

Calendar No. 710

115TH CONGRESS }
2d Session }

SENATE

{ REPORT
{ 115-451

ALASKA NATIVE VIETNAM ERA VETERANS LAND ALLOTMENT ACT

DECEMBER 20, 2018.—Ordered to be printed

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

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany S. 785]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 785) to amend the Alaska Native Claims Settlement Act to provide for equitable allotment of land to Alaska Native veterans, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and an amendment to the title and recommends that the bill, as amended, do pass.

The amendments are as follows:

1. Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Alaska Native Vietnam Era Veterans Land Allotment Act”.

SEC. 2. PURPOSE.

The purpose of this Act is to provide an opportunity for certain Alaska Native Vietnam era veterans to select and receive an allotment of Federal land in the State of Alaska.

SEC. 3. DEFINITIONS.

In this Act:

(1) AVAILABLE FEDERAL LAND.—

(A) IN GENERAL.—The term “available Federal land” means Federal land in the State that—

- (i) is vacant, unappropriated, and unreserved;

(ii) has been selected by, but not yet conveyed to—

(I) the State, if the State agrees to voluntarily relinquish the selection of the Federal land for selection by an eligible individual; or

(II) a Regional Corporation or a Village Corporation, if the Regional Corporation or Village Corporation agrees to voluntarily relinquish the selection of the Federal land for selection by an eligible individual; or

(iii) is identified as available for selection under section 4(d)(1).

(B) EXCLUSIONS.—The term “available Federal land” does not include any Federal land in the State that is—

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

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

(ii) withdrawn or acquired for purposes of the Armed Forces;

(iii) under review for a pending right-of-way for a natural gas corridor;

(iv) within the Arctic National Wildlife Refuge;

(v) within a unit of the National Forest System; or

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

(2) ELIGIBLE INDIVIDUAL.—The term “eligible individual” means an individual who, as determined by the Secretary in accordance with section 4(a)—

(A) is—

(i) a Native veteran who served during the period between August 5, 1964, and December 31, 1971; or

(ii) a personal representative, acting for the benefit of the heirs, of the estate of a deceased Native veteran who served during the period between August 5, 1964, and December 31, 1971; and

(B) has received fewer than 157.5 acres pursuant to—

(i) the Act of May 17, 1906 (34 Stat. 197, chapter 2469) (as in effect on December 17, 1971); and

(ii) section 41 of the Alaska Native Claims Settlement Act (43 U.S.C. 1629g).

(3) NATIVE; REGIONAL CORPORATION; VILLAGE CORPORATION.—The terms “Native”, “Regional Corporation”, and “Village Corporation” have the meanings given those terms in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602).

(4) SECRETARY.—The term “Secretary” means the Secretary of the Interior.

(5) STATE.—The term “State” means the State of Alaska.

(6) VETERAN.—The term “veteran” has the meaning given the term in section 101 of title 38, United States Code.

SEC. 4. ALLOTMENTS FOR CERTAIN NATIVE VETERANS.

(a) INFORMATION TO DETERMINE ELIGIBILITY.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Secretary of Defense, in coordination with the Secretary of Veterans Affairs, shall provide to the Secretary a list of all members of the Armed Forces who served during the period between August 5, 1964, and December 31, 1971.

(2) USE.—The Secretary shall use the information provided under paragraph (1) to determine whether an individual meets the military service requirements under section 3(2)(A).

(3) OUTREACH AND ASSISTANCE.—The Secretary, in coordination with the Secretary of Veterans Affairs, shall conduct outreach, and provide assistance in applying for allotments, to eligible individuals.

(b) Selection by Eligible Individuals.—

(1) IN GENERAL.—An eligible individual—

(A) subject to paragraphs (2) and (3), may select not more than 2 parcels of available Federal land totaling not more than 160 acres; and

(B) on making a selection pursuant to subparagraph (A), shall submit to the Secretary an allotment selection application for the applicable parcels of available Federal land.

(2) MINIMUM ACREAGE.—A parcel of available Federal land selected pursuant to paragraph (1)(A) shall be not less than 2.5 acres.

(3) TREATMENT OF CERTAIN ACRES.—The following acres held by an eligible individual shall be counted toward the 160-acre limitation under paragraph (1)(A):

(A) Any acres received pursuant to the Act of May 17, 1906 (34 Stat. 197, chapter 2469) (as in effect on December 17, 1971).

- (B) Any acres received pursuant to section 41 of the Alaska Native Claims Settlement Act (43 U.S.C. 1629g).
- (c) CONFLICTING SELECTIONS.—If 2 or more eligible individuals submit to the Secretary an allotment selection application under subsection (b)(1)(B) for the same parcel of available Federal land, the Secretary shall—
- (1) give preference to the selection application received on the earliest date; and
 - (2) provide to each eligible individual the selection application of whom is rejected under paragraph (1) an opportunity to select a substitute parcel of available Federal land.
- (d) IDENTIFICATION OF AVAILABLE FEDERAL LAND FOR ALLOTMENT SELECTION.—
- (1) IN GENERAL.—Not later than 2 years after the date of enactment of this Act, subject to paragraphs (2) and (3), the Secretary, in consultation with the State, Regional Corporations, and Village Corporations, shall identify not more than 500,000 acres of Federal land as available Federal land for allotment selection to meet the purpose of this Act.
 - (2) LIMITATION ON WILDLIFE REFUGE ACREAGE.—
 - (A) YUKON DELTA NATIONAL WILDLIFE REFUGE ACREAGE.—Of the available Federal land identified under paragraph (1), not more than 42,000 acres shall be located in the Yukon Delta National Wildlife Refuge.
 - (B) TOGIAK NATIONAL WILDLIFE REFUGE ACREAGE.—Of the available Federal land identified under paragraph (1), not more than 10,000 acres shall be located in the Togiak National Wildlife Refuge.
 - (3) CERTIFICATION; SURVEY.—The Secretary shall—
 - (A) certify that the available Federal land identified under paragraph (1) is free of known contamination; and
 - (B) survey the available Federal land under paragraph (1) into aliquot parts and lots, segregating all navigable and meanderable waters and land not available for allotment selection.
 - (4) MAPS.—As soon as practicable after the date on which available Federal land is identified under paragraph (1), the Secretary shall submit to Congress, and publish in the Federal Register, 1 or more maps depicting the identified available Federal land.
- (e) CONVEYANCES.—Any available Federal land conveyed to an eligible individual under this section shall be subject to—
- (1) valid existing rights;
 - (2) the reservation of minerals to the United States; and
 - (3) if the available Federal land conveyed is within the boundaries of a unit of the National Wildlife Refuge System, the laws (including regulations) applicable to the use and development of the unit of the National Wildlife Refuge System.
- (f) INTENT OF CONGRESS.—It is the intent of Congress that not later than 2 years after the date on which an eligible individual submits an allotment selection application under subsection (b)(1)(B) that meets the requirements of this Act, as determined by the Secretary, the Secretary shall issue to the eligible individual a certificate of allotment with respect to the available Federal land covered by the allotment selection application, subject to the requirements of subsection (e).

2. Amend the title so as to read: “A bill to provide an opportunity for certain Alaska Native Vietnam era veterans to select and receive an allotment of Federal land in the State of Alaska.”.

PURPOSE

The purpose of S. 785, as ordered reported, is to provide an opportunity for certain Alaska Native Vietnam-era veterans to select and receive an allotment of Federal land in the State of Alaska.

BACKGROUND AND NEED

In 1887, Congress passed the General Allotment Act (25 U.S.C. 331) to allow Native Americans to apply for an allotment of land, not to exceed 160 acres. It was unclear if Alaska Natives were able to apply for an allotment under that Act, so in 1906, Congress passed the Alaska Native Allotment Act (1906 Act, Public Law 59–171) to ensure that the indigenous peoples of Alaska were also able to select an allotment of land. The 1906 Act gave the Secretary of

the Interior discretion, under rules as he may prescribe, to allot to any Alaska Native who was at least 21 years old up to 160 acres of non-mineral, Federal land in Alaska, to remain with them and their heirs in perpetuity. The purpose of the Act was to enable Alaska Natives to legally own the lands they had used and occupied for generations. The rules adopted by the Secretary provided that allotments would not be made on lands reserved by the United States unless the claimant used and occupied them prior to the reservation.

In 1956, Congress amended the 1906 Act (1956 amendments, Public Law 84-931) to require applicants to prove substantial use and occupancy of a parcel of land for at least five years in order for an allotment to be conveyed to them. The 1956 amendments clarified that the land needed to be “vacant, unappropriated, and unreserved.” The 1956 amendments further allowed an allotment to be conveyed in a national forest, provided that an applicant was able to prove use and occupancy prior to the forest being withdrawn, or if the Secretary of Agriculture determined that the land was “chiefly valuable to agriculture or grazing purposes.”

In 1971, Congress passed the Alaska Native Claims Settlement Act (ANCSA, Public Law 92-203) to resolve all outstanding aboriginal land claims. Section 18(a) of ANCSA repealed the 1906 Act. Leading up to the repeal of the 1906 Act, the Bureau of Indian Affairs and local partners conducted outreach to encourage eligible Alaska Natives to apply for an allotment of land. According to the Department of the Interior (DOI), that effort resulted in over 10,000 individual applicants for an allotment, which quadrupled the number of applicants in just two years.

That time period coincided with the beginning of the Vietnam War. Many Alaska Natives were enlisted and served abroad during the war. Due to their service, they were unable to be physically present in Alaska to submit an application, and many were unaware of the opportunity to apply.

Congress recognized this inequity in 1998 and enacted legislation (1998 Act, section 432 of Public Law 105-276) to reopen the 1906 Act for a limited time and with a narrow scope. The 1998 Act allowed Alaska Natives, or their heirs, who were eligible under the 1906 Act and who served at least six months between January 1, 1969 and June 2, 1971, or were enlisted or drafted before December 17, 1971, to apply for an allotment of land. Further, allotments could only be selected from vacant, unappropriated, and unreserved Federal land, and selections were prohibited from wilderness lands, units of a National Forest, and land withdrawn for military purposes.

DOI promulgated regulations (43 C.F.R. 2568) to set up a system to convey allotments to Alaska Native Vietnam veterans. Pursuant to these regulations, if an individual could prove use and occupancy on land that was not available for selection because it was deemed inconsistent with the permitted uses of a given conservation system unit, that individual could make a selection elsewhere in the State without proving use and occupancy.

According to the Bureau of Land Management (BLM), the 1998 Act allowed 255 allotments to be conveyed, for a 25 percent approval rate—much lower than the 80 percent approval rate under the 1906 Act. The 1998 Act’s low success can be attributed to a

number of factors, including limitations on available land and proof of military service.

Congress has amended the 1998 Act twice to address these issues. In 2000, Congress expanded the eligible period of service to December 31, 1971, and clarified the role of a personal representative (section 301 of Public Law 106–559). Also, in 2004, Congress clarified how an eligible individual can prove their military service (section 306 of Public Law 108–452).

Despite these efforts, an estimated 2,800 Native Alaskans who served in the Vietnam War have yet to receive their allotment. S. 785 seeks to address the 1998 Act’s shortcomings by establishing a separate program to provide another opportunity for those individuals to apply for an allotment of land. S. 785 clarifies eligible land available for selection, directs BLM to identify available land before the selection process begins, and directs the Departments of Defense (DoD) and Veterans Affairs (VA) to certify military service and conduct outreach to Native veterans.

LEGISLATIVE HISTORY

S. 785 was introduced by Senators Sullivan and Murkowski on March 30, 2017. The Subcommittee on Public Lands, Forests, and Mining held a hearing on S. 785 on July 26, 2017. The text of S. 785 was also included as section 11 of S. 1481, the ANCSA Improvement Act, which was introduced by Senators Murkowski and Sullivan on June 29, 2017.

Companion legislation, H.R. 1867, was introduced in the House of Representatives by Representative Young on April 3, 2017, and referred to the Natural Resources Committee.

In the 114th Congress, similar legislation, S. 1955, was introduced by Senators Sullivan and Murkowski on August 8, 2015. The Subcommittee on Public Lands, Forests, and Mining held a hearing to consider S. 1955 on October 8, 2015 (S. Hrg. 114–490). The text of S. 1955 was also included as section 11 of S. 3273, the ANCSA Improvement Act, which was introduced by Senators Murkowski and Sullivan on July 14, 2016.

Companion legislation, H.R. 2387, was introduced by Representative Young in the House of Representatives on May 15, 2015. The Natural Resources Committee’s Subcommittee on Indian, Insular, and Alaska Native Affairs held a hearing to consider H.R. 2387 on June 6, 2015. The Natural Resources Committee ordered the bill favorably reported, as amended, by voice vote on September 22, 2016 (H. Rept. 114–832).

The Senate Committee on Energy and Natural Resources met in open business session on October 2, 2018, and ordered S. 785 favorably reported, as amended.

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. 785, if amended as described herein. Senator Wyden asked to be recorded as voting no.

COMMITTEE AMENDMENTS

During its consideration of S. 785, the Committee adopted an amendment in the nature of a substitute and an amendment to the title. The substitute amendment creates a new program, rather than amending the 1998 Act and addresses a number of issues, including eligible land, eligible person, outreach, the selection process, the identification of land, and conveyances. The title amendment reflects changes made by the substitute amendment.

With regard to eligible land, the substitute amendment authorizes selections in “vacant, unappropriated, and unreserved” Federal lands. Notwithstanding the exclusion of lands reserved by the United States in section 3(1)(A)(i) of the substitute, the substitute amendment permits the Secretary to include lands in National Wildlife Refuges in the 500,000 acres of Federal land available for allotment selection under section 4(d). Land that is not available for selection include land in the Tongass and Chugach National Forests; the Arctic National Wildlife Refuge (ANWR); the National Petroleum Reserve-Alaska; the Trans-Alaska Pipeline System (TAPS) right-of-way (ROW); that has been withdrawn for defense purposes; is proposed for the Alaska LNG pipeline ROW; and that is within a unit of the National Park System or a National Monument.

The substitute amendment defines an “eligible person” to be an Alaska Native veteran who was not dishonorably discharged, and served in Vietnam for any period of time beginning at the start of the war in 1964, up through December 31, 1971. If an eligible person is deceased and has not received an allotment, an heir is authorized to receive the land.

The substitute amendment directs DoD to provide DOI with a list of individuals who served in the Vietnam War and directs DoD and the VA to reach out to veterans in Alaska to make them aware of the opportunity to select an allotment of land.

The substitute amendment authorizes an eligible person to select up to two parcels of land, not totaling more than 160 acres, and requires the eligible person to submit an application to the BLM. If more than one application is submitted for a single parcel of land, preference is given to the application that was received on the earliest date.

The substitute amendment directs the BLM, Alaska Native Corporations (ANCs), and the State to jointly identify up to 500,000 acres of land that are available for selection and free from contamination. An eligible person is not required to apply for land that has been identified as available for selection, so the option to apply for other land is preserved. The text requires that up to 42,000 acres of land be identified in the Yukon Delta National Wildlife Refuge and up to 10,000 acres of land be identified in the Togiak National Wildlife Refuge.

The substitute amendment further reserves all minerals to the Federal government and makes clear that the intent of Congress is for a conveyance to be made within two years of an application being submitted, provided that the individual meets all eligibility criteria.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

Section 1 provides a short title.

Section 2. Purpose

Section 2 specifies the bill's purpose.

Section 3. Definitions

Section 3 defines key terms.

Section 4. Allotments for certain native veterans

Subsection (a) directs the Secretary of Defense, in coordination with the Secretary of Veterans Affairs, to provide the Secretary of the Interior (Secretary) with a list of individuals who served between August 5, 1964, and December 31, 1971 and directs the Secretary to use that list to determine whether military service requirements have been met by an individual. This subsection also directs the Secretaries of the Interior and Veterans Affairs to conduct outreach to eligible individuals and provide assistance in applying for allotments.

Subsection (b) authorizes eligible individuals to select up to two parcels of available Federal land, totaling not more than 160 acres. This subsection also directs an eligible individual to submit an allotment selection application to the Secretary, establishes a 2.5 acre minimum for land parcel selections, and specifies the treatment of certain acres.

Subsection (c) directs the Secretary, in the event of conflicting allotment selections, to give preference to the application received on the earliest date and to provide each eligible individual with a resulting rejected application, with the opportunity to select a substitute parcel of Federal land.

Subsection (d) directs the Secretary, in consultation with the State of Alaska and ANCs, to identify up to 500,000 acres of available Federal land, and requires the Secretary to certify that the land is free of contamination. The subsection further requires that of the 500,000 acres of available Federal land, up to 42,000 acres be identified in the Yukon Delta National Wildlife Refuge and up to 10,000 acres of land be identified in the Togiak National Wildlife Refuge. The subsection also directs the Secretary to submit one or more maps depicting the available Federal land for selection and to publish such maps in the Federal Register.

Subsection (e) makes clear that the conveyances of Federal land are subject to valid existing rights, the reservation of minerals by the Federal government, and, for allotments in National Wildlife Refuges, applicable laws and regulations.

Subsection (f) states the intent of Congress that if an application meets the eligibility criteria, a conveyance be made within two years of an application being submitted to the Secretary.

COST AND BUDGETARY CONSIDERATIONS

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

S. 785 would provide certain Alaska Native veterans or their heirs the opportunity to apply for allotments of land in Alaska.

CBO estimates that implementing S. 785 would cost \$11 million over the 2019–2023 period, assuming appropriation of the necessary amounts.

Enacting the bill would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply. CBO estimates that enacting S. 785 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2029.

S. 785 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA).

Estimated cost to the Federal Government: The estimated budgetary effect of S. 785 is shown in the following table. The costs of the legislation fall within budget function 450 (community and regional development).

| | By fiscal year, in millions of dollars— | | | | | |
|--|---|------|------|------|------|-----------|
| | 2019 | 2020 | 2021 | 2022 | 2023 | 2019–2023 |
| INCREASES IN SPENDING SUBJECT TO APPROPRIATION | | | | | | |
| Estimated Authorization Level | 1 | 2 | 3 | 3 | 4 | 13 |
| Estimated Outlays | * | 2 | 3 | 3 | 3 | 11 |

* = between zero and \$500,000.

Basis of estimate: For this estimate, CBO assumes that S. 785 will be enacted near the end of 2018 and that the necessary amounts will be appropriated for each year beginning in 2019. Estimated outlays are based on historical spending patterns for administering similar land allotments. S. 785 would authorize the Department of the Interior (DOI) to grant allotments of up to 160 acres each from certain vacant, federally owned land in Alaska to Alaska Natives who served in the armed forces between August 5, 1964, and December 31, 1971, or to their heirs.

Background

Under the Alaska Native Allotment Act of 1906 (1906 Act), DOI was authorized to convey allotments of up to 160 acres of vacant land to Alaska Natives. The law required Alaska Natives to prove that they had continually used and occupied that particular land for a period of at least five years in order to receive such an allotment.

In 1971, the 1906 Act was repealed; in the three years before its repeal, DOI and other organizations worked with Alaska Natives to ensure eligible people were aware of their eligibility for allotments and that those who were interested in such allotments submitted applications before the law's repeal. However, in the years following that repeal, some people became concerned that certain Alaska Natives who served in the armed forces during the Vietnam Era (1964 to 1975) would not have been able to submit applications for allotments in the final years before the 1906 Act was repealed. Subsequently, the Alaska Native Veterans Allotment Act of 1998 (1998 Act) was enacted to allow those eligible veterans to apply for allotments in the same manner as under the 1906 Act. The authority to submit such applications expired in February 2002.

In a 1997 report to the Congress, DOI estimated that about 1,600 Alaska Native veterans would be eligible to submit applications under the 1998 Act. DOI received about 800 applications, although

only about 250 of them met the 1998 Act's requirements; all others were rejected.

Eligible land

The land eligible for allotment under S. 785 could not be located within a national forest, national park, a national preserve, a national monument, or a right-of-way of the TransAlaska Pipeline. Under the bill, the federal government would retain mineral rights to any land allotted under S. 785 and eligible people would not be required to have personally used the land for which they submit applications.

The bill also would direct DOI to consult with the state and Alaska Native Corporations to identify 500,000 acres of federal land to be made available for allotment under S. 785. DOI would then be required to review and approve applications for allotments of land as they are submitted and to survey the land before making the allotments. Using information from DOI, CBO expects that DOI would work with the Alaska Native Corporations to select land that is close to land owned by the corporations and as contiguous as possible. That would streamline the required survey and assessment of the selected land.

However, the bill would not restrict eligible people from applying for allotments outside of the 500,000 acres of land that DOI would be required to set aside. According to DOI, when given the option to select multiple allotments, Alaska Natives have historically tended to prefer selecting land that is near their corporation for their initial allotment and to select land in more remote areas for subsequent allotments. The more remote allotments tend to be for the purpose of acquiring land conducive to hunting and fishing. CBO estimates that about half of the land allotted would be outside of the 500,000 acres that DOI would set aside.

ELIGIBLE APPLICANTS

Using information from DOI about the number of Alaska Native veterans who served between 1964 and 1971 and who did not receive allotments under the 1906 Act or the 1998 Act, CBO estimates that approximately 1,350 veterans or their heirs would be eligible to apply for allotments under S. 785. That figure is equal to the approximately 1,600 veterans estimated to be eligible in DOI's 1997 report to the Congress, minus the 250 people who received allotments under the 1998 Act.

About 50 percent of those eligible applied for allotments under the 1998 Act. CBO expects that application rates under S. 785 would be slightly higher than those under the 1998 Act because S. 785 removes the restriction that any land applied for must have been personally used by the applicant and directs DOI to conduct outreach activities and to provide application assistance to eligible people. Therefore, CBO estimates that under S. 785 about 70 percent of eligible people (or about 950 people) would submit applications for allotments totaling about 150,000 acres of land.

ALLOTMENT COSTS

Using information from DOI, CBO estimates that conferring with state officials and Alaska Native Corporations to set aside 500,000 acres of land and reviewing applications for and surveying about

75,000 acres (half of the 150,000 acres expected to be allotted in total under the bill) would cost DOI about \$2 million over the 2019–2023 period.

CBO expects that applications for the remaining 75,000 acres would be for land outside of the land set aside by DOI. Using information from DOI, CBO estimates that reviewing applications and surveying other noncontiguous land would cost DOI about \$9 million over the 2019–2023 period and \$5 million after 2023. The majority of those costs would stem from travel to remote areas of Alaska. All such spending would be subject to appropriation.

Uncertainty: CBO aims to produce cost estimates that generally reflect the middle of a range of the most likely budgetary outcomes that would result if the legislation was enacted. The cost to implement S. 785 could be greater or smaller than CBO has estimated.

The number of applicants who would apply for land outside of the 500,000 acres set aside by DOI under the bill is uncertain and thus the cost of reviewing the applications and surveying the land could be different. DOI expects that more remote pieces of land would be selected for their proximity to hunting and fishing. However, although such remote land would be of value to applicants, DOI would probably encourage eligible people to apply for land within the set-aside portion. If more land is chosen within the set-aside portion, the costs would be lower.

Pay-As-You-Go considerations: None.

Increase in long-term direct spending and deficits: CBO estimates that enacting S. 785 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2029.

Mandates: S. 785 contains no intergovernmental or private-sector mandates as defined in UMRA.

Estimate prepared by: Federal costs: Robert Reese; Mandates: Rachel Austin.

Estimate reviewed by: Kim P. Cawley, Chief, Natural and Physical Resources Cost Estimates Unit; 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. 785. 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. 785, as ordered reported.

CONGRESSIONALLY DIRECTED SPENDING

S. 785, 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 the Interior at the July 26, 2017, hearing on S. 785 follows:

STATEMENT OF JOHN RUHS, ACTING DEPUTY DIRECTOR FOR
OPERATIONS, BUREAU OF LAND MANAGEMENT, U.S. DE-
PARTMENT OF THE INTERIOR

Thank you for the opportunity to present the views of the Department of the Interior (Department) on S. 785, the Alaska Native Veterans Land Allotment Equity Act. S. 785 amends the 1971 Alaska Native Claims Settlement Act (ANCSA) to allow any Alaska Native veteran (or heir) who served during the period of August 5, 1964, through May 7, 1975, who has not yet received a Native allotment under the 1906 Allotment Act, to apply for an allotment of up to 160 acres of Federal land.

The Department supports equitable treatment of Alaska Natives and Alaska Native Veterans in the Alaska Land Conveyance program. We appreciate the sponsor's continuing interest in extending to Vietnam-era Alaska Native Veterans opportunities to apply for an individual allotment in recognition of their service to our country. The Department supports the goals of S. 785 and looks forward to working with the sponsor and the Committee to provide technical edits to further enhance this legislation and offer timely and efficient resolution of longstanding Native allotment processes.

Background

Several laws govern disposition of lands in Alaska. The Alaska Statehood Act and ANCSA provide for conveyance of broad swaths of land to the State and to Native Corporations. Land transfers to individual Alaska Natives were first authorized by the Alaska Native Allotment Act of 1906. The Allotment Act, as amended, authorized the Secretary of the Interior to convey up to 160 acres of "vacant, unappropriated, and unreserved non-mineral" land to individual Alaska Natives who could prove as head of household "substantially continuous use and occupancy of that land for a period of five years." Over 10,000 Alaska Natives filed allotment applications before 1971.

ANCSA, enacted in 1971, included a provision repealing the 1906 Allotment Act but with a savings provision allowing the Department to finalize the approximately 15,000 individual allotment claims then pending before the Department. In 1981, Section 905 of the Alaska National Interest Lands Conservation Act (ANILCA) legislatively approved the vast majority of the pending Allotment Act applications.

As of this date, there remain pending approximately 272 applications under the 1906 Act, most of which will require the State of Alaska to voluntarily re-convey title to the United States government before a conveyance can be made to the individual allotment claimant. The BLM has

prioritized the completion of individual allotments, and to date has completed final patent to approximately 98 percent (over 13,100 parcels) of individual Native allotments.

Another act authorizing land transfers to individual Alaska Natives is the Alaska Native Vietnam Veterans Allotment Act of 1998 (P. L. 105–276). This Act authorized the Department to provide a new 18-month filing period, ending in January 2002, to qualifying Alaska Native Vietnam-era veterans who were unable to file a claim under the 1906 Allotment Act before its repeal in 1971 because they were on active military duty during the three years (1968–1971) prior to repeal of the 1906 Act. Certificates for 255 allotments have been issued, and seven parcels remain pending.

Members of Congress concerned about the low number of Alaska Native Vietnam-era veterans obtaining allotments under the 1998 Act identified three obstacles to that goal: (1) Alaska Native Vietnam veterans were able to apply only for land that had been vacant, unappropriated, and unreserved; (2) the eligible service dates did not encompass the full term of Vietnam war (1964–1975); and (3) veterans were required to prove they had been using the allotment for which they applied in a substantially continuous and independent manner for five or more years.

In addition, concerns have been raised that the lack of available land nullifies the very purpose of granting Native Vietnam-era veterans an allotment benefit. A recurring congressional concern has been that there is virtually no land available for selection and allotment in southeast Alaska because such land is located within the Tongass National Forest or conservation units, or has been conveyed to the State of Alaska or ANCSA Native Corporations.

S. 785

S. 785 is intended to address the obstacles in the 1998 Act and the lack of land available for selection and allotments. The bill authorizes allotment of Federal lands to individual Alaska Native veterans of the Vietnam era. It amends ANCSA to allow any Alaska Native veteran (or heir) who served during the period of August 5, 1964, through May 7, 1975, who has not yet received a Native allotment for a full 160 acres under the 1906 Allotment Act, to apply for an allotment of up to 160 acres of Federal land. Lands available for selection under S. 785 are any vacant Federal land in the state of Alaska that is located outside of the Trans-Alaska Pipeline right-of-way, a unit of the National Park System, a National Preserve, or a National Monument. Available lands in S. 785 include wild-life refuges, national forests, wilderness areas, acquired lands, national defense withdrawn lands, and lands selected by, or already conveyed to, the State of Alaska or an Alaska Native Corporation. The Department would like to work with the sponsor to develop criteria for adjudication

and for the determination of superior rights to lands in these categories.

S. 785 also authorizes compensatory acreage only for Native Corporations that voluntarily relinquish land selected in order to make such land available for Alaska Native Veteran allotments. There is no similar provision for State selections. The bill does not mention compensatory acreage for land re-conveyed by the State of Alaska. We would like to work with the sponsor to develop options to address the goals of this legislation while reducing the impact to established land patterns and minimizing delays in fulfilling entitlements in progress.

The bill requires the Secretary of the Interior to publish implementing regulations, after consultation with Alaska Native organizations, within one year of the enactment of S. 785. Within five years after the date of enactment, S. 785 requires the Secretary to approve and certify allotment applications filed under this Act. The legislation further requires the Secretary to contact, in coordination with Alaska Native organizations, each individual potentially affected by S. 785 to explain the process by which the person may apply for an allotment. The Secretary is also required to contact each person or entity that has an interest in land that is potentially adverse to the interest of an applicant with notice of how to contest the allotment. We would like to work with the sponsor to develop a timetable and outreach strategy that supports the entire process for Alaska Native Veterans to select and receive allotments.

Conclusion

The highest priority of the BLM's Alaska Land Transfer program is to fulfill existing statutory mandates by completing title transfer to individual Alaska Natives that includes equitable opportunities for Alaska Native Veterans, as well as to fulfill remaining entitlements under ANCSA and the Statehood Act. We welcome the opportunity to work with the sponsor and the Committee to address the technical issues raised in this testimony in order to enhance the legislation.

Thank you for the opportunity to testify. I would be glad to address any questions.

ADDITIONAL VIEWS OF SENATOR CANTWELL

The stated purpose of S. 785, as ordered reported by the Committee on Energy and Natural Resources, is to give any Alaska Native veteran who may have missed the opportunity to apply for a Native allotment because the veteran was serving in the armed forces in Vietnam another opportunity to apply for one now.

I fully support that goal. Plainly, no Alaska Native who was eligible for an allotment should have been deprived of the opportunity to apply for one because he or she was serving his or her country during the Vietnam War.

I cannot, however, support creating an entirely new allotment program that is broader than the original one and would have the effect of opening up our national wildlife refuges, national forests, wilderness areas, and the National Petroleum Reserve-Alaska to allotment. Congress set aside those lands for the benefit of the American people as a whole. They should not now be parceled out to state, corporate, and individual ownership.

Unfortunately, S. 785, as originally introduced, would have done just that. The original allotment program only provided for the allotment of "vacant, unappropriated, and unreserved" lands in Alaska. Lands that had been reserved for national forests were not eligible for allotment unless the Alaska Native applying for the allotment could establish personal use and occupancy of the land prior to the reservation of the national forest. S. 785, as introduced, would have opened up appropriated and reserved lands, including national forests, national wildlife refuges, and National Petroleum Reserve-Alaska to allotment, and it did away with the prior personal use and occupancy requirement.

Senator Murkowski's amendment, which the Committee agreed to by voice vote, restores the requirement that allotments can only be made from "vacant, unappropriated, and unreserved" lands. In addition, it expressly excludes lands with the Arctic National Wildlife Refuge or within any national forest, national park, national preserve, or national monument. Her amendment goes a long way toward restoring the protections for the national interest lands afforded by the original allotment program.

The amendment still falls far short of what is needed, however. While the amendment appears to exclude reserved lands from allotment in section 3(1)(A)(i), it opens up lands reserved for national wildlife refuges, other than the Arctic National Wildlife Refuge, in sections 4(d)(2) and 4(e)(3). Moreover, unlike the original allotment program, the amendment does not apply the prior personal use and occupancy requirement to reserved lands. Nor does it exclude designated wilderness areas from allotment.

Ensuring fair treatment of Alaska Natives who served our country during the Vietnam War and protecting our national interest lands in Alaska are not incompatible. There is no reason we cannot

give Alaska Native veterans who may have missed the original deadline another chance to apply for an allotment and still protect our national interest lands. Congress has done so before. Section 432 of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999, Public Law 105-276, provided an "open season," which ran from July 31, 2000 through January 31, 2002. Under that law, any Alaska Native who would have been eligible for an allotment under the original allotment program, but missed the filing deadline because he or she was serving in the armed forces during the Vietnam War, was given a second chance to apply for an allotment under the terms of the original allotment program. The previous open season expressly excluded wilderness areas, national forests, the National Petroleum Reserve-Alaska, and all reserved lands, including national wildlife refuges.

I fully support giving any Alaska Native veteran who missed the previous open season another chance to apply for an allotment, but on the same terms as afforded by the previous open season. I cannot support creating a new and different allotment program that would open up national wildlife refuges and wilderness areas to allotment.

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 as ordered reported.

