

KAKE TRIBAL CORPORATION LAND TRANSFER ACT

JANUARY 27, 2000.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. YOUNG of Alaska, from the Committee on Resources,
submitted the following

R E P O R T

[To accompany S. 430]

[Including cost estimate of the Congressional Budget Office]

The Committee on Resources, to whom was referred the bill (S. 430) to amend the Alaska Native Claims Settlement Act, to provide for a land exchange between the Secretary of Agriculture and the Kake Tribal Corporation, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

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

SECTION 1. SHORT TITLE.

This Act may be cited as the “Kake Tribal Corporation Land Transfer Act”.

SEC. 2. DECLARATION OF PURPOSE.

The purpose of this Act is to authorize the reallocation of lands and selection rights between the State of Alaska, Kake Tribal Corporation, and the City of Kake, Alaska, in order to provide for the protection and management of the municipal watershed.

SEC. 3. AMENDMENT OF ALASKA NATIVE CLAIMS SETTLEMENT ACT.

The Alaska Native Claims Settlement Act (43 U.S.C. 1601 note) is amended by adding at the end the following new section:

“KAKE TRIBAL CORPORATION LAND TRANSFER

“SEC. 42. (a) IN GENERAL.—If—

“(1) the State of Alaska relinquishes its selections rights under the Alaska Statehood Act (P.L. 85-508) to lands described in subsection (c)(2) of this section; and

“(2) Kake Tribal Corporation and Sealaska Corporation convey all right, title, and interest to lands described in subsection (c)(1) to the City of Kake, Alaska, then the Secretary of Agriculture (hereinafter referred to as ‘Secretary’) shall, not later than 180 days thereafter, convey to Kake Tribal Corporation title to the sur-

face estate in the land identified in subsection (c)(2) of this section, and convey to Sealaska Corporation title to the subsurface estate in such land.

“(b) EFFECT ON SELECTION TOTALS.—(1) Of the lands to which the State of Alaska relinquishes selection rights and which are conveyed to the City of Kake pursuant to subsection (a), 694.5 acres shall be charged against lands to be selected by the State of Alaska under section 6(a) of the Alaska Statehood Act and 694.5 acres against lands to be selected by the State of Alaska under section 6(b) of the Alaska Statehood Act.

“(2) The land conveyed to Kake Tribal Corporation and to Sealaska Corporation under this section is, for all purposes, considered to be land conveyed under this Act. However, the conveyance of such land to Kake Tribal Corporation shall not count against or otherwise affect the Corporation’s remaining entitlement under section 16(b).

“(c) DESCRIPTION OF LANDS SUBJECT TO EXCHANGE.—(1) The lands to be transferred to the City of Kake and under subsection (a) are the surface and subsurface estate to approximately 1430 acres of land owned by Kake Tribal Corporation and Sealaska Corporation, and depicted as ‘KTC Land to City of Kake’ on the map entitled ‘Kake Land Exchange-1999’, dated September, 1999.

“(2) The lands subject to relinquishment by the State of Alaska and to conveyance to Kake Tribal Corporation and Sealaska Corporation under subsection (a) are the surface and subsurface estate to approximately 1389 acres of Federal lands depicted as ‘Jenny Creek-Land Selected by the State of Alaska to KTC’ on the map entitled ‘Kake Land Exchange-1999’, dated September, 1999.

“(d) WITHDRAWAL.—Subject to valid existing rights, the lands described in subsection (c)(2) are withdrawn from all forms of location, entry, and selection under the mining and public land laws of the United States and from leasing under the mineral and geothermal leasing laws. This withdrawal expires 18 months after the effective date of this section.

“(e) MAPS.—The maps referred to in this Act shall be maintained on file in the Office of the Chief, United States Forest Service, the Office of the Secretary of the Interior, and the Office of the Petersburg Ranger District, Alaska.

“(f) WATERSHED MANAGEMENT.—The United States Forest Service may cooperate with the Kake Tribal Corporation and the City of Kake in developing a watershed management plan that provides for the protection of the watershed in the public interest. Grants may be made, and contracts and cooperative agreements may be entered into, to the extent necessary to assist the City of Kake and the Kake Tribal Corporation in the preparation and implementation of a watershed management plan for the land within the City of Kake’s municipal watershed.

“(g) EFFECTIVE DATE.—This section is effective upon the execution of one or more reciprocal agreements that provide for one or more reciprocal conservation easements that, subject to valid existing rights of third parties—

“(1) encumber all lands depicted as ‘KTC Land to City of Kake’ and ‘KTC Land-Conservation Easement to City of Kake’ on a map entitled ‘Kake Land Exchange-1999’ dated September 1999;

“(2) provide for the relinquishment by Kake Tribal Corporation to the Corporation’s development rights on lands described in paragraph (1); and

“(3) provide for perpetual protection and management of lands depicted as ‘KTC Land-Conservation Easement to City of Kake’ on the map described in paragraph (1) as—

“(A) a watershed;

“(B) a municipal drinking water source in accordance with the laws of the State of Alaska;

“(C) a source of fresh water for the Gunnuk Creek Hatchery; and

“(D) habitat for black bear, deer, birds, and other wildlife.

“(h) AUTHORIZATION OF APPROPRIATIONS.—There are authorized such sums as may be necessary to carry out this Act. No funds authorized under this section may be paid to Kake Tribal Corporation unless Kake Tribal Corporation is a party to any reciprocal agreements entered into under subsection (g).”.

PURPOSE OF THE BILL

The purpose of S. 430 is to amend the Alaska Native Claims Settlement Act, to provide for a land exchange between the Secretary of Agriculture and the Kake Tribal Corporation, and for other purposes.

BACKGROUND AND NEED FOR LEGISLATION

The Kake Tribal Corporation (KTC) is a Native village corporation organized under the Alaska Native Claims Settlement Act (ANCSA). Pursuant to ANCSA, KTC was awarded lands in and around the core township of the City of Kake. Some of KTC's holdings are on the municipal watershed supplying the City of Kake with its drinking water. These lands have timber that is eligible for harvest by KTC.

For several years, City residents have been concerned that KTC will log its watershed property. In recognition of this local concern, KTC's board of directors has refrained from authorizing timber harvest on the watershed. However, late in 1999, KTC come under intense pressure to generate revenue. A previous effort by KTC to set up a special program to care for the needs of certain shareholders such as Native elders led to a lawsuit which forced KTC to file for bankruptcy. KTC's severe financial situation increases the likelihood that KTC will log the municipal watershed to pay creditors.

KTC is faced with a dilemma: it may have to exercise the unpopular choice of logging the municipal watershed to pay creditors, or preserve the watershed, which might place KTC's other assets at higher risk.

S. 430 as passed by the Senate sets up one locally popular approach to resolve this dilemma. The measure provides for an equal value land exchange in which KTC conveys the watershed lands to the Tongass National Forest, and receives lands away from the problem area. (See Senate Report 106-31 for more information on the terms and conditions of this exchange). Under this concept, KTC would be able to log its property without any effect on the city's watershed.

After S. 430 was referred to the House Committee on Resources, certain federal officials, the State of Alaska, KTC, the City and other local interests agreed in concept to an alternative land exchange. An amendment in the nature of a substitute adopted by the Committee reflects the new proposal.

Under this concept, KTC would agree to convey 1430 acres of its watershed property to the City of Kake, and retain ownership of the remaining 1127 acres of its watershed land. Both the land conveyed to the City and the land retained by KTC would then be encumbered by a conservation easement that prohibits logging and protects the watershed.

In compensation for conveying the 1430 acres of watershed property to the City, KTC would receive certain land to which the State gives up its Statehood selection rights. This land, known as the Jenny Creek property, is located away from the watershed and may be logged without controversy.

In compensation for agreeing to put the other portion of the watershed under a conservation easement, KTC would be compensated, subject to appropriation of funds, in cash for the value of its relinquished development and logging rights.

Under this exchange there will no net loss to the Tongass National Forest land base, and the City watershed will be preserved.

A matter involving the disposition of the subsurface estate of the lands subject to the exchange has come to the attention of the Committee. Sealaska Corporation, as the owner of the subsurface estate beneath KTC's watershed lands, must be treated fairly in this exchange. Sealaska Corporation, the Native Regional Corporation for Southeast Alaska, has expressed to the Committee its willingness to exchange its subsurface estate to facilitate the much-needed land exchange. With respect to that portion of the KTC land to be exchanged for the Jenny Creek property, the reported bill directs the exchange of Sealaska's subsurface estate beneath the surface estate owned by KTC for the subsurface estate beneath the Jenny Creek property. The Committee concludes that, with respect to the portion of the surface estate owned by KTC that will be subject to conservation easements, it would be inequitable to have Sealaska continue to own the subsurface estate in this area. It has been suggested that Sealaska exchange to the United States this remaining subsurface estate for equivalent subsurface estate in Southeast Alaska, perhaps pursuant to an already existing agreement between Sealaska and the U.S. Forest Service. This solution would provide equitable treatment to Sealaska Corporation.

While S. 430 as approved by the Committee resolves the local controversy over the watershed lands, further refinement of the details of the conservation easements may be desirable. In this vein, the Committee urges Kake Tribal Corporation and the City, to the extent that it is feasible and timely, to produce a signed agreement providing for appropriate conservation easements that can be incorporated by reference into the bill.

COMMITTEE ACTION

S. 430 was introduced on February 22, 1999, by Senator Frank H. Murkowski (R-AK). The bill passed the Senate on April 19, 1999, with amendments. The bill was then referred to the Committee on Resources. Hearings on an earlier version of a bill (H.R. 2756) addressing the same problem were held in the 105th Congress on February 25, 1998. On November 3, 1999, the Full Resources Committee met to consider the bill. Chairman Don Young (R-AK) offered an amendment in the nature of a substitute, as described above. It was adopted by voice vote. The bill as amended was then 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 Resources' oversight findings and recommendations are reflected in the body of this report.

CONSTITUTIONAL AUTHORITY STATEMENT

Article I, section 8, and Article IV, section 3, of the Constitution of the United States grant Congress the authority to enact this bill.

COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(2) 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)(3)(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.

2. 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.

3. Government Reform Oversight Findings. Under clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee has received no report of oversight findings and recommendations from the Committee on Government Reform on this bill.

4. Congressional Budget Office Cost Estimate. 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:

S. 430—KAKE TRIBAL CORPORATION LAND TRANSFER ACT

Summary: S. 430 would authorize the Secretary of Agriculture to make grants and enter into cooperative agreements with the city of Kake, Alaska, to prepare and implement a watershed management plan for certain lands located within its municipal watershed. S. 430 also would direct the Secretary to convey to the Kake and Sealaska tribal corporations the surface and subsurface estate of certain lands within the Tongass National Forest, subject to certain conditions.

Based on information from the Forest Service and the Kake Tribal Corporation (KTC), CBO estimates that implementing S. 430 would cost \$15 million over the 2001–2004 period, assuming appropriation of the necessary amounts. The act would not affect direct spending or receipts; therefore, pay-as-you-go procedures would not apply. S. 430 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA). Any costs incurred by the state of Alaska under this act would be voluntary.

Estimated cost to the Federal Government: Several steps would be necessary before the land exchange between the Secretary of Agriculture and the tribal corporations would occur. First, the tribal corporations must grant a conservation easement for about 2,500 acres of land owned by the corporations that are located within the city's municipal watershed. Next, the tribal corporations would need to transfer ownership of some of their land within the municipal watershed to the city. Finally, the state of Alaska would need to relinquish its selection rights to about 1,400 acres of land in the Tongass National Forest that would be conveyed to the tribal cor-

porations under the act. Based on information from each of these interested parties, CBO expects that agreements to fulfill each of these conditions will be reached in 2000.

Because the state of Alaska currently has selection rights to certain lands in the Tongass National Forest, the Forest Service does not plan to harvest timber on the 1,400 acres that would be transferred to the tribal corporations under S. 430. Therefore, this transfer would not affect federal receipts. Based on information from the Forest Service and the KTC, CBO estimates that the tribal corporation will seek monetary compensation from the federal government in exchange for the conservation easement granted on its land within the municipal watershed. Based on the potential value to the tribal corporation of developing these lands, we estimate the conservation easement could be worth as much as \$15 million. Any such compensation would be subject to the availability of appropriated funds.

Pay-as-you-go considerations: None.

Estimated impact on State, local, and tribal governments: S. 430 contains no intergovernmental mandates as defined in UMRA. The state of Alaska might incur some costs should it choose to relinquish its selection rights to the land proposed for conveyance to the tribal corporations. Such costs would be incurred voluntarily, however. The tribal corporations would benefit from enactment of this legislation because the land they would receive could be developed to generate income.

Estimated impact on the private sector: This bill contains no new private-sector mandates as defined in UMRA.

Previous CBO estimate: On March 11, 1999, CBO transmitted a cost estimate for S. 430 as ordered reported by the Senate Committee on Energy and Natural Resources on March 4, 1999. Under that version of S. 430, the Secretary of Agriculture and the tribal corporations would enter into an equal value land exchange. The tribal corporations would receive the surface and subsurface estate of unspecified lands within the Tongass National Forest in exchange for the surface and subsurface estate of the municipal watershed lands, which the Forest Service would manage.

The Senate version would not authorize the Secretary of Agriculture to enter into agreements and make grants to assist in implementing a watershed management plan, which CBO estimates could cost up to \$15 million over the 2001–2004 period, assuming the appropriation of the necessary amounts.

Estimate prepared by: Federal costs: Megan Carroll. Impact on State, local, and tribal governments: Marjorie Miller.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

COMPLIANCE WITH PUBLIC LAW 104–4

This bill contains no unfunded mandates.

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 and existing law in which no change is proposed is shown in roman):

**SECTION 42 OF THE ALASKA NATIVE CLAIMS
SETTLEMENT ACT**

KAKE TRIBAL CORPORATION LAND TRANSFER

SEC. 42. (a) IN GENERAL.—If—

(1) the State of Alaska relinquishes its selections rights under the Alaska Statehood Act (P.L. 85-508) to lands described in subsection (c)(2) of this section; and

(2) Kake Tribal Corporation and Sealaska Corporation convey all right, title, and interest to lands described in subsection (c)(1) to the City of Kake, Alaska,

then the Secretary of Agriculture (hereinafter referred to as “Secretary”) shall, not later than 180 days thereafter, convey to Kake Tribal Corporation title to the surface estate in the land identified in subsection (c)(2) of this section, and convey to Sealaska Corporation title to the subsurface estate in such land.

(b) EFFECT ON SELECTION TOTALS.—(1) Of the lands to which the State of Alaska relinquishes selection rights and which are conveyed to the City of Kake pursuant to subsection (a), 694.5 acres shall be charged against lands to be selected by the State of Alaska under section 6(a) of the Alaska Statehood Act and 694.5 acres against lands to be selected by the State of Alaska under section 6(b) of the Alaska Statehood Act.

(2) The land conveyed to Kake Tribal Corporation and to Sealaska Corporation under this section is, for all purposes, considered to be land conveyed under this Act. However, the conveyance of such land to Kake Tribal Corporation shall not count against or otherwise affect the Corporation’s remaining entitlement under section 16(b).

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thermal leasing laws. This withdrawal expires 18 months after the effective date of this section.

(e) MAPS.—The maps referred to in this Act shall be maintained on file in the Office of the Chief, United States Forest Service, the Office of the Secretary of the Interior, and the Office of the Petersburg Ranger District, Alaska.

(f) WATERSHED MANAGEMENT.—The United States Forest Service may cooperate with the Kake Tribal Corporation and the City of Kake in developing a watershed management plan that provides for the protection of the watershed in the public interest. Grants may be made, and contracts and cooperative agreements may be entered into, to the extent necessary to assist the City of Kake and the Kake Tribal Corporation in the preparation and implementation of a watershed management plan for the land within the City of Kake’s municipal watershed.

(g) EFFECTIVE DATE.—This section is effective upon the execution of one or more reciprocal agreements that provide for one or more reciprocal conservation easements that, subject to valid existing rights of third parties—

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(2) provide for the relinquishment by Kake Tribal Corporation to the Corporation’s development rights on lands described in paragraph (1); and

(3) provide for perpetual protection and management of lands depicted as “KTC Land-Conservation Easement to City of Kake” on the map described in paragraph (1) as—

(A) a watershed;

(B) a municipal drinking water source in accordance with the laws of the State of Alaska;

(C) a source of fresh water for the Gunnuk Creek Hatchery; and

(D) habitat for black bear, deer, birds, and other wildlife.

(h) AUTHORIZATION OF APPROPRIATIONS.—There are authorized such sums as may be necessary to carry out this Act. No funds authorized under this section may be paid to Kake Tribal Corporation unless Kake Tribal Corporation is a party to any reciprocal agreements entered into under subsection (g).