

Calendar No. 468

108TH CONGRESS }
2d Session }

SENATE

{ REPORT
108-251

ALASKA NATIVE ALLOTMENT SUBDIVISION ACT

MARCH 29, 2004.—Ordered to be printed

Mr. DOMENICI, from the Committee on Energy and Natural Resources, submitted the following

R E P O R T

[To accompany S. 1421]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 1421), to authorize the subdivision and dedication of restricted land owned by Alaska natives, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Alaska Native Allotment Subdivision Act”.

SEC. 2. DEFINITIONS.

In this Act:

- (1) RESTRICTED LAND.—The term “restricted land” means land in the State that is subject to Federal restrictions against alienation and taxation.
- (2) SECRETARY.—The term “Secretary” means the Secretary of the Interior.
- (3) STATE.—The term “State” means the State of Alaska.

SEC. 3. SUBDIVISION AND DEDICATION OF ALASKA NATIVE RESTRICTED LAND.

(a) IN GENERAL.—An Alaska Native owner of restricted land may, subject to the approval of the Secretary—

- (1) subdivide the restricted land in accordance with the laws of the—
 - (A) State; or
 - (B) applicable local platting authority; and

- (2) execute a certificate of ownership and dedication with respect to the restricted land subdivided under paragraph (1) with the same effect under State law as if the restricted land subdivided and dedicated were held by unrestricted fee simple title.

(b) RATIFICATION OF PRIOR SUBDIVISIONS AND DEDICATIONS.—Any subdivision or dedication of restricted land executed before the date of enactment of this Act that has been approved by the Secretary and by the relevant State or local platting authority, as appropriate, shall be considered to be ratified and confirmed by Congress as of the date on which the Secretary approved the subdivision or dedication.

SEC. 4. EFFECT ON STATUS OF LAND NOT DEDICATED.

Except in a case in which a specific interest in restricted land is dedicated under section 3(a)(2), nothing in this Act terminates, diminishes, or otherwise affects the continued existence and applicability of Federal restrictions against alienation and taxation on restricted land or interests in restricted land (including restricted land subdivided under section 3(a)(1)).

PURPOSE OF THE MEASURE

The purpose of S. 1421 is to authorize the subdivision and dedication of restricted land owned by Alaska Natives, subject to the approval of the Secretary of the Interior.

BACKGROUND AND NEED

S. 1421 will provide Native landowners the authority to subdivide property they have received under the Native Allotment Act of 1906. Individual Alaska Native landowners cannot subdivide their native allotments to transfer it either by gift or by sale. Native landowners also lack authority to dedicate rights-of-way across their land for public access or for utility purposes. The lack of explicit statutory authorization calls into question the legal validity of lands that have been subdivided in the past and lands that likely could be subdivided in the future. S. 1421 will provide the necessary authorization to Alaska Native landowners to dedicate their land for public purposes, subject to the approval of the Secretary of the Interior. S. 1421 allows Alaska Natives to own lands with the same obligations and privileges of other private landowners in Alaska, but creates no obligation of Alaska Natives to do anything with their allotments unless they elect to sell or dispose of their lands.

LEGISLATIVE HISTORY

S. 1421 was introduced by Senator Murkowski on July 16, 2003. The Subcommittee on Public Lands and Forests held a field hearing in Anchorage, Alaska, on August 6, 2003. S. Hrg. 108–163. The Subcommittee held a second hearing in Washington, D.C. on February 12, 2004. At the business meeting on March 10, 2004, the Committee on Energy and Natural Resources ordered S. 1421 favorably reported, with an amendment in the nature of a substitute.

COMMITTEE RECOMMENDATION

The Senate Committee on Energy and Natural Resources, in open business session on March 10, 2004, by a unanimous voice vote of a quorum present, recommends that the Senate pass S. 1421, if amended as described herein.

COMMITTEE AMENDMENT

During the consideration of S. 1421, the Committee adopted an amendment in the nature of a substitute. The amendment deleted the congressional findings section and simplified the savings clause language in the bill. The amendment is described in the section-by-section analysis below.

SECTION-BY-SECTION ANALYSIS

Section 1 entitles the bill the “Alaska Native Allotment Subdivision Act”.

Section 2 provides definitions used in the bill.

Section 3 grants to Alaska Native landowners the ability to subdivide and dedicate restricted land in accordance with State and local law, subject to the approval of the Secretary of the Interior. The section also ratifies subdivisions and dedications executed prior to the date of enactment.

Section 4 clarifies that nothing in this Act terminates, diminishes or otherwise affects Federal restrictions or alienation and taxation on restricted lands not dedicated by this Act.

COST AND BUDGETARY CONSIDERATIONS

The following estimate of costs of this measure has been provided by the Congressional Budget Office:

S. 1421—Alaska Native Allotment Subdivision Act

S. 1421 would allow Alaska Natives, subject to approval by the Secretary of the Interior, to legally subdivide certain parcels of land that have been allotted to them by the federal government. Under current law, federal restrictions against alienation and taxation prohibit individuals from subdividing those lands in accordance with state and local law.

Based on information from the Department of the Interior, CBO estimates that S. 1421 would have no significant impact on the federal budget. The bill would not affect revenues. S. 1421 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

The CBO staff contact for this estimate is Megan Carroll. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 1421. The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of S. 1421.

EXECUTIVE COMMUNICATIONS

On February 12, 2004, the Committee on Energy and Natural Resources requested legislative reports from the Department of the Interior and the Office of Management and Budget. These reports had not been received at the time this report was filed. The testimony provided by the Bureau of Land Management at the Subcommittee hearing follows:

STATEMENT OF KATHLEEN CLARKE, DIRECTOR, BUREAU OF
LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

Mr. Chairman and Members of the Committee, I am Kathleen Clarke, Director of the Bureau of Land Management, Department of the Interior. I appreciate the opportunity to appear before you today to present the Department's views on S. 1421, the Alaska Native Allotment subdivision Act. The Department supports the intent of this bill. We would like to work with Committee to make certain technical amendments designed to clarify and strengthen the bill.

BACKGROUND

The purpose of the Federal statutory restrictions placed on Alaska Native allotments and restricted Native town-site lots is to protect Alaska Native owners against loss of their State and local governments, the Bureau of Indian Affairs, realty service providers under the Indian Self-Determination Act, and the general public. All of these entities have in the past relied upon the legal validity of dedications to the public which appeared on the face of existing plats.

Enactment of S. 1421 would remove an obstacle to pending lot sales and re-sales in existing subdivisions. It would pave the way for other Native owners of restricted lands to create new subdivisions in compliance with State or local platting requirements without forcing them to choose between the financial benefits of compliance with State law and the retention of protections against taxation and creditor's claims inherent in the restricted status of their lands. This feature is clarified by Section 5(b) of S. 1421, which provides that Federal restrictions against taxation and alienation are only lost by compliance with State or local platting requirements as to those specific interests expressly dedicated in the Certificate of Ownership and Dedication.

The Department recommends amending Section 4(a)(1) of the bill to read, "subdivide the restricted land for rights-of-way for public access, easements for utility installation, use and maintenance and for other public purposes, in accordance with the laws of the—" to make this section consistent with the findings in Section 2(a)(b)(c) of the bill. Additionally, the Department recommends adding a new section to the bill authorizing the promulgation of regulations to clarify how S. 1421 would be implemented.

CONCLUSION

In closing, I would like to thank the Committee for its continuing commitment to address these complex issues, and reiterate the Department's support for the intent of this bill. If enacted with certain technical changes, S. 1421 will allow Native Alaskans to subdivide their restricted allotment lands with the approval of the Secretary. We look forward to working with the Committee on technical

amendments to this bill. I will be happy to answer any questions you may have.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee notes that no changes in existing law are made by the bill S. 1421 as ordered reported.

