.

[7] Attachment #3.

[8] Attachment #6.

399 allotments rejected and closed.[9] Of the 399 allotments rejected, 301 were allotments closed under the decision in *Shields v. United States*.[10] In contrast, non-Natives have received 622 homesites, 280 homesteads, and 65 trade and manufacturing sites granted within the Tongass National Forest.[11]

- In January 2002, BLM's records show 3,345 allotment parcels were pending; 10,119 parcels certified; and 2,514 parcels rejected and closed.[12]
- In November 2002, BLM's records show 743 Veteran allotment applications were filed for 992 parcels; 0 parcels certified; and 176 parcels rejected and closed.[13]

Alaska Department of Natural Resources (DNR) records show:

- In 1867, upon the sale of Alaska to the United States, the federal government owned 375 million acres of land in the Alaska Territory.[14]
- In 1903, the federal homestead laws were extended to Alaska.[15]
- In 1959, upon statehood, the federal government granted the State of Alaska 28% of federal land in the state consisting of about 105 million acres.[16]
- In 1971, The Alaska Native Claims Settlement Act granted 44 million acres to Alaska's Village and Native Corporations.[17]
- In 2002, the DNR calculated that the federal government owned 60% (or 222 million acres) of the land in Alaska; with 19.8 million acres in National Forests; 48.3 acres in National Parks; but less than 1% of the total land was in private ownership which includes Native allotments.[18]

Other records show:

- In 1960, the Alaska Native population in Alaska was estimated to be 42,522 (18.8% of the population).[19]

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[9] Attachment #7.

[10] 698 F.2d 987 (9th Cir. 1983) A copy of this decision is attached hereto as Attachment #8. It is also important to note that large portions of the Tongass National Forest were withdrawn before the Alaska Native Allotment Act was enacted in 1906.

[11] Attachment #9.

[12] Attachment #10.

[13] Attachment #11.

[14] Attachment #2 (*Dividing Alaska, 1867-2000: Changing Land Ownership and Management*, University of Alaska, Institute of Social and Economic Research, Volume XXXII, No. 1, November 2000).

[15] Id., at 4.

[16] Id., at 1.

[17] Id., at 1.

[18] This fact sheet is attached hereto as Attachment #12 and is available at the following website: http://www.dnr.state.ak.us/mlw/factsht/land_own.pdf. See also, Page 6 of the University of Alaska report that is cited in footnote 14 above.

[19] Alaska Federation of Natives, *Our Choices, Our Future: Analysis of the Status of Alaska Natives Report*, at 32 (2004). A copy of this report is attached hereto as Attachment #13.

- In 1970, when the Allotment Act of 1906 was about to be repealed, there were about 57,000 Alask Natives living in Alaska.[20]
- In 1980, there were reported to be 75,000 Alaska Native people living in Alaska.[21]
- In 2000, the Alaska Native population in Alaska was 119,241 (19% of the population).[22]

[20] The estimate is based on the fact that Alaska Natives have consistently represented 19% of the total population of Alaska and in 1970 the total population in Alaska was 301,000.

[21] Attachment #13 at 30 (*Our Choices, Our Future: Analysis of the Status of Alaska Natives Report*).

[22] Attachment #13, at pages 5, 30.

B

TESTIMONY OF

Edward K. Thomas, President

Central Council

Tlingit and Haida Indian Tribes of Alaska

U. S. SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES

SUBCOMMITTEE ON PUBLIC LANDS AND FORESTS

HEARING ON S. 1466

(THE ALASKA LAND TRANSFER ACCELERATION ACT OF 2003)

FEBRUARY 12, 2004

HEARING ON S. 1466
FEBRUARY 12, 2004
Testimony of:
Edward K. Thomas, President
Central Council
Tlingit and Haida Indian Tribes of Alaska

INTRODUCTION

Mr. Chairman and Honorable members of the Senate Subcommittee on Public Lands and Forests of the Committee on Energy and Natural Resources:

My name is Edward Thomas. I am the elected President of the Central Council of the Tlingit and Haida Indian Tribes of Alaska, a federally recognized Indian Tribe with 24,000 Tribal citizens. Southeast Alaska is the ancestral homelands of the Tlingit and Haida people. In addition to speaking on behalf of the Central Council today, I am also here to speak on behalf of a Working Group, which I formed in August 2003 to specifically address S. 1466. That group represents about 190 Tribal entities.

I am honored to be here today to speak to this Committee about S. 1466 and its adverse impacts on the Native people of Alaska. I will first summarize the land transfer problems that S. 1466 attempts to address. Second, I will identify the provisions of S. 1466 that adversely impact Native allotments. Third, I will summarize and discuss the technical amendments to S. 1466 I am submitting to the Committee today.

BACKGROUND OF S. 1466

S. 1466 does not change all of the reasons why the transfer of land in Alaska has taken so long. Thus, it is certain that S. 1466 will not bring about the finalization of the transfers of land to Native allotment applicants, Native Corporations, and the State of Alaska by the year 2009. Instead, S. 1466 offers false hopes that the transfer of land will be completed in 2009. That goal is impossible under S. 1466. However, the goal is possible if the Committee adopts the technical amendments to S. 1466 that I submit to you today. Before I discuss those amendments, I want to explain what is wrong with S. 1466.

The overall goal of S. 1466 is to ensure that the State of Alaska and Native Corporations obtain patents to land that each has selected. In order for that to occur, Bureau of Land Management (BLM) must complete and finalize all pending Native allotments. In other words, pending Native allotments are holding up the finalization of land transfers to the State and Corporations. To remedy that problem, S. 1466 streamlines the government's processing of allotment applications but in doing so it eliminates existing property rights of Native allotment applicants. This is justified according to a BLM Memo,[1] because Native allotment applicants (or heirs) are the cause of the delays in finalizing Native allotments. It is not true that Native allotment applicants (or heirs) are the cause of the delay. Instead, the cause is the inefficient and lengthy processes used by BLM, the Office of Hearings and Appeals (OHA), and the Interior Board of Land Appeals (IBLA).

[1] Memorandum from BLM, Alaska State Director to Assistant Secretary, Land and Minerals Management (May 7, 2003).

The length of time BLM takes to process allotment applications is caused by numerous factors including:

- Many approved applications sit idle for years awaiting surveys.
- Many applications sit idle for years awaiting a hearing because allotment hearings are routinely only conducted in the summer months thereby severely limiting the total number of allotment hearings scheduled each year. Further, there were only a few allotment hearings in the summer of 2003 because the Office of Hearings and Appeals ran out of money. By the time hearings finally occur, many applicants and their witnesses are deceased.
- Many applications sit idle for years waiting to be processed after favorable hearing decisions or favorable appeal decisions. Only minor ministerial tasks need to be done in these cases.
- Many applications sit idle for years waiting for an appeal decision from the IBLA. Five years is the average length of time it takes the IBLA to issue a decision.
- Many applications could now be final under the legislative approval provisions of ANILCA but the State of Alaska protested over 6,000 allotments, thus adding years to the process.

It is important to understand that the delay in processing Native allotment applications has hurt allotment applicants far more than the delay has hurt either the State or Native Corporations. This is true because in many old cases, the applicants and their witnesses have died during the thirty and more years it has taken the government to process the applications which resulted in the rejection of allotments. We can expect this injustice to only increase as time goes on. I am here today to speak for all the applicants and their heirs who continue to wait for the government to make good on its promise to convey title to land for their allotments.

OVERVIEW OF NATIVE ALLOTMENTS IN ALASKA

Before I discuss the reasons why I oppose specific provisions of S. 1466, a brief discussion of the Alaska Native Allotment Act, may be helpful. In 1906, Congress enacted the Alaska Native Allotment Act because Native people in Alaska were starving to death due to the encroachment of lands necessary for subsistence.[2] Prior to 1906, Alaska Natives could not get title to land they used to obtain the necessary resources for food, shelter and clothing. Congress intended that the Secretary would convey allotments to Alaska Native people to preserve their subsistence traditions, not destroy them. Protecting traditional uses of land and resources remains equally important today.

The legislative history of the Allotment Act establishes that prior to the passage of the Act, non-native encroachment on Native lands caused widespread devastation which

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[2] Report on Conditions in Alaska, by James W. Witten, Special Inspector, General Land Office (1903).

the federal government failed to prevent even though it had a duty to protect Native use and occupancy.[3] The government's failure resulted in the starvation of Native men, women, and children throughout Alaska. This was such an acute problem that President Roosevelt sent a special investigator to Alaska in 1903 in an attempt to alleviate the suffering and death, caused by the inability of Native people to access and harvest traditional resources.[4]

It must be remembered that by 1903, the Alaskan "gold rush" had been underway for almost ten years. Congress knew that the heavy traffic through Alaska to the goldfields greatly affected the traditional land uses and possessory rights of Alaska's Native people. There was also substantial traffic from the salmon canneries, oil production, copper mining and commercial logging. These were all activities that took a heavy toll on the same resources that provided food, shelter and clothing to Native Alaskans. History tells us that non-native encroachment on their lands caused widespread devastation resulting in the starvation of Native men, women, and children. Congress recognizing its duty to protect the use and occupancy of lands by Native people in Alaska decided it must take action. The action was the Alaska Native Allotment Act that carved out allotments of 160 acres of land so that crucial subsistence activities could continue undisturbed for generation after generation.

Unfortunately, the government agencies responsible for carrying out the allotment program did not agree that conveyance of allotments was necessary. Consequently, in the first fifty-four years of the Alaska Native Allotment Act only 78 allotments were granted, and as of 1970, only 245 allotments had been conveyed to Native people.[5]

The Alaska Native Allotment Act was repealed in 1971 by the passage of the Alaska Native Claims Settlement Act (ANCSA).[6] After 1971 only applications that were then pending were processed. In 1970, the government finally implemented a program to let Alaska Natives know about the opportunity to get title to allotments of land. This program had government employees visiting villages throughout the state helping Alaska Natives to file allotment applications. Because of these efforts, approximately 10,000 allotment applications were filed before the 1971 deadline. However, the delay in finalizing allotments has never been too many applications filed but rather the process used for allotment applications is lengthy and costly.

In 1980, Congress again tried to provide finality to Native allotments by the passage of Section 905, of the Alaska National Interest Lands Conservation Act

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[3] *Pence v. Kleppe*, 529 F.2d 135, 141 (9th Cir. 1976).

[4] Report, James W. Witten, at 32-33.

[5] DAVID CASE & DAVID VOLUCK, ALASKA NATIVES AND AMERICAN LAWS 110 (2d ed. 2002) (citing Bureau of Indian Affairs 1956-1993 Annual Caseloads Report, Summary of Native Allotment Numbers (Juneau 1994)).

[6] 43 U.S.C. 1617.

(ANILCA).[7] Section 905 was designed to remove many of the administrative barriers to obtaining an allotment by authorizing the Secretary of Interior to "legislatively" approve some, but certainly not all, of the pending allotments. Legislative approval eliminated the need for costly and lengthy administrative hearings. The will of Congress was thwarted when the State of Alaska protested more than 6,000 applications as a way to prevent legislative approval.

It is unknown how many allotments have been legislatively approved. Allotments not legislatively approved, require proof that the applicant's use of the land was substantially continuous for more than 5 years, potentially exclusive of others. There are approximately 4,000 pending allotment parcels requiring adjudication today.[8] Many of the pending allotments require hearings on one or more of the following three issues: 1) whether the application was filed on time but later lost by the government; 2) whether the legal description on the application is erroneous and should be amended; and 3) whether the applicant's use of the land meets the legal requirements for obtaining an allotment.

Some of these very old cases in need of hearings are further complicated and could be unfairly denied because many of the applicants and first hand witnesses have died. All applications are now over 30 years old and some much older ranging up to 90 years old.[9]

The age of these claims is far more acute for the applicants or their heirs because in many of the old cases, the applicants and their first hand witnesses are deceased. Many of these old claims require a hearing where the applicants' heirs, many who are the grandchildren of the applicants, must prove by a preponderance of the evidence that the applicant's use of the land was substantially continuous for more than 5 years potentially exclusive of others. One example is the case of Harry McKinley who filed his allotment application in 1909, and died in 1927. Finally, in 2002, over 90 years after Mr. McKinley filed his application and 75 years after he died, the Department scheduled an evidentiary hearing on the issue of Mr. McKinley's use and occupancy. It then took until to the IBLA where it will likely remain for another 5 years. Mr. McKinley is not an isolated case.

Another example is the case of Setuck Harry who filed his application in 1911 and died in the early 1940's. An evidentiary hearing was held to determine the correct

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[7] 43 U.S.C. 1634.

[8] There are approximately 2,800 applications, but each application may have up to four parcels. 1.6 is the average number of parcels in an application. A Report Concerning Open Season for Certain Native Alaska Veterans for Allotments, Prepared for Congress by the Department of the Interior in Response to Section 106 of Public Law 104-42, p. 6 (June 1997).

[9] See the pending applications of Chetah Ka (A-000438) filed in 1919, Paul Brown (A-000439) filed in 1909; Harry McKinley (A-000441) filed in 1909; Setuck Harry (A001489) filed in 1911; John Ketch Koostien (A-001499) filed in 1912; James Rudolph (A-001745) filed in 1915; William Jackson (A-001747) filed in 1915; Jack Yaquam (A-001787) filed 1915 Jack Moore (A-002492) filed in 1915; and David Lawrence (A-002494) filed in 1915.

location of the allotment and the decision issued in 2000 was favorable to the heirs and so was the IBLA's 2001 decision. Since that 2001 decision, BLM has accomplished little work; the final approval of that allotment has not yet been issued. In the meantime, the U.S. Forest Service permits fishing camps on this allotment and has even allowed fuel to be stored on that land.

Another example is the case of Luke Thomas who filed his application in 1915. His application was determined to be valid in 1991. Because Mr. Thomas' allotment land was mistakenly conveyed to the State, this is a "title recovery" case which simply means the State must reconvey the land to BLM. Since BLM's 1991 validity decision, there has been no action by the BLM to recover this land except a mere request letter sent to the State in 1992.

Another case is that of Chetah Ka who filed his application in 1911, and died in 1919. On February 8, 2002, the BLM requested an evidentiary hearing to be scheduled on the issue of Mr. Ka's use of the claimed land. It has been 93 years since Mr. Ka filed his application but his heirs have still not been afforded a hearing on Mr. Ka's use of the land.

There are many other similar examples of cases that have been delayed by a process that has failed. There is no one reason that explains the length of time it takes an allotment to be finalized. When compared to homestead claims in Alaska, it is clear the amount of evidence the government requires to prove allotment claims are valid is a major factor in causing the delays because today there are no outstanding homestead claims because the government required minimal proof for those claims.

SECTIONS 301, 302, 305 AND 501 ELIMINATE IMPORTANT STATUTORY AND CONSTITUTIONAL RIGHTS OF NATIVE ALLOTMENT APPLICANTS

Sections 301 and 302 allow the government to exercise its discretion to avoid its obligation to recover the land when the allotment is valid and the land was erroneously conveyed. Although, Section 301 allows the State or Corporation to offer the applicant land in a different location from the allotment land, if the applicant does not consent, this Section authorizes the Secretary to survey the land as it is now described in BLM's records. This provision will authorize surveying land that may not correctly describe the allotment land. An unknown number of allotments are incorrectly described in BLM's records. In most cases these errors are the fault of the government, not the fault of the applicant.[10] Further, these sections do not eliminate BLM's lengthy adjudication of allotments because these sections apply only to "valid" allotments. The phrase valid allotment denotes the final determination BLM issues after its adjudication of the applicant's use and occupancy. In hundreds of allotment applications filed over 30 years

[10] *Mary Olympic v. United States*, 615 F.Supp. 990, 994 (D. Alaska 1985).

ago, a final validity decision has still not been made. Thus, Sections 301 and 302 do nothing to speed up BLM's adjudication process.

Section 305 eliminates the existing right of Native allotment applicants to amend an allotment description. Amendments of allotments arose from the recognition by Congress that a significant percentage of allotment applications contained errors that were not the fault of the applicants.[11] In most cases it was the BIA that identified the location of the allotment and provided BLM with many erroneous legal descriptions. Congress intervened with Section 905(c) of ANILCA allowing the correction of erroneous legal descriptions.

The right to amend allotment descriptions under ANILCA is allowed only in very limited situations; it is allowed only in situations where it is proven that the land described in the application is not the land that the applicant originally intended to apply for as the allotment. The purpose of Section 905(c) is to correct mistakes in the allotment applications that the government made when it collected the applications during 1970-1971.

If the right to amend is eliminated as contemplated by S. 1466, some applicants will lose their allotments because they will not be able to prove use and occupancy of land they did not originally intend to apply for. It is also possible that even if they receive land they did not intend to apply for, valuable improvements on the land they did intend to apply for would be lost.

Sections 305 (f)(1) and (f)(3) eliminate the right of allotment applicants to reinstate their closed cases. Under current federal court decisions, applicants (or heirs) have the right to get closed allotment cases reinstated if BLM closed the case without an opportunity for a hearing because such a closure was in violation of due process.[12] Before these federal court decisions, allotment applications were routinely rejected and closed whenever it believed there was insufficient evidence to prove the applicant's qualifying use of the land claimed for an allotment. The number of closed cases that should be reopened is unknown but we suspect it is a substantial number.

Eliminating the right to reinstate allotment cases closed in violation of the applicants' due process rights compounds the original violation and will only lead to future litigation. Although, the U.S. Supreme Court has repeatedly held that while Congress has plenary authority over Indian affairs, which would include Native allotment matters, it must comply with guarantees of the U.S. Constitution,[13] such as the due

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[11] S. Rep. No. 413, 96th Cong. 2d Sess. 237-38, reprinted in 1980 U.S. Code Cong. & Ad.News 5070, 5181-82.

[12] *Pence v. Kleppe*, 529 F.2d 135 (9th Cir. 1976); *Pence v. Andrus*, 586 F.2d 733 (9th Cir. 1978).

[13] *United States v. Sioux Nation of Indians*, 448 U.S. 371, (1980). *See also, Delaware Tribal Business Committee v. Weeks*, 430 U.S. 73, 84 (1977).

process clause and the just compensation clause.[14] Congress should delete Sections 305 (f)(1) and (f)(3) from S. 1466 and instead, direct BLM to reinstate those unlawfully closed cases.

Section 305(f)(2) severely limits the right of allotment applicants to file reconstructed applications in cases where the government lost the original applications. This problem arose during 1970-71, when the government went to villages in Alaska and filled out by hand numerous allotment applications from information provided by the applicants. These applications were then sent to California where specific legal descriptions were created for each allotment. The applications were typed and sent back to Alaska. This process caused the loss of more than 500 applications. Still today, there are applicants wondering when they will get allotment certificates, not knowing their applications were lost. Under current rulings of the IBLA, applicants (or heirs) have the right to file reconstructed applications where the government lost their original application.

Unfortunately, Section 305 (f)(2) eliminates this right and in addition allows BLM to reject previously filed reconstructed applications unless the BLM's file already contains the information that would meet the long list of evidentiary requirements as set forth in Section 305 (f)(2). This Section effectively creates a new and extremely harsh standard far exceeding the evidence the IBLA now requires to prove the government lost an application.[15] It will be impossible for many applicants to meet this new standard because they will be required to remember details of events surrounding the filing of their applications which occurred over thirty years ago.

Moreover, it likely violates due process to authorize BLM to close cases that do not meet the higher evidentiary standard when notice of the new standard has never been provided to applicants. Even if notice of the new standard was provided, it is likely a due process violation to allow BLM to close such cases without a hearing on the factual issues.

Section 305(f)(3) eliminates the right of allotment applicants to request reinstatement of relinquished allotment land even if the relinquishment is invalid. The right to reinstate an allotment on the grounds that a relinquishment is invalid is addressed in Section 905 of ANILCA.[16] Invalid relinquishments according to the IBLA are those

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[14] *See, Babbitt v. Youpee*, 519 U.S. 234 (1997); *Bolling v. Sharpe*, 347 U.S. 497 (1954); *United States. v. Antelope*, 430 U.S. 641 91977); *Hodel v. Irving*, 481 U.S. 704 (1987).

[15] *Alice Brean v. United States*, 159 IBLA 310 (2003) (holding that the IBLA will set aside BLM's rejection of a reconstructed allotment if the Board decides there is a question of fact whether the application was timely filed and BLM has not provided the applicant with a hearing required by the due process clause).

[16] 43 U.S.C. 1634(a)(6).

that were unknowing or involuntary.[17] One example of an invalid relinquishment is found in the case of Willie Arkanakyak, an Alaska Native who neither spoke nor read English.[18] Evidence introduced in the hearing established that a BIA employee found Mr. Arkanakyak intoxicated in a bar and caused him to sign a relinquishment of his allotment.

Section 501 creates new procedures for allotment hearings and appeals, sacrificing the right of Native allotment applicants to have fair and impartial hearings and appeals. Further, the new procedures add time and cost to the existing hearings and appeals process. It is also certain that the new procedures will not meet due process.

Currently, applicants (or heirs) have a right to a fair hearing to determine certain factual issues in their allotment cases. The hearings are conducted by impartial administrative law judges under rules proscribed by federal regulations. These hearings meet due process guarantees.[19] Unless the new hearing procedures are identical to the existing procedures, it is likely that due process requirements will not be met.

Applicants presently have a right to appeal agency decisions to the IBLA under rules proscribed by federal regulations. Unless the appeals process contemplated by Section 501 is identical to the existing appeals process, it is unlikely that due process will be met.

The hearings and appeals process are unquestionably slow causing years to the finalization of many allotment cases. However, that does not justify eliminating the rights of Native allotment applicants to fair and impartial hearings and appeals. Instead, this Committee should examine why OHA and IBLA have failed to hold hearings and issue decisions on a timely basis. Lack of resources is one major reason for this failure. For example, the OHA generally schedules allotment hearings only in the summer months which drastically reduce the total number of hearings that occur each year. Obviously, scheduling year-round hearings would solve part of the problem. In addition, although only 15 hearings were scheduled for the summer of 2003, OHA cancelled 10 because it ran out of money.

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[17] *Matilda Johnson*, 129 IBLA 82 (1994).

[18] *Estate of Willie Arkanakyak*, IBLA 93-113 (March 8, 2001).

[19] *Pence v. Andrus*, 586 F.2d 733 (9th Cir. 1978).

TECHNICAL AMENDMENTS TO S. 1466

The proposed amendments to S. 1466 will afford Native allotment applicants due process and will facilitate the transfer of land selected by the State and Native Corporations. Numerous provisions in S. 1466 add substantial time and costs to the finalization of land transfers, contrary to the specific purpose of this legislation. I am certain that the goal of finalizing the transfer of land in Alaska by 2009 will never be reached if S. 1466 is enacted as it is now written. I offer this Committee technical amendments to S. 1466 that assures the 2009 goal will be reached and the rights of Native people in Alaska will be protected.

Summary of Technical Amendments

Legislative Approval: Section 305 is amended to provide legislative approval of all pending applications with mediation required for settlements where the State or Corporations have a valid interest in the land. This provision will substantially reduce the delays that are inherent in BLM's existing process.

Title Recovery: Section 302 is amended to substantially shorten the title recovery process by providing for legislative approval of all pending applications where the land has been erroneously conveyed to the State or Native Corporation. In hundreds of allotment cases, the title recovery process has taken over 30 years and is still not finalized. Without legislative approval of these cases, it will be impossible to finalize the hundreds of pending title recovery allotment cases by 2009. Section 302 also makes it clear that if alternative land is offered to the applicant by the State or Corporation and the applicant refuses it, the BLM is not authorized to force the applicant to accept but instead, must carry out its duty to recover the land in accordance with the decision in *Aguilar v. United States.*[20]

Reconstructed/Reinstated/Amended Applications: Section 310 is amended to reaffirm the existing right to reconstruct lost applications and to reinstate improperly closed applications and provides a fair timeline for the finalization of cases. Section 310 requires BLM to identify all allotment applications that were or may have been improperly closed and to notify each applicant. The applicants will have three years after such notice to request reconstruction, reinstatement or amendment of their allotment applications. BLM's report identifying improperly closed allotment cases with subsequent notice to applicants and a 3-year deadline to request reinstatement will substantially reduce the likelihood that the protected property rights of Alaska Natives will be sacrificed in a rush to finalize the land transfers to the State and Corporations.

[20] 474 F.Supp. 840 (D. Alaska 1979) (holding that BLM had a trust obligation to recover allotment land it had erroneously conveyed to the State of Alaska).

Hearings and Appeals Process: Section 501 is amended to provide two options that will ensure that allotment hearings and appeals will be completed in a fair and timely manner. The first option authorizes compacting/contracting allotment hearings and appeals to the Tribes in Alaska. The second option increases the resources of OHA making it possible for the opening of an office in Alaska where administrative law judges would be permanently assigned to conduct year round allotment and probate hearings for cases where a Tribe elects not to provide such service.

Vietnam Veterans Allotments: Section 307 adds a new section to S. 1466 which amends 43 U.S.C. 1629g allowing allotment applications to be filed for 160 acres of vacant federal land by Alaska Natives veterans (or heirs) who honorably served during the Vietnam era.

Southeast Alaska Allotments: Section 308 adds a new section to S. 1466 which allows reinstatement of applications that were closed under the *Shields*[21] case adjusting the unfair balance in the geographic distribution of allotments because the land in all of Southeast Alaska was withdrawn by 1909.

Compacting or Contracting the Department's Responsibilities to Tribes: Section 309 adds a new section to S. 1466 which allows Tribes to assume many of the allotment responsibilities of the Department of the Interior including the adjudication, hearings, and appeals of allotments and probate work. This provision will cut years from the current processing of allotments.

Analysis of Technical Amendments to S. 1466

The amendments to S. 1466 will protect the rights that Native allotment applicants currently enjoy under due process safeguards, administrative and federal case law, ANILCA, and the Alaska Native Allotment Act. The amendments will also ensure that Congress meets its trust responsibility to Alaska Native allotment applicants.

Legislative Approval: Legislative approval for all pending allotments including those allotments reinstated under the technical amendments will greatly reduce the time it takes to now finalize allotments. Without legislative approval, it will be impossible for allotments and other land transfers to be finalized by 2009. Although, the legislative approval provisions under ANILCA[22] were intended to achieve this exact result, it failed to do so because the state exercised its veto power in at least 60 percent of the allotment applications, forcing hundreds of cases into BLM's lengthy adjudication process. The allotments that have been legislatively approved prove that this procedure saves time and money. The finalization of land transfers will not happen by 2009 without the expansion of legislative approval because it is simply impossible for the Department to adjudicate and hold hearings for the current number of pending applications.

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[21] *Shields v. United States*, 698 F.2d 987 (9th Cir. 1983).

[22] 43 U.S.C. Section 1634(a)(1(A).

Title Recovery: Amending Section 301 reduces delays. This amendment will eliminate the obstacles to the finalization of land transfers in title recovery cases. This is important because about one-third of the remaining allotment cases are title recovery cases. Title recovery cases are those where the allotment lands were erroneously conveyed by BLM to the State or Native Corporations. In these cases, BLM first determines if the allotment is valid, which means BLM determines if the case file contains sufficient evidence of the applicant's use of the claimed land. If so, BLM sends a letter requesting the land be reconveyed but in many cases, years have elapsed since the letters requesting reconveyance were sent and no action has been taken since. Moreover, years are added to title recovery cases because many cases require hearings under existing law.

- Recovery of land required: The amendments reflect the government's obligation to recover the land when the allotment is valid and the land was erroneously conveyed.[23] To provide additional discretion to not recover allotment lands will only create more obstacles because even if the government exercises its Section 301 discretion and fails to recover the allotment land, a cloud will remain on the title. In addition, an allotment applicant could still initiate litigation to recover title.

- Valid existing rights: Currently, allotments that are legislatively approved are subject to valid existing rights if such rights were initiated prior to the commencement of use of the allotment. Allotments are not subject to existing rights if the existing rights were initiated after use of the allotment began. On the other hand, such rights are routinely reserved in Settlement Agreements that allotment applicants must sign before the State or Corporations will agree to reconvey the land. There are many unreconveyed allotment cases that have sat idle because of the interests in the allotment claimed by the State or Corporations. Section 301 does nothing to eliminate the current stand off.

- Settlement Agreements: Before the State or Corporations agree to reconvey allotment land, it requires applicants to sign settlement agreements. Many of these agreements unfairly reserve interests in the allotment. These reserved interests were not initiated first and therefore are not interests that could legally be justified. In some cases, the reconveyance documents reserve even more interests to the State or Corporations. The State interprets Title 38 of the Alaska Revised Statutes as requiring reservations of certain interests even when those interests are legally unjustified under federal law.

- Legislative approval: Legislative approval will remove many of the delaying obstacles from the title recovery cases. There are numerous allotment applications which now require lengthy and costly adjudication only because ANILCA 43 U.S.C. § 1634 (a)(4) requires it for lands conveyed to the State and

[23] *See, Aguilar v. United States*, 474 F.Supp. 840 (D. Alaska 1979).

lands selected or tentatively approved to the State or Corporations. Excluding title recovery cases from the legislative approval provisions of ANILCA has been ineffective, causing only delay, inaction, and even defiance in some cases where the State and Corporations have overtly refused to reconvey.

- Alternative dispute resolution (ADR): Continuing to require lengthy allotment hearings will not allow the goal of finalization for land transfer to be reached for many years. However, if ADR was part of the title recovery process prior to legislative approval, in many cases the valid interests of the State or Corporation could be settled. ADR could eliminate time and costs in title recovery cases.

- Direct conveyance from the Corporation to the applicant: Allowing Native Corporations to directly reconvey the allotment land to the applicant will save time and money. It will also allow the Corporation and the applicant more flexibility in resolving land conflicts because the amendment allows the applicant to accept substituted land and/or cash compensation in lieu of the allotment.

Reinstatement of Unlawfully Closed Applications: The amendment provides for reinstatement of unlawfully closed cases in a timely and fair manner. By federal court decision, a due process hearing on factual issues is required before an allotment case can be closed.[24] Yet there are cases that were closed without a hearing and remain closed today. Those cases must be reinstated. Further, unlawfully closed cases also include cases where the land was relinquished but the relinquishment was not knowing or voluntary. In other words, some relinquishments occurred under questionable circumstances. There are other cases where BIA and others made errors in filling out legal descriptions which had the effect of reducing the total acreage of an allotment. Questionable cases must be reinstated even if only for the purpose of investigation. However, BLM's policy as stated in its manual is that it will not reinstate an unlawfully closed application on its own initiative but instead requires a request from the applicant.[25] Therefore, the first step in fixing the reinstatement problem is a mandate to BLM to provide a report of allotment applications that were or may have been unlawfully closed.

The amendment requires BLM to provide to the public within 6 months from the enactment of S. 1466, a list of all allotment cases that were closed without notice and hearing. The amendment provides a 3-year deadline from the date of BLM's published list of closed cases to file with BLM a request for reinstatement. Once the three year deadline lapses, BLM will have a finite number of cases to accept or deny reinstatement and if other provisions of S. 1466 are amended these reinstated cases should be final by 2009 or before.

Reconstruction of Lost Applications: The amendment to Section 305 allows the reconstruction of lost applications within a time frame that ensures the 2009 goal will be met. It is obvious that land transfers may never be final if the right to reconstruct lost

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[24] *See, Pence v. Kleppe*, 529 F.2d 135 (9th Cir. 1976).

[25] BLM's Native Allotment Manual, Section 7(a)(2) of Chapter II (1991).

applications does not end, but it is unfair to abruptly end the reconstruction of lost applications without any prior notice to allotment applicants who may not know that their applications were lost. Thus, sufficient time with notice must be given to allow Alaska Natives who may have lost applications needing reconstruction. The amendment provides a 3-year deadline for submitting reconstructed applications. BLM is required to provide notice of the 3-year deadline to the Bureau of Indian Affairs, Tribes, and others serving Alaska Natives. The 3-year deadline begins to run from the date BLM first provides notice of the 3-year deadline.

Hearings and Appeals: Section 501 is amended to resolve the problem of the delays at the hearing and appeal levels. The amendment also prevents unnecessary duplication and excessive costs that now occur and are certain to occur in the future under the new hearing and appeal procedures contemplated by S. 1466.

Although the current hearings and appeals system adds years to many allotment cases, the resolution of this problem should not unfairly deprive allotment applicants' access to impartial hearings and appeals decided by an appeals Board that has the expertise to decide allotment issues such as the IBLA. It could take a new appeals body years to gain the expertise necessary to issue competent appeal decisions.

Many Tribes in Alaska are capable and eager to assume the Department's allotment hearings and appeals responsibility by compacting or contracting in accordance with the Indian Education and Self-Determination Act of 1975.[26] The amendment provides for compacting/contracting that would distribute among numerous Tribes the hearings and appeals burden that the Department has failed to meet. Moreover, the hearings would take place year round and be conducted by Tribal Judges who already have knowledge of the allotment applicant's culture and subsistence practices. In the compacts/contracts, participating Tribes could agree to adopt as Tribal law the federal regulations governing hearings and appeals.

The current resources of the Department's Office of Hearings and Appeals including the IBLA must be increased and the work expanded. The amendment provides that the resources of OHA would be increased in order to open an office in Alaska where administrative law judges would be permanently assigned and conduct year round allotment and probate hearings for cases where Tribes elect not to provide such service. In addition additional funding is appropriated to the IBLA with a directive that it be used to increase its staff for allotment cases where Tribes elects not to provide such service.

Compacting or Contracting the Department's Responsibilities to Tribes: The amendment allows Tribes to assume many of the allotment responsibilities of the Department including BLM's adjudication process, hearings, appeals and probate work. Contracting or compacting such responsibilities to the Tribes will be consistent with aims of the Self Determination Act and the trust responsibilities of Congress and the Department. Having the Tribes assume the work will also remove many of the delays to

[26] Pub. L. No. 93-638. 25 U.S.C. § 450 et. seq.

the finalization of land transfers because the burden of allotment work will be distributed among many Tribal entities. The Department of the Interior has had over thirty years to finalize allotments as that work is not even close to completion. It is time to give the Tribes the opportunity to do so.

Amending the Vietnam Veterans Allotment Act: 43 U.S.C. § 1629g is amended to provide that Alaska Natives who honorably served during the Vietnam era be eligible for allotments of 160 acres of vacant federal land. The goal of this amendment is to help make it possible for all Alaska Natives who honorably served in the military during the Vietnam War to receive allotments of land in Alaska. The numerous restrictions in the current Act have defeated many of the applications filed and even discouraged many from applying. For example, as of December 1, 2003, BLM has rejected about 47 percent of the applications filed under the Veterans Allotment Act.[27]

There are three major reasons why the current Veterans Allotment Act needs to be amended. First, is the lack of federal land that is available for veteran allotments; existing law severely limits what type of land can be available for allotments. Presently, land available for veteran allotments must be:

- non-mineral, without gas, coal, or oil,
- not valuable for minerals, sand or gravel,
- without campsites,
- not selected by the State of Alaska or a Native Corporation,
- not designated as wilderness,
- not acquired federal lands,
- not contain a building or structure,
- not withdrawn or reserved for national defense,
- not a National Forest,
- not BLM land with conservation system unit sites, (unless the manager consents),
- not land claimed for mining,
- not homesites, or trade and manufacturing sites or headquarters site,
- not a reindeer site, and
- not a cemetery site.

Further, these restrictions make it impossible for veterans in Southeast Alaska to apply because as shown above, land in a national forest is not available to veterans and most of Southeast Alaska is the Tongass National Forest. This restriction prevents many deserving veterans in southeast Alaska from obtaining allotments. The amendment makes vacant federal land available for veteran allotments.

Second, the current law does not allow for the legislative approval of veteran allotment applications. The amendment provides legislative approval instead of the use

[27] Written communication from John M. Toms, Jr., BLM's Native Veteran Allotment Coordinator, to Carol Yeatman, Supervising Attorney, Alaska Legal Services Corporation, Native Allotment Program, dated December 1, 2003.

and occupancy requirements veterans must now meet. This provision is similar to the legislative approval provision Congress made available to applicants of allotments who applied under the Alaska Native Allotment Act. Legislative approval will save time and money because it will eliminate the costly and lengthy administrative adjudication of the applicant's use and occupancy.

The third reason the law needs to be changed is that current law is unfair to many deserving veterans that do not qualify even though they honorably served their country during the Vietnam era. Many Alaska Native veterans who served during the Vietnam era do not qualify for an allotment under the military service time restrictions in the current law. Only veterans who served from January 1, 1969 to December 31, 1971 are now eligible to apply for an allotment. However, the Vietnam era covered a much longer time span. The "Vietnam era" is legally defined as beginning August 5, 1964 and ending May 7, 1975. Veterans that served during the "Vietnam era" from August 5, 1964 to December 31, 1968, and from January 1, 1972 to May 7, 1975 are excluded from getting an allotment under current law. There are approximately 1,700 Alaska Native Vietnam veterans that will get a chance to apply for an allotment if this provision is enacted into law. Those 1,700 veterans are now excluded simply because they bravely served their country a little too early or a little too late.

Reinstatement of Allotments Closed Under the *Shields* Decision: The amendment provides for reinstatement of applications that were closed under the decision in *Shields v. United States*[28] by allowing ancestral use of certain allotments to meet the use and occupancy requirements. Although this provision expands the current reinstatement policy of the Department, this amendment provides basic justice. Because most of the land throughout Southeast Alaska was withdrawn by 1909 and the federal government did not inform Native people about the Allotment Act, few Alaska Natives in Southeast Alaska received allotments. Reinstatement of the applications rejected under the *Shields* decision adjusts this unfair distribution of land.

The *Shields* decision answered the question of whether Congress intended to require allotment applicants to prove they personally "used" the land claimed in cases where the land had been withdrawn for the Tongass National Forest before the applicant's birth or if proof that the applicant's ancestors used the land was sufficient. The argument that ancestral use met the "use" requirement was valid because the word "use" was not defined in the Allotment Act or in its legislative history. Unfortunately when a term or word used in a federal statute is not defined by Congress, the courts allow the agencies to interpret the word. That is exactly what happened with the word "use." The Department of the Interior interpreted the word "use" to mean personal rather than ancestral use and the courts deferred to that interpretation. This amendment will not change the language of the Allotment Act but instead will allow Congress to define "use" in a manner that merely differs from the Department of the Interior's definition.

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[28] 698 F.2d 987 (9th Cir. 1983).

CLOSING

Congress enacted the Alaska Native Allotment Act in 1906 so that Alaska Natives would obtain title to land and resources that had fed, clothed and sheltered them for thousands of years. Many Alaska Natives still wait for that promised title. I urge this Committee to amend S. 1466 and in doing so, to protect the rights of Native allotment applicants while eliminating many of the factors that now delay finalizing allotment cases.

Respectfully submitted,

Edward K. Thomas, President

Attachment: Technical Amendments

Technical Amendments to the Alaska Land Transfer Acceleration Act (S. 1466)

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

Section 2. Definitions is amended by:

(1) striking after 'In this Act: (1) and (2)' and inserting '(7) and (8).'

(2) inserting after 'In this Act:' '(1) ANCESTOR- The term 'ancestor' means any person to whom the applicant can show lineal or clan relation,' and

(3) inserting '(2) APPLICANT – The term 'applicant' means the applicant or the heir or heirs of the applicant if the applicant is deceased,' and

(4) inserting '(3) INDIAN PROBATE- The term 'Indian probate' means the probate of the estate of an Alaska Native who held an interest in trust property prior to death,' and

(5) inserting '(4) INDIAN TRIBE- The term 'Indian tribe' shall have the meaning given that term in section 4(e) of the Indian Self-Determination and Education Assistance Act (codified at 25 U.S.C. §450b(e)),' and

(6) inserting '(5) LAND TRANSFER DECISION – The term 'land transfer decision' means any decision of the Bureau of Land Management relating to federal land entitlement within the State.' and

(7) inserting '(6) MAJOR INTEREST – The term 'major interest' means a present permitted, licensed, or other authorized interest in the land within an allotment.'

(8) inserting '(9) TRIBAL ORGANIZATION- The term 'Tribal organization' shall have the meaning given that term in section 4(l) of the Indian Self-Determination and Education Assistance Act (codified at 25 U.S.C. §450b(l)).'

(9) adding the following after 'Sec. 2. Definitions:' 'Section 3. Savings Provision- If any provision of this Act, as enacted, is declared unconstitutional or is held invalid, the validity of the remainder of this Act shall not be affected.'

(10) adding the following after 'Sec. 3, Savings Provision:' 'Section 4. Attorney's Fees-A court has discretion to award to a prevailing party, other than the United

States, attorney's fees and other expenses, in addition to any costs incurred by that party, in any civil action including proceedings for judicial review of agency action, brought by or against the United States in any court having jurisdiction of that action.'

(11) adding the following after 'Sec. 4. Attorney's Fees:' 'every civil action against any party including the United States for the recovery of land for an approved or valid allotment shall be barred unless the complaint is filed within 10 years after the allotment applicant receives a written decision from the Department of the Interior that the United States government declines to prosecute to recover the land.

Title III—Native Allotments

SECTION 301. TITLE AFFIRMATION

Section 301 of S. 1466 is amended by:

(1) in section 301(d) striking all of subsections (1) and (2) and inserting the following:

'(1) IN GENERAL-The Secretary shall correct a conveyance to a Native Corporation or to the State for land that is described in a valid allotment application to exclude the described allotment land.

(2)(A) ATTESTATION-Before correcting the conveyance, the Secretary shall request the Native Corporation or the State to attest that it has not:

(i) granted any third party rights or taken any other action that would affect the ability of the United States to convey full title under the Act of May 17, 1906 (34 Stat. 197, chapter 2469);

(ii) caused or allowed to be caused any disturbance of the surface or subsurface of the land; and

(iii) stored or allowed the deposits of hazardous waste on the land.

(B) FAILURE TO ATTEST- If the Native Corporation or the State fail to attest as described in subsection (A) of this Section, the Secretary shall timely perform a hazardous materials inspection prior to the correction of the conveyance.'

(2) in subsection (d)(3) after 'acceptable written,' striking "concurrence' and inserting 'attestation.'

(3) striking subsection (d)(4) and inserting '(4) The only document of reconveyance that is necessary from the State or a Native Corporation to use the procedures authorized by this subsection is the attestation described in paragraph 2A.'

SECTION 302. TITLE RECOVERY OF NATIVE ALLOTMENTS

Section 302 of S. 1466 is amended by:

(1) in subsection (a) after 'established by the Secretary, all' striking 'or any part.'

(2) striking subsection (b) and inserting 'The United States shall accept the deed after the United States legislatively approves the allotment under Section 305 of this Act.'

(3) in subsection (c) adding at the end 'with the informed consent of the allotment applicant.'

(4) in subsection (d) after 'the Secretary shall provide the applicant or the' striking 'personal representative' and inserting 'heir(s).'

(5) in subsection (d) adding to the end the following: 'and if applicant's acceptance is not forthcoming, and the land is alternate land as described in subsection (c) of this Section, the United States shall not accept the deed.'

(6) in subsection (e) after 'the Secretary' striking 'may' and inserting 'shall.'

(7) striking subsection (f) and inserting the following:

'(f) RECOVERY OF TITLE-If the Native Corporation or the State fails to reconvey the allotment land, the Secretary shall file an action in court to recover title.'

(8) redesignating subsections (g), (h), and (i), as subsections (h), (i), (j) respectively.

(9) insert the following as subsection (g):

(g) DIRECT CONVEYANCE OF TITLE TO APPLICANT-The State of Alaska and Native Corporations in Alaska may directly convey surveyed lands described in an allotment application or alternative lands that have been mutually agreed upon to Native allotment applicants or their heirs and thereafter in accordance with 25 C.F.R. § 151.14, the Secretary shall formally accept such conveyance documents in trust for said individual(s), and shall issue to the applicant or heirs a certificate of allotment

(10) in subsection (j) after 'The United States' inserting 'and the applicant.'