

## Calendar No. 679

115TH CONGRESS }  
2d Session }

SENATE

{ REPORT  
{ 115-393

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TO AMEND THE ALASKA NATIVE CLAIMS SETTLEMENT ACT TO REPEAL A  
PROVISION LIMITING THE EXPORT OF TIMBER HARVESTED FROM LAND  
CONVEYED TO THE KAKE TRIBAL CORPORATION UNDER THAT ACT

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NOVEMBER 28, 2018.—Ordered to be printed

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Ms. MURKOWSKI, from the Committee on Energy and Natural  
Resources, submitted the following

### R E P O R T

[To accompany S. 1149]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 1149) to amend the Alaska Native Claims Settlement Act to repeal a provision limiting the export of timber harvested from land conveyed to the Kake Tribal Corporation under that Act, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

#### PURPOSE

The purpose of S. 1149 is to amend the Alaska Native Claims Settlement Act (ANCSA) to repeal a provision (43 U.S.C. 1629h) limiting the export of timber harvested from land conveyed to the Kake Tribal Corporation (KTC) under that Act.

#### BACKGROUND AND NEED

In 2000, Congress enacted Public Law 106-283, the Kake Tribal Corporation Land Transfer Act, in an effort to prevent timber harvesting in the Gunnuk Creek watershed near the native village of Kake, Alaska. The Gunnuk Creek watershed is the potable water source for the village.

Under the terms of the land exchange, KTC conveyed 1,430 acres of surface and subsurface estate in the Gunnuk Creek watershed to the City of Kake, but retained 1,127 acres of its watershed land. Both the land conveyed to the City of Kake and the land retained by KTC were encumbered by a conservation easement to protect the watershed. In return for the conveyed lands, KTC acquired

1,389 acres of timberlands in the nearby Jenny Creek area, which is outside of the protected watershed.

Although the legislation did not require the values of the lands subject to exchange be equal, the parties attempted to informally equalize the value of the land exchange. To facilitate this, Sealaska, the southeast regional native corporation established under the Alaska Native Claims Settlement Act (ANCSA), and the State of Alaska exchanged lands among themselves and the U.S. Forest Service. The exchanged land included 1,127 acres of Sealaska lands that were deeded to the Southeast Alaska Lands Trust to aid in the protection of the town's watershed, and 694.5 acres from the State of Alaska to the City of Kake for the purpose of municipal expansion.

The House Committee report accompanying the legislation noted that KTC would be compensated with a \$15 million payment from the Forest Service to equalize the value of the exchange. An appraisal conducted in 2000 for the purpose of determining the approximate value of the timber if the timber was sold in export markets, estimated that the value of the Gunnuk Creek watershed's timber was worth approximately \$32 million while the value of the timber at Jenny Creek—land at Saginaw and Hamilton Bay on Kuiu Island—was estimated to be worth \$14.4 million (H. Rept. 106-489). By contrast, private appraisals estimated the domestic market value of that timber in 2000 to be approximately \$7.4 million.

A provision was included in Public Law 106-283 that prohibited the sale of the timber from the Jenny Creek lands in export markets. This effectively required that the timber be sold only in Alaska or to West Coast mills for domestic processing. This had the effect of lowering the sales value, yet increasing timber availability for the mills.

Also impacting the value of the exchange to KTC, Congress did not begin appropriating the \$15 million payment until 2005 because the authorization of appropriations in the legislation prohibited appropriations being made until KTC entered into a series of conservation easements. By 2009, Congress had appropriated just under \$13 million of the total compensation. From 2000 to 2009, timber prices decreased. The Forest Service contends that since the value of the timber in the Gunnuk Creek watershed has declined, the remaining \$2.1 million of the \$15 million in compensation is no longer necessary to equalize the values of the land exchange.

KTC has argued over the past decade that the remaining \$2.1 million is still owed from the original appropriation. For several years, KTC has been seeking to repeal the timber export prohibition to allow the corporation to sell Jenny Creek timber for export, potentially raising its value and helping to offset the compensation deficit it faced with the original 2000 land exchange.

S. 1149 strikes the provision in Public Law 106-283 prohibiting KTC from exporting timber, thus allowing the corporation to sell its timber as it chooses, the same right held by all other Alaska Native corporations that gained lands under terms of ANCSA.

## LEGISLATIVE HISTORY

S. 1149 was introduced by Senator Murkowski on May 17, 2017. The Subcommittee on Public Lands, Forests, and Mining held a hearing on S. 1149 on July 26, 2017.

The Senate Committee on Energy and Natural Resources met in open business on October 2, 2018, and ordered S. 1149 favorably reported.

## COMMITTEE RECOMMENDATION

The Senate Committee on Energy and Natural Resources, in open business session on October 2, 2018, by a majority voice vote of a quorum present, recommends that the Senate pass S. 1149.

## SECTION-BY-SECTION ANALYSIS

*Section. 1. Repeal of provision limiting the export of timber harvested from certain Kake Tribal Corporation land*

Section 1 repeals section 42 of ANCSA to remove the prohibition on the exportation of timber harvested from KTC lands.

## COST AND BUDGETARY CONSIDERATIONS

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

S. 1149 would amend the Kake Tribal Corporation Land Transfer Act to repeal a timber export prohibition on almost 1,400 acres of land that was conveyed to the Kake Tribal Corporation in 2001.

Because the prohibition that would be repealed under S. 1149 only applies to timber controlled by the native corporation, CBO estimates that implementing the bill would not affect federal spending.

Enacting S. 1149 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

CBO estimates that enacting S.1149 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2029.

S. 1149 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

The CBO staff contact for this estimate is Robert Reese. The estimate was reviewed by H. Samuel Papenfuss, 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. 1149. 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. 1149, as ordered reported.

## CONGRESSIONALLY DIRECTED SPENDING

S. 1149, as ordered reported, does not contain any congressionally directed spending items, limited tax benefits, or limited tariff benefits as defined in rule XLIV of the Standing Rules of the Senate.

## EXECUTIVE COMMUNICATIONS

The testimony provided by the Department of Agriculture at the July 26, 2017, hearing on S. 1149 follows:

STATEMENT FOR THE RECORD, U.S. FOREST SERVICE,  
UNITED STATES DEPARTMENT OF AGRICULTURE

Chairman Lee, Ranking Member Wyden, members of the Subcommittee, thank you for the opportunity to present the views of the U.S. Department of Agriculture (USDA) regarding S. 1149—the Kake Tribal Corporation Export Restriction Act.

S. 1149 would repeal a timber export prohibition that was enacted in 2000 as part of the Kake Tribal Corporation Land Transfer Act (Public Law 106–283, October 6, 2000, 114 Stat. 867) (Kake Act). The Kake Act reallocated lands and land selection rights among the State of Alaska, Kake Tribal Corporation, and the City of Kake. The Kake Act also involved conveyance of 1,389 acres of federal lands to Kake Tribal Corporation and Sealaska Corporation. Conveyance of land interests was completed in 2001 and Forest Service considers the Kake Act to be fully implemented. The Forest Service does not have a role in Kake Tribal Corporation’s timber sale activities and therefore has no position on the bill.

Thank you again for the opportunity to provide this statement for the record.

## CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the original bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

**ALASKA NATIVE CLAIMS SETTLEMENT ACT**

Public Law 92–203, as amended

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**KAKE TRIBAL CORPORATION LAND TRANSFER**

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SEC. 42. (a) IN GENERAL.—If—

[(h) TIMBER MANUFACTURING; EXPORT RESTRICTION.—Notwithstanding any other provision of law, timber harvested from lands conveyed to Kake Tribal Corporation under this section shall not be available for export as unprocessed logs from Alaska,

nor may Kake Tribal Corporation sell, trade, exchange, substitute, or otherwise convey such timber to any person for the purpose of exporting that timber from the State of Alaska.】

【(i)】 *(h)* AUTHORIZATION OF APPROPRIATIONS.—There are authorized such sums as may be necessary to carry out this chapter, including to compensate Kake Tribal Corporation for relinquishing its development rights pursuant to subsection (g)(2) 【and to provide assistance to Kake Tribal Corporation to meet the requirements of subsection (h)】. No funds authorized under this section may be paid to Kake Tribal Corporation unless Kake Tribal Corporation is a party to the conservation easements described in subsection (g).