

House Subcommittee on Indian, Insular and Alaska Native Affairs

Don Young, Chairman

Hearing Memo

June 8, 2015

To: Natural Resources Committee Members

From: Majority Staff, Subcommittee on Indian, Insular and Alaska Native Affairs

Hearing: Legislative hearing on H.R. 2387 (Young-AK), the *Alaska Native Veterans Land Allotment Equity Act*.

The Subcommittee will hold a Legislative Hearing on **Wednesday, June 10, 2015, at 11:00 a.m. in Room 1324 Longworth HOB** on H.R. 2387.

Summary of the Bill:

H.R. 2387, the *Alaska Native Veterans Land Allotment Equity Act* was introduced by Rep. Don Young May 15, 2015 and has been referred to the Subcommittee on Indian, Insular and Alaska Native Affairs. The bill would amend the Alaska Native Claims Settlement Act¹ to provide equitable treatment of Alaska Native Vietnam Veterans in their acquisition of land under the Native Allotment Act of 1906.²

Background:

It is well known that per capita, American Indian and Alaska Natives have served at a higher rate in the United States Armed Forces than other ethnic groups.³ During the Vietnam War which officially lasted from 1964-1975, approximately 2,800 Alaska Natives served in the military during the conflict. Unfortunately, due to their service to the United States, many of these Veterans were unable to have opportunity to apply for their Native allotments under the Alaska Native Allotment Act prior to the enactment of the Alaska Native Claims Settlement Act (ANCSA) which repealed the Native Allotment Act in 1971.

In 1998, H.R. 4194⁴ included an amendment to amend ANCSA to provide Alaska Native Vietnam veterans an opportunity to obtain an allotment of up to 160 acres (or two parcels) of land under the Native Allotment Act.

Three major obstacles emerged which prevented many Alaska Native Vietnam veterans from selecting and obtaining their allotments. First, Alaska Native Vietnam veterans can only

¹ 43 U.S.C. 1617 et seq.

² 34 Stat. 197, as amended, repealed December 1971.

³ U.S. Department of Veterans Affairs. “*American Indian and Alaska Native Veterans: Lasting Contributions.*” September 2006.

⁴ See P.L. 105-276, the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999

apply for land that was vacant, unappropriated, and unreserved when their use of such land first began.

Second, Alaska Native Vietnam veterans can only apply if they served in active military duty from January 1, 1969 to December 31, 1971, despite the conflict beginning and ending before and after this period.

Third, Alaska Native Vietnam veterans must prove they used the land (applied for in their Native allotment application) in a substantially continuous and independent manner, at least potentially exclusive of others, for five or more years. This requirement was not in the original Native Allotment Act, nor has it been required of other Alaska Native applicants in applying for their Native allotment.

Further, adjudication of use and occupancy issues will take years and will be very costly. These and several factors supporting the need for this legislation are outlined in the Department of the Interior's study on Alaska Native Veterans for Allotments as required by P.L. 105-276.⁵

Major Provisions/Analysis of H.R. 1168:

H.R. 2387 aims to increase the available land for allotments for Veterans by authorizing Alaska Native Vietnam veterans to apply for land that is federally owned and vacant. The lack of available land under existing law nullifies the very purpose of granting Alaska Native Vietnam veterans an allotment benefit. This is true because most land in Alaska is not available for Alaska Native Vietnam veteran allotment applications under existing law. For example, there is no land available in southeast Alaska because it either is within the Tongass National Forest or has been selected or conveyed to the State of Alaska or ANCSA Native Corporations.

H.R. 2387 will also expand the military service dates to coincide with the entire Vietnam conflict: August 5, 1964 through May 7, 1975. The expansion of military service dates to include all Alaska Natives who served in the military during the Vietnam conflict is consistent with the federal government's policy of providing benefits to veterans of the Vietnam War. The federal government has given public land benefits to veterans (or their widows or heirs) of every war beginning with the Indian Wars of 1790 and ending with the Korean conflict in 1955. Incidentally, Alaska Native veterans were not eligible for these public land benefits until 1924 because the courts had determined Alaska Natives were not United States citizens.

H.R. 2387 would extend the deadline of the allotment application to three years after the Secretary of the Interior issues final regulations under Section 4 of this bill. It also would correct the dates of Approval of Allotments to accommodate the extension of the application process of an Alaska Native Vietnam veteran.

H.R. 2387 would also assure ANCSA Regional and Village Corporations that if an Alaska Native Vietnam veteran makes his or her allotment selection within lands selected (and

⁵ U.S. Department of the Interior: *A Report Concerning Open Season for Certain Native Alaska Veterans for Allotments*, June 1997.

not yet conveyed) by those Corporations then said Corporation's lands entitlement will remain intact.

The bill would prohibit an Alaska Native Vietnam veteran from selecting lands within the right-of-way granted for the TransAlaska Pipeline or the inner and outer corridor of that right-of-way withdrawal. It also would prohibit a veteran from selecting from a unit of the National Park System, National Preserve, or a National Monument.

H.R. 2387 would also allow a veteran who made an allotment selection under Section 3(e) of this bill, before the date of the enactment of this bill, to withdraw that selection and reselect lands under this section if the land originally selected was not conveyed to that person prior to enactment of this bill.

Previous Committee Action. Bills with similar intent have been introduced and referred to the Subcommittee since the 105th Congress. The Subcommittee most recently received testimony in the 110th Congress. In the 106th Congress, H.R. 4345 passed the House of Representatives but no action was taken by the Senate.

Witnesses:

Mr. Mike Black, Director
Bureau of Indian Affairs
(Accompanied by *Ms. Karen Mouritsen*, Deputy Assistant Director for Energy, Minerals, and Realty Management, Bureau of Land Management)
U.S. Department of the Interior
Washington, D.C.

Mr. Nelson Angapak Sr.,
Former Vice President
Alaska Federation of Natives
Anchorage, AK.

The Alaska Native Claims Settlement Act⁶ as amended by H.R. 2387⁷

§1617. Revocation of Indian allotment authority in Alaska

~~(a) Revocation of authority (a) Revocation-~~

~~No Native (1) IN GENERAL- No Native~~ covered by the provisions of this chapter, and no descendant of his, may hereafter avail himself of an allotment under the provisions of the Act of February 8, 1887 (24 Stat. 389), as amended and supplemented, or the Act of June 25, 1910 (36 Stat. 363). ~~Further, the~~

~~(2) REPEAL- The~~ Act of May 17, 1906 (34 Stat. 197), as amended, is repealed.

~~Notwithstanding the foregoing provisions of this section, any~~

~~(3) APPLICATIONS FOR ALLOTMENT-~~

~~(A) IN GENERAL- Notwithstanding paragraphs (1) and (2), any~~ application for an allotment that is pending before the Department of the Interior on December 18, 1971, may, at the option of the Native applicant, be approved and a patent issued in accordance with said 1887, 1910, or 1906 Act, as the case may be, in which event the Native shall not be eligible for a patent under section 1613(h)(5) of this title.

~~(B) CERTAIN APPLICATIONS APPROVED- Any allotment application pending before the Department of the Interior on December 18, 1971, that was closed by the Department pursuant to the civil action styled `Shields v. United States' (698 F.2d 987 (9th Cir. 1983), cert. denied (104 S. Ct. 73 (1983))) shall be reopened and considered to be approved pursuant to this paragraph.~~

(b) Charging allotment against statutory grant

Any allotments approved pursuant to this section during the four years following December 18, 1971, shall be charged against the two million acre grant provided for in section 1613(h) of this title.

(c) Relocation of allotment

(1)(A) Notwithstanding any other provision of law, an allotment applicant, who had a valid application pending before the Department of the Interior on December 18, 1971, and whose application remains pending as of October 14, 1992, may amend the land description in the application of the applicant (with the advice and approval of the responsible officer of the Bureau of Indian Affairs) to describe land other than the land that the applicant originally intended to claim if-

(i) the application pending before the Department, either describes land selected by, tentatively approved to, or patented to the State of Alaska or otherwise conflicts with an interest

⁶ 43 USC 1617(a) and 43 USC 1629g.

⁷ As introduced on May 15, 2015.

in land granted to the State of Alaska by the United States prior to the filing of the allotment application;

(ii) the amended land description describes land selected by, tentatively approved to, or patented to the State of Alaska of approximately equal acreage in substitution for the land described in the original application; and

(iii) the Commissioner of the Department of Natural Resources for the State of Alaska, acting under the authority of State law, has agreed to reconvey or relinquish to the United States the land, or interest in land, described in the amended application.

(B) If an application pending before the Department of the Interior as described in subparagraph (A) describes land selected by, but not tentatively approved to or patented to, the State of Alaska, the concurrence of the Secretary of the Interior shall be required in order for an application to proceed under this section.

(2)(A) The Secretary shall accept reconveyance or relinquishment from the State of Alaska of the land described in an amended application pursuant to paragraph (1)(A), except where the land described in the amended application is State-owned land within the boundaries of a conservation system unit as defined in the Alaska National Interest Lands Conservation Act. Upon acceptance, the Secretary shall issue a Native Allotment certificate to the applicant for the land reconveyed or relinquished by the State of Alaska to the United States.

(B) The Secretary shall adjust the computation of the acreage charged against the land entitlement of the State of Alaska to ensure that this subsection will not cause the State to receive either more or less than its full land entitlement under section 6 of the Act entitled "An Act to provide for the admission of the State of Alaska into the Union", approved July 7, 1958 (commonly referred to as the "Alaska Statehood Act"), and section 906 of the Alaska National Interest Lands Conservation Act (43 U.S.C. 1635). If the State retains any part of the fee estate, the State shall remain charged with the acreage.

(d) Correction of conveyance documents

(1) If an allotment application is valid or would have been approved under section 1634 of this title had the land described in the application been in Federal ownership on December 2, 1980, the Secretary may correct a conveyance to a Native Corporation or to the State that includes land described in the allotment application to exclude the described allotment land with the written concurrence of the Native Corporation or the State.

(2) A written concurrence shall-

(A) include a finding that the land description proposed by the Secretary is acceptable; and

(B) attest that the Native Corporation or the State 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); and

(ii) stored or allowed the deposit of hazardous waste on the land.

(3) On receipt of an acceptable written concurrence, the Secretary, shall-

(A) issue a corrected conveyance document to the State or Native Corporation, as appropriate; and

(B) issue a certificate of allotment to the allotment applicant.

(4) No documents of reconveyance from the State or an Alaska Native Corporation or evidence of title, other than the written concurrence and attestation described in paragraph (2), are necessary to use the procedures authorized by this subsection.

(e) Native allotment revisions on land selected by or conveyed to a Native Corporation

(1) An allotment applicant who had an application pending before the Department of the Interior on December 18, 1971, and whose application is still open on the records of the Department of the Interior as of December 10, 2004, may revise the land description in the application to describe land other than the land that the applicant originally intended to claim if-

(A) the application-

(i) describes land selected by or conveyed by interim conveyance or patent to a Native Corporation formed to receive benefits under this chapter; or

(ii) otherwise conflicts with an interest in land granted to a Native Corporation by the United States;

(B) the revised land description describes land selected by or conveyed by interim conveyance or patent to a Native Corporation of approximately equal acreage in substitution for the land described in the original application;

(C) the Director of the Bureau of Land Management has not adopted a final plan of survey for the final entitlement of the Native Corporation or its successor in interest; and

(D) the Native Corporation that selected the land or its successor in interest provides a corporate resolution authorizing reconveyance or relinquishment to the United States of the land, or interest in land, described in the revised application.

(2) The land description in an allotment application may not be revised under this section unless the Secretary has determined-

(A) that the allotment application is valid or would have been approved under section 1634 of this title had the land in the allotment application been in Federal ownership on December 2, 1980;

(B) in consultation with the administering agency, that the proposed revision would not create an isolated inholding within a conservation system unit (as defined in section 3102 of title 16); and

(C) that the proposed revision will facilitate completion of a land transfer in the State.

(3)(A) On obtaining title evidence acceptable under Department of Justice title standards and acceptance of a reconveyance or relinquishment from a Native Corporation under paragraph (1), the Secretary shall issue a Native allotment certificate to the applicant for the land reconveyed or relinquished by the Native Corporation.

(B) Any allotment revised under this section shall, when allotted, be made subject to any easement, trail, right-of-way, or any third-party interest (other than a fee interest) in existence on the revised allotment land on the date of revision.

(f) Reinstatements and reconstructions

(1) If an applicant for a Native allotment filed under the Act of May 17, 1906 (34 Stat. 197, chapter 2469) petitions the Secretary to reinstate a previously closed Native allotment application or to accept a reconstructed copy of an application claimed to have been timely filed with an agency of the Department of the Interior, the United States-

(A) may seek voluntary reconveyance of any land described in the application that is reinstated or reconstructed after December 10, 2004; but

(B) shall not file an action in any court to recover title from a current landowner.

(2) A certificate of allotment that is issued for any allotment application for which a request for reinstatement or reconstruction is received or accepted after December 10, 2004 shall be made subject to any Federal appropriation, trail, right-of-way, easement, or existing third party interest of record, including third party interests created by the State, without regard to the date on which the Native allotment applicant initiated use and occupancy.

§1629g. Open season for certain Alaska Native veterans for allotments

(a) ~~In general Alaska Native Veteran Allotments~~

~~(1) During the eighteen-month period following promulgation of implementing rules pursuant to subsection (e) of this section, a person described in subsection (b) of this section shall be eligible for an allotment of not more than two parcels of federal land totaling 160 acres or less under the Act of May 17, 1906 (chapter 2469; 34 Stat. 197), as such Act was in effect before December 18, 1971.~~

~~(2) Allotments may be selected only from lands that were vacant, unappropriated, and unreserved on the date when the person eligible for the allotment first used and occupied those lands.~~

~~(3) The Secretary may not convey allotments containing any of the following-~~

~~(A) lands upon which a native or non-native campsite is located, except for a campsite used primarily by the person selecting the allotment;~~

~~(B) lands selected by, but not conveyed to, the State of Alaska pursuant to the Alaska Statehood Act or any other provision of law;~~

~~(C) lands selected by, but not conveyed to, a Village or Regional Corporation;~~

~~(D) lands designated as wilderness by statute;~~

~~(E) acquired lands;~~

~~(F) lands containing a building, permanent structure, or other development owned or controlled by the United States, another unit of government, or a person other than the person selecting the allotment;~~

~~(G) lands withdrawn or reserved for national defense purposes other than National Petroleum Reserve Alaska;~~

~~(H) National Forest Lands; and~~

~~(I) lands selected or claimed, but not conveyed, under a public land law, including but not limited to the following:~~

~~(1) Lands within a recorded mining claim.~~

~~(2) Home sites.~~

~~(3) Trade and Manufacturing sites.~~

~~(4) Reindeer sites or headquarters sites.~~

~~(5) Cemetery sites.~~

~~(4) A person who qualifies for an allotment on lands prohibited from conveyance by a provision of subsection (a)(3) of this section may select an alternative allotment from the following lands located within the geographic boundaries of the same Regional Corporation as the excluded allotment-~~

~~(A) lands withdrawn pursuant to section 1610(a)(1) of this title which were not selected, or were relinquished after selection;~~

~~(B) lands contiguous to the outer boundary of lands withdrawn pursuant to section 1610(a)(1)(C) of this title, except lands excluded from selection by a provision of subsection (a)(3) of this section and lands within a National Park; or~~

~~(C) vacant, unappropriated and unreserved lands.~~

~~(1) ALLOTMENTS-~~

~~(A) ELIGIBLE RECIPIENTS- Any person described in paragraph (1) or (2) of subsection (b) shall be eligible to receive an allotment under the Act of May 17, 1906 (34 Stat. 197, chapter 2469) (as in effect before December 18, 1971), of not more than 2 parcels of Federal land, the total area of which shall not exceed 160 acres.~~

~~(B) FILING DEADLINE- An allotment shall be filed for an eligible recipient not later than 3 years after the date on which the Secretary promulgates regulations pursuant to section 4 of the Alaska Native Veterans Land Allotment Equity Act.~~

~~(2) LAND AVAILABLE FOR ALLOTMENTS-~~

~~(A) IN GENERAL- Subject to subparagraph (C), an allotment under this section shall be selected from land that is--~~

~~(i) vacant; and~~

~~(ii) owned by the United States;~~

~~(iii) selected by, or conveyed to, the State of Alaska, if the State voluntarily relinquishes or conveys to the United States the land for the allotment; or~~

~~(iii) selected by, or conveyed to, a Native Corporation, if the Native Corporation voluntarily relinquishes or conveys to the United States the land for the allotment.~~

~~(B) RELINQUISHMENT BY NATIVE CORPORATION- If a Native Corporation relinquishes land under subparagraph (A)(iii), the Native Corporation may select appropriate~~

Federal land, as determined by the Secretary, the area of which is equal to the area of the land relinquished by the Native Corporation, to replace the relinquished land.

(C) EXCLUSIONS- An allotment under this section shall not be selected from land that is located within--

(i) a right-of-way of the TransAlaska Pipeline;

(ii) an inner or outer corridor of such a right-of-way; or

(iii) a unit of the National Park System, a National Preserve, or a National Monument.

(3) ALTERNATIVE ALLOTMENTS- A person described in paragraph (1) or (2) of subsection (b) who qualifies for an allotment under this section on land described in paragraph (2)(C) may select an alternative allotment from land that is--

(A) located within the boundaries of land described in paragraph (2)(C);

(B)(i)(I) withdrawn under section 11(a)(1)(C); and

(II) not selected, or relinquished after selection, under section 11(a)(3);

(ii) contiguous to an outer boundary of land withdrawn under section 11(a)(1)(C); or

(iii) vacant, unappropriated, and unreserved; and

(C) not a unit of the National Park System, a National Preserve, or a National Monument.

~~(5)~~ (4) After consultation with a person entitled to an allotment within a Conservation System Unit, the Secretary may convey alternative lands of equal acreage, including lands within a Conservation System Unit, to that person if the Secretary determines that the allotment would be incompatible with a purpose for which the Conservation System Unit was established.

~~(6)~~ (5) All conveyances under this section shall-

(A) be subject to valid existing rights, including any right of the United States to income derived, directly or indirectly, from a lease, license, permit, right-of-way or easement; and

(B) reserve to the United States deposits of oil, gas and coal, together with the right to explore, mine, and remove these minerals, on lands which the Secretary determines to be prospectively valuable for development.

(b) Eligible person

(1) A person is eligible to select an allotment under this section if that person-

(A) would have been eligible for an allotment under the Act of May 17, 1906 (chapter 2469; 34 Stat. 197), as that Act was in effect before December 18, 1971 (except that the term "nonmineral", as used in that Act, shall for the purpose of this subsection be defined as provided in section 1634(a)(3) of this title, except that such definition shall not apply to land within a conservation system unit); and

~~(B) is a veteran who served during the period between January 1, 1969 and December 31, 1971 and-~~

~~(i) served at least 6 months between January 1, 1969 and December 31, 1971; or~~

~~(ii) enlisted or was drafted into military service after June 2, 1971 but before December 3, 1971.~~

(B) is a veteran who served during the period beginning on August 5, 1964, and ending on May 7, 1975.

~~(2)(A) The personal representative or special administrator, appointed in an Alaska State court proceeding of the estate of a decedent who was eligible under subsection (b)(1)(A) of this section may, for the benefit of the heirs, select an allotment if the decedent was a veteran who served in South East Asia at any time during the period beginning August 5, 1964, and ending December 31, 1971, and during that period the decedent-~~

~~(i) was killed in action;~~

~~(ii) was wounded in action and subsequently died as a direct consequence of that wound, as determined by the Department of Veterans Affairs or based on other evidence acceptable to the Secretary; or~~

~~(iii) died while a prisoner of war.~~

~~(B)(i) If the Secretary requests that the Secretary of Veterans Affairs make a determination whether a veteran died as a direct consequence of a wound received in action, the Secretary of Veterans Affairs shall, within 60 days of receipt of the request-~~

~~(I) provide a determination to the Secretary if the records of the Department of Veterans Affairs contain sufficient information to support such a determination; or~~

~~(II) notify the Secretary that the records of the Department of Veterans Affairs do not contain sufficient information to support a determination and that further investigation will be necessary.~~

~~(ii) Not later than 1 year after notification to the Secretary that further investigation is necessary, the Department of Veterans Affairs shall complete the investigation and provide a determination to the Secretary.~~

(2) DECEASED INDIVIDUALS- If an individual who would otherwise have been eligible for an allotment under this section dies before applying for an allotment, an heir of the individual may apply for, and receive, an allotment under this section, on behalf of the estate of the individual.

(3) No person who received an allotment or has a pending allotment under the Act of May 17, 1906 may receive an allotment under this section, other than an heir who applies for, and receives, an allotment on behalf of the estate of a deceased individual under paragraph (2).

(c) Study and report

(1) The Secretary of the Interior shall conduct a study to identify and assess the circumstances of veterans of the Vietnam era who-

(A) served during a period other than that specified in subsection (b)(1)(B) of this section;

(B) were eligible for an allotment under the Act of May 17, 1906; and

(C) did not apply for an allotment under that Act.

(2) The Secretary shall, within one year of October 21, 1998, issue a written report on the study, including findings and recommendations, to the Committee on Appropriations and the Committee on Energy and Natural Resources in the Senate and the Committee on Appropriations and the Committee on Resources in the House of Representatives.

(d) Approval of Allotments-

(1) IN GENERAL- Subject to any valid right in existence on the date of enactment of the Alaska Native Veterans Land Allotment Equity Act, and except as provided in paragraph (3), not later than December 31, 2020, the Secretary shall--

(A) approve any application for an allotment filed in accordance with subsection (a); and

(B) issue a certificate of allotment under such terms, conditions, and restrictions as the Secretary determines to be appropriate.

(2) NOTIFICATION- Not later than December 31, 2017, on receipt of an application for an allotment under this section, the Secretary shall provide to any person or entity that has an interest in land described in subsection (a)(2) that is potentially adverse to the interest of the applicant a notice of the right of the person or entity, by not later than 90 days after the date of receipt of the notice--

(A) to initiate a private contest of the allotment; or

(B) to file a protest against the allotment in accordance with procedures established by the Secretary.

(3) ACTION BY SECRETARY- If a private contest or protest relating to an application for an allotment is initiated or filed under paragraph (2), the Secretary shall not issue a certificate for the allotment under paragraph (1)(B) until a final determination has been made with respect to the private contest or protest.

(e) Reselection- A person that selected an allotment under this section may withdraw that selection and reselect land in accordance with this section after the date of enactment of the Alaska Native Veterans Land Allotment Equity Act, if the land originally selected--

(1) was selected before the date of enactment of the Alaska Native Veterans Land Allotment Equity Act; and

(2) as of the date of enactment of that Act, was not conveyed to the person.

(d)(f) Definitions

For the purposes of this section, the terms "veteran" and "Vietnam era" have the meanings given those terms by paragraphs (2) and (29), respectively, of section 101 of title 38.

(e)(g) Regulations

No later than 18 months after October 21, 1998, the Secretary of the Interior shall promulgate, after consultation with Alaska Natives groups, rules to carry out this section.