

TO AMEND THE ALASKA NATIVE CLAIMS SETTLEMENT ACT TO PROVIDE THAT ALEXANDER CREEK, ALASKA, IS AND SHALL BE RECOGNIZED AS AN ELIGIBLE NATIVE VILLAGE UNDER THAT ACT, AND FOR OTHER PURPOSES

DECEMBER 22, 2014.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. HASTINGS of Washington, from the Committee on Natural Resources, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 1103]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 1103) to amend the Alaska Native Claims Settlement Act to provide that Alexander Creek, Alaska, is and shall be recognized as an eligible Native village under that Act, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE BILL

The purpose of H.R. 1103 is to amend the Alaska Native Claims Settlement Act to provide that Alexander Creek, Alaska, is and shall be recognized as an eligible Native village under that Act.

BACKGROUND AND NEED FOR LEGISLATION

The Alaska Native Claims Settlement Act of 1971 (ANCSA) extinguished all claims of Native people based on aboriginal title to lands and waters in Alaska. In compensation, the Act entitled Alaska Natives to 44 million acres of public lands in Alaska and nearly \$1 billion. The lands and funds would be conveyed to 12 Regional Corporations, more than 200 Village Corporations, and a small number of Group Corporations and Urban Corporations organized

by Native residents of at least one-fourth degree Alaska Indian, Eskimo, or Aleut blood (or a combination thereof).

Fee title to the 44 million acres of land conveyed under ANCSA is divided among the Native Corporations under a complex formula relating to geography and Native population. Depending on the size of its enrollment, each Alaska Native Village of 25 or more residents is entitled to a minimum of three townships (69,120 acres) and a maximum of seven townships (161,280 acres) in which part of the village is located. The Act further provides that title to the subsurface estate of a Village Corporation's land (except in a National Wildlife Refuge) be held by the applicable Regional Corporation.

In addition to providing land conveyances to Regional and Village Corporations, ANCSA provides that a Village of fewer than 25 Native residents may form a "Group Corporation" entitled to a maximum of 7,680 acres of land. Accordingly, Alexander Creek organized as a Group Corporation after the Department of the Interior reduced its original enrollment from more than 25 Natives to fewer than 25.

ANCSA prescribed a host of conditions under which Native Corporations must operate. The Corporations must be for-profit business corporations organized under the laws of Alaska. Their settlement lands are treated as private property subject to State regulation, but they are nontaxable until developed. While ANCSA Corporations may buy, sell, or trade their lands like any private landowner, shares issued by the Corporations are not publicly traded or sold. Importantly, section 7 of ANCSA requires that 70% of revenues derived by a Regional Corporation from the development of timber and mineral resources on land patented to it under ANCSA be shared with the other Regional Corporations. The other Regional Corporations in turn must redistribute these benefits to Village Corporations in their regions and to at-large shareholders (i.e., Natives who own shares in a Regional but not a Village Corporation).

ALEXANDER CREEK

Alexander Creek is located 27 miles northwest of Alaska's largest city of Anchorage. While most Native Villages are listed by name in Section 11(b)(1) of ANCSA, Alexander Creek secured recognition as a Village of at least 25 Native residents under Interior Department procedures authorized by ANCSA Section 11(b)(3). Alexander Creek's recognition was challenged through administrative appeals and lawsuits, precipitated by (among other things) concerns that its Village status would entitle it to the same lands claimed by the State and the Mat-Su Borough pursuant to other statutes including the Alaska Statehood Act (Public Law 85-508, July 7, 1958, 72 Stat. 339).

On an appeal of Alexander Creek's Village status in 1974, the Department of the Interior Alaska Native Claims Appeals Board (ANCAB) decided that only 22 Native people should be enrolled to Alexander Creek, three short of meeting the eligibility requirements for a Village. As a result, Alexander Creek was forced to organize as a Group Corporation with a corresponding reduction of its land entitlement. Alexander Creek argues that several Native residents were not properly counted because the Interior Depart-

ment failed to notify them of the administrative proceedings where they could have testified as to their resident status.

Alexander Creek filed a lawsuit that resulted in protracted litigation. The case eventually went to the U.S. Court of Appeals for the District of Columbia Circuit, which reversed Interior's determination but remanded the case to a lower court for further proceedings. This led to negotiations that resulted in Alexander Creek organizing as a Group Corporation rather than a Village Corporation. Subsequent leadership of Alexander Creek petitioned Congress for legislation to enroll the excluded Natives and give it Village Corporation status.

On July 23, 2013, the Subcommittee on Indian and Alaska Native Affairs held a hearing on H.R. 1103. A witness representing the Department of the Interior testified in opposition to the bill. In Interior's view, H.R. 1103 would "effectively overturn the long-standing settlement, codified in statute, which resolved the status of Alexander Creek, and would undermine the finalization of entitlement claims in southcentral Alaska." (Written Statement of Mike Black, Director of the Bureau of Indian Affairs.)

It must be noted that ANCSA has been amended numerous times by Congress. It is further important to note that Native Villages recognized pursuant to ANCSA are not tribes. The Alaska Native Villages possess a unique history of relations with the federal government that is not comparable to those of recognized Indian tribes in the contiguous 48 states. Accordingly, Congress has regularly dealt with Alaska Natives through laws and policies that are separate from those Congress uses in its dealings with tribes.

Testimony from Stephanie Thompson, President of Alexander Creek, was given on a previous version of the bill (H.R. 4194) on March 20, 2012. Ms. Thompson submitted materials in the record demonstrating that a number of Natives (who have since passed away) were not given a fair opportunity to testify before the Interior Department regarding their membership in Alexander Creek. Ms. Thompson was not asked to testify on H.R. 1103 because her testimony would be substantially unchanged from what she provided in the previous Congress.

ANALYSIS OF H.R. 1103

H.R. 1103 recognizes Alexander Creek as a Native Village, making it eligible to form a Village Corporation under ANCSA. The bill directs the Secretary of the Interior to open negotiations with Alexander Creek and, in his sole discretion, to enter into an agreement within one year of enactment of the bill "to fairly and equitably settle aboriginal land claims and any other claims of Alexander Creek against the United States" in approximate parity with those of other Alaska Village Corporations.

The bill does not prescribe any benefits and does not guarantee what they will be, if any. Unlike a prior version reported by the Committee in the 112th Congress (H.R. 4194; H. Rept. 112-736), H.R. 1103 further provides that any settlement reached by Interior and Alexander Creek pursuant to the bill "shall not be subject to the Indian Tribal Judgment Funds Use or Distribution Act (25 U.S.C. 1401), unless subsequently authorized by law." Even though it is not the bill sponsor's intent to authorize the payment of money to Alexander Creek, this new provision was included following his

consultation with the Congressional Budget Office in an effort to ensure the bill does not generate a budget score.

The bill further requires Alexander Creek, upon being recognized as a Village, to notify its members that they shall cease receiving certain revenue-sharing benefits available to them under section 7(m) of ANCSA. Such members, however, will be eligible for revenue sharing payments established under section 7(j) of ANCSA. These revenue sharing measures in ANCSA provide for the redistribution of 70% of revenues derived by all Alaska Native Regional Corporations from the development of timber and subsurface resources on their settlement lands.

Finally, the bill ensures the entitlement to lands that Alexander Creek obtained as a Group Corporation is not diminished by the change in its status.

H.R. 1103 rectifies a longstanding problem caused by the federal government in its failure to allow Alexander Creek a fair and just opportunity to establish the requisite enrollment of Natives that would qualify it to be a Village under ANCSA. The bill has no impact on taxpayers and it does not disturb any existing land entitlement under ANCSA.

COMMITTEE ACTION

H.R. 1103 was introduced on March 12, 2013, by Congressman Don Young (R-AK). The bill was referred to the Committee on Natural Resources, and within the Committee to the Subcommittee on Indian and Alaska Native Affairs. On July 23, 2013, the Subcommittee held a hearing on the bill. On February 27, 2014, the Natural Resources Committee met to consider the bill. The Subcommittee on Indian and Alaska Native Affairs was discharged by unanimous consent. No amendments were offered and the bill was adopted and ordered favorably reported to the House of Representatives by voice vote.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Natural Resources' oversight findings and recommendations are reflected in the body of this report.

COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(1) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out this bill. However, clause 3(d)(2)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974. Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of the Congressional Budget Office:

H.R. 1103—A bill to amend the Alaska Native Claims Settlement Act to provide that Alexander Creek, Alaska, is and shall be recognized as an eligible Native village under that Act, and for other purposes

Summary: H.R. 1103 would change the federal designation of the Alexander Creek community in Alaska. CBO estimates that enacting H.R. 1103 would cost \$30 million over the 2015–2024 period. Because those costs would increase direct spending, pay-as-you-go procedures apply. Enacting the legislation would not affect revenues or spending subject to appropriation.

H.R. 1103 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

Estimated cost to the Federal Government: H.R. 1103 would designate the Alexander Creek community as a Native village under the Alaska Native Claims Settlement Act of 1971 (ANCSA). The community is currently recognized as a Native group under ANCSA. The legislation would require the Department of the Interior (DOI) to settle land and other claims with the newly designated Native village.

ANCSA established a process to classify Native Alaskan communities for the purpose of conveying nearly 44 million acres of federal land to those communities. Under ANCSA, Native villages are entitled to about 69,000 acres, and Native groups can receive up to about 8,000 acres. The Alexander Creek community was classified as a Native group in 1974, and that classification was affirmed and codified in the Alaska National Interest Lands Conservation Act of 1980 (ANILCA). In that agreement, the Alexander Creek community was entitled to receive almost 8,000 acres of federal land. H.R. 1103 would supersede the ANILCA agreement and would classify the Alexander Creek community as a Native village, allowing them to receive an additional 61,000 acres of land.

CBO estimates that 61,000 acres of land in this area of Alaska would have an appraised value of about \$30 million. Because most eligible lands have already been conveyed to the state of Alaska, CBO expects that the settlement under H.R. 1103 would be in the form of a monetary settlement to the community from the Treasury's Judgment Fund (a permanent, indefinite appropriation for claims and judgments against the United States). However, the cost of the settlement under H.R. 1103 ultimately would depend on the terms agreed upon by DOI and the Alexander Creek Native Village. (The bill does not specify the terms of the settlement agreement.) If the settlement were in the form of a transfer of federal land to the Alexander Creek community, for example, the legislation would have a negligible effect on the federal budget.

Pay-As-You-Go considerations: The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. The net changes in outlays that are subject to those pay-as-you-go procedures are shown in the following table.

CBO ESTIMATE OF PAY-AS-YOU-GO EFFECTS FOR H.R. 1103, A BILL TO AMEND THE ALASKA NATIVE CLAIMS SETTLEMENT ACT TO PROVIDE THAT ALEXANDER CREEK, ALASKA, IS AND SHALL BE RECOGNIZED AS AN ELIGIBLE NATIVE VILLAGE UNDER THAT ACT, AND FOR OTHER PURPOSES, AS ORDERED REPORTED ON FEBRUARY 27, 2014

	By fiscal year, in millions of dollars—														2014-2019	2014-2024
	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024					
	NET INCREASE IN THE DEFICIT															
Statutory Pay-As-You-Go Impact	0	30	0	0	0	0	0	0	0	0	0	0	0	30	30	

Intergovernmental and private-sector impact: H.R. 1103 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments. Enacting the bill would benefit the community of Alexander Creek.

Estimate prepared by: Federal Costs: Martin von Gnechten; Impact on State, Local, and Tribal Governments: Melissa Merrell; Impact on the Private-Sector: Amy Petz.

Estimate approved by: Theresa Gullo, Deputy Assistant Director for Budget Analysis.

2. Section 308(a) of Congressional Budget Act. As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does not contain any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures. CBO estimates that enacting H.R. 1103 would cost \$30 million over the 2015–2024 period.

3. General Performance Goals and Objectives. As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill is to amend the Alaska Native Claims Settlement Act to provide that Alexander Creek, Alaska, is and shall be recognized as an eligible Native village under that Act.

EARMARK STATEMENT

This bill does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined under clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives.

COMPLIANCE WITH PUBLIC LAW 104–4

This bill contains no unfunded mandates.

COMPLIANCE WITH H. RES. 5

Directed Rule Making. The Chairman does not believe that this bill directs any executive branch official to conduct any specific rule-making proceedings.

Duplication of Existing Programs. This bill does not establish or reauthorize a program of the federal government known to be duplicative of another program. Such program was not included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139 or identified in the most recent Catalog of Federal Domestic Assistance published pur-

suant to the Federal Program Information Act (Public Law 95–220, as amended by Public Law 98–169) as relating to other programs.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic):

ALASKA NATIVE CLAIMS SETTLEMENT ACT

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SEC. 43. ALEXANDER CREEK VILLAGE RECOGNITION.

(a) *RECOGNITION OF THE VILLAGE OF ALEXANDER CREEK.*—Subject to the limitations of this section and notwithstanding section 1432(d) of the Alaska National Interest Lands Conservation Act (Public Law 96–487) and any conveyance or agreement in furtherance thereof or thereto, to the contrary, Alexander Creek, located within Township 15N, Range 7W, Seward Meridian, Alaska, is and shall be recognized as an eligible Native village under section 11(b)(3) of this Act.

(b) *DEFINITIONS.*—For the purposes of this section, the following terms apply:

(1) The term “agency” includes—

(A) any instrumentality of the United States;

(B) any element of an agency; and

(C) any wholly owned or mixed-owned corporation of the United States Government identified in chapter 91 of title 31, United States Code.

(2) The term “Alexander Creek” means Alexander Creek, Incorporated, an Alaska Native Group corporation organized pursuant to this Act prior to the enactment of this section, but subsequent to enactment of this section means Alexander Creek, Incorporated, an Alaska Native Village corporation recognized and organized pursuant to section (a).

(3) The term “Region” means Cook Inlet Region Incorporated, an Alaska Native Regional Corporation, which is the appropriate Regional Corporation for Alexander Creek under section 1613(h) of this Act.

(c) *ORGANIZATION OF ALEXANDER CREEK.*—As soon as practicable after enactment of this section, Alexander Creek shall cause to be filed—

(1) any amendments to its corporate charter in the State of Alaska necessary to convert from a Native group to a Native Village corporation; and

(2) if necessary, any amendments to its corporate charter and governing business documents that fulfill the terms of the agreement authorized under this Act.

(d) *NEGOTIATIONS.*—

(1) *AUTHORITY AND DIRECTION TO NEGOTIATE.*—Not later than 30 days after the date of enactment of this section, the Secretary shall open discussions and subsequently negotiate and, in the Secretary's sole discretion on behalf of the United States, enter into an agreement within one year of enactment of this section, with Alexander Creek to fairly and equitably settle aboriginal land claims and any other claims of Alexander Creek against the United States; and such agreement with Alexander Creek shall be in approximate value parity with those of other Alaska Native Village Corporations, notwithstanding Alexander Creek's prior status as a Group Corporation.

(2) *FUNDS FOR SETTLEMENT.*—A settlement reached under this subsection shall not be subject to the Indian Tribal Judgment Funds Use or Distribution Act (25 U.S.C. 1401), unless subsequently authorized by law.

(e) *SHAREHOLDER PARTICIPATION.*—Alexander Creek shall notify each member of the Native village recognized under this section that, upon the effective date of this section, such members shall cease to receive benefits from the Region as at-large shareholders pursuant to section 7(m), and that all future resource payments from the Region shall be made to the Village Corporation pursuant to section 7(j). The Region shall not be liable under any State, Federal, or local law, or under State or Federal common law, for damages arising out of or related to the cessation of payments to such individuals under section 7(m) pursuant to this section.

(f) *CONSTRUCTION.*—Except as provided in this section with respect to Alexander Creek, nothing in this section shall be construed to modify or amend land conveyance entitlements or conveyance agreements between the Region and village corporations other than Alexander Creek in such region, nor between the Region and the Federal Government, nor between any such parties and the State of Alaska.

(g) *CONSTRUCTION REGARDING CURRENT ALEXANDER CREEK LAND.*—Nothing in this section shall be construed to reduce the land entitlement to which Alexander Creek became entitled as a Group Corporation, including the land selected by and conveyed to Alexander Creek at the time of enactment of this section.

DISSENTING VIEWS

H.R. 1103: ALEXANDER CREEK VILLAGE RECOGNITION ACT

H.R. 1103 would amend the Alaska Native Claims Settlement Act (ANCSA) to recognize Alexander Creek Inc., currently an Alaska Native Group, as an Alaska Native Village. As a Native Village, Alexander Creek would be eligible for similar treatment as other Native Villages under ANCSA, including eligibility to receive from 69,120 acres to 161,200 acres of land from the public domain, depending on the number of residents. Under its Native Group designation, Alexander Creek currently encompasses 7,680 acres—the maximum acreage allotted under ANCSA for Native Groups—in a remote area approximately 27 miles from Anchorage, Alaska.

In 1973, Alexander Creek, the Cook Inlet Region Incorporated (CIRI—an Alaska Native Corporation), the United States, and various other groups including Sierra Club and an Alaska sportsmen's group began having disputes over whether Alexander Creek should be considered a Group or a Village. These disputes led to court battles and culminated in a 1979 agreement in which Alexander Creek dropped its claim to be a Village in exchange for Group status and up to 7,680 acres of land. The agreement was codified in Section 1432 of the Alaska National Interest Lands Conservation Act (ANILCA). In subsequent years, however, the leadership of Alexander Creek took the view that they should have been recognized as an ANCSA Village.

The Department of the Interior has expressed concerns with the bill. Specifically, declaration of Alexander Creek as an eligible Village could have serious repercussions in the overall framework of land conveyances established by ANCSA. The resolution of Alexander Creek's status as a Native Group and subsequent codification in ANILCA allowed the land entitlement process throughout South Central Alaska's Cook Inlet region to proceed. The BLM's Alaska Land Conveyance program is now in a late stage of implementation. The Department believes that changing the status of Alexander Creek at this stage in the process could undercut the basis on which village and regional entitlements were addressed.

For these reasons, H.R. 1103 has the potential to require recalculation and reapportionment of the ANCSA figures, which may disrupt this lengthy and complex land entitlement and conveyance process.

PETER DEFAZIO,

Ranking Member, Committee on Natural Resources.

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