

ALASKA FEDERAL LANDS MANAGEMENT DEMONSTRATION
PROJECT ACT

OCTOBER 11, 2002.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. HANSEN, from the Committee on Resources,
submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 4734]

[Including cost estimate of the Congressional Budget Office]

The Committee on Resources, to whom was referred the bill (H.R. 4734) to expand Alaska Native contracting of Federal land management functions and activities and to promote hiring of Alaska Natives by the Federal Government within the State of Alaska, 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 all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Alaska Federal Lands Management Demonstration Project Act”.

SEC. 2. FINDINGS.

(a) FINDINGS.—Congress finds the following:

(1) The Alaska National Interest Lands Conservation Act (16 U.S.C. 3101 et seq.) established new and expanded units of the National Park System and the National Wildlife Refuge System in many areas of Alaska. The purposes of these conservation system units include protection of habitat for fish and wildlife, conservation of fish and wildlife populations, continued opportunity for subsistence uses by local residents, and protection of archeological sites associated with Alaska Native cultures.

(2) Many rural Alaskan communities are in close proximity to conservation system units and the purposes of these conservation system units are uniquely relevant to the culture and ways of Alaska Natives and other residents of rural

Alaska communities. Congress recognized this close relationship in sections 1306, 1307, and 1308 of the Alaska National Interest Lands Conservation Act, which directed the Secretary of the Interior to establish programs whereby Alaska Native lands were given preference for the siting of conservation system unit facilities, Alaska Native corporations and local residents were given preference for the provision of visitor services, and local residents were given preference for employment.

(b) PURPOSES.—The purposes of this Act are as follows:

- (1) To promote innovative management strategies that are designed to lead to greater efficiency in conservation system unit management.
- (2) To expand Alaska Native contracting opportunities.
- (3) To increase local employment in Alaska.
- (4) To further the unique purposes of conservation system units as they relate to subsistence practices, Alaska Native culture, and the conservation of fish and wildlife habitat and populations.

SEC. 3. ALASKA FEDERAL LANDS MANAGEMENT DEMONSTRATION PROJECT.

(a) IN GENERAL.—The Secretary shall carry out a program within the Department of the Interior to be known as the “Alaska Federal Lands Management Demonstration Project” by which 12 Indian tribes or tribal organizations may contract to perform construction, maintenance, data collection, biological research, and harvest monitoring on conservation system units in Alaska.

(b) PARTICIPATION.—During each of the 2 fiscal years immediately following the date of the enactment of this Act, the Secretary shall select, in a manner to achieve geographic representation within Alaska, not less than 6 eligible Indian tribes or tribal organizations per year to participate in the demonstration project.

(c) ELIGIBILITY.—To be eligible to participate in the demonstration project, an Indian tribe or tribal organization, shall—

- (1) request participation by resolution or other official action of the governing body of the Indian tribe or tribal organization;
- (2) demonstrate financial and management stability and capability, as evidenced by the Indian tribe or tribal organization having no unresolved significant and material audit exceptions for the previous 3 fiscal years; and
- (3) demonstrate significant use of or dependency upon the relevant conservation system unit or other public land unit for which programs, functions, services, and activities are requested to be placed under contract.

(d) PRIORITY.—If the Secretary receives a request to contract specific conservation system unit programs, services, functions, and activities, or portions thereof, from more than one Indian tribe or tribal organization meeting the criteria set forth in subsection (c), the Secretary shall apply the priority selection criteria applied by the Alaska Region of the Bureau of Indian Affairs for contracting pursuant to the Indian Self-Determination and Education Assistance Act. If, after applying such criteria, more than one eligible Indian tribe or tribal organization remains and such Indian tribes or tribal organizations have overlapping requests to negotiate and contract for the same programs, services, functions, and activities, or portions thereof, the Secretary may require such Indian tribes or tribal organizations to agree regarding which Indian tribe or tribal organization shall have the ability to contract or to submit a joint request prior to entering into negotiations.

(e) PLANNING PHASE.—Each Indian tribe and tribal organization selected by the Secretary to participate in the demonstration project shall complete a planning phase prior to negotiating and entering into a conservation system unit management contract. The planning phase shall be conducted to the satisfaction of the Secretary, Indian tribe, or tribal organization, and shall include—

- (1) legal and budgetary research; and
- (2) internal tribal planning and organizational preparation.

(f) CONTRACTS.—

(1) IN GENERAL.—Upon request of a participating Indian tribe or tribal organization that has completed the planning phase pursuant to subsection (e), the Secretary shall negotiate and enter into a contract with the Indian tribe or tribal organization for the Indian tribe or tribal organization to plan, conduct, and administer programs, services, functions, and activities, or portions thereof, as described in subsection (a), requested by the Indian tribe or tribal organization and related to the administration of a conservation system unit that is substantially located within the geographic region of the Indian tribe or tribal organization.

(2) TIME LIMITATION FOR NEGOTIATION OF CONTRACTS.—Not later than 90 days after a participating Indian tribe or tribal organization has notified the Secretary that it has completed the planning phase required by subsection (e), the Secretary shall initiate and conclude negotiations, unless an alternative negotia-

tion and implementation schedule is otherwise agreed to by the parties. The declination and appeals provisions of the Indian Self-Determination and Education Assistance Act, including section 110 of such Act, shall apply to contracts and agreements requested and negotiated under this Act.

(g) CONTRACT ADMINISTRATION.—

(1) INCLUSION OF CERTAIN TERMS.—At the request of the contracting Indian tribe or tribal organization, the benefits, privileges, terms, and conditions of agreements entered into pursuant to titles I and IV of the Indian Self-Determination and Education Assistance Act may be included in a contract entered into under this Act. If any provisions of the Indian Self-Determination and Education Assistance Act are incorporated, they shall have the same force and effect as if set out in full in this Act and shall apply notwithstanding any other provision of law. The parties may include such other terms and conditions as are mutually agreed to and not otherwise contrary to law.

(2) AUDIT.—Contracts entered into under this Act shall provide for a single-agency audit report to be filed as required by chapter 75 of title 31, United States Code.

(3) TRANSFER OF EMPLOYEES.—Any career Federal employee employed at the time of the transfer of an operation or program to an Indian tribe or tribal organization shall not be separated from Federal service by reason of such transfer. Intergovernmental personnel actions may be used to transfer supervision of such employees to the contracting Indian tribe or tribal organization. Such transferred employees shall be given priority placement for any available position within their respective agency, notwithstanding any priority reemployment lists, directives, rules, regulations, or other orders from the Department of the Interior, the Office of Management and Budget, or other Federal agencies.

(h) AVAILABLE FUNDING; PAYMENT.—Under the terms of a contract negotiated pursuant to subsection (f), the Secretary shall provide each Indian tribe or tribal organization funds in an amount not less than the Secretary would have otherwise provided for the operation of the requested programs, services, functions, and activities. Contracts entered into under this Act shall provide for advance payments to the tribal organizations in the form of annual or semiannual installments.

(i) TIMING; CONTRACT AUTHORIZATION PERIOD.—An Indian tribe or tribal organization selected to participate in the demonstration project shall complete the planning phase required by subsection (e) not later than 1 calendar year after the date that it was selected for participation and may begin implementation of its requested contract no later than the first day of the next fiscal year. The Indian tribe or tribal organization and the Secretary may agree to an alternate implementation schedule. Contracts entered into pursuant to this Act are authorized to remain in effect for 5 consecutive fiscal years, starting from the fiscal year the participating Indian tribe or tribal organization first entered into its contract under this Act.

(j) REPORT.—Not later than 90 days after the close of each of fiscal years 2003 and 2006, the Secretary shall present to the Congress detailed reports, including a narrative, findings, and conclusions on the costs and benefits of this demonstration project. The reports shall identify remaining institutional and legal barriers to the contracting of conservation system unit management to Alaska Native entities and shall contain recommendations for improving, continuing, and expanding the demonstration project. The reports shall be authored jointly with, and shall include the separate views of, all participating Indian tribes and tribal organizations.

(k) LIMITATIONS.—

(1) REVENUE PRODUCING VISITOR SERVICES.—Contracts authorized under this Act shall not include revenue-producing visitor services, unless an agreement is reached with the most directly affected Alaska Native corporations to allow such services to be included in the contract. Such contracts shall not otherwise repeal, alter, or otherwise modify section 1307 or 1308 of the Alaska National Interests Lands Conservation Act.

(2) CONTRACTS.—Contracts authorized under this Act shall not grant or include any authority to administer or otherwise manage or oversee permits, licenses, or contracts related to sport hunting and fishing guiding activities.

(3) DENALI NATIONAL PARK.—The Denali National Park shall not be subject to any of the provisions of this Act.

(4) STATE'S MANAGEMENT AUTHORITY FOR FISH AND WILDLIFE.—Nothing in this Act is intended to enlarge or diminish the responsibility and authority of the State of Alaska for management of fish and wildlife.

(l) PLANNING GRANTS.—

(1) IN GENERAL.—Subject to the availability of appropriated funds, upon application the Secretary shall award a planning grant in the amount of \$100,000 to any Indian tribe or tribal organization selected for participation in the demonstration project to enable it to plan for the contracting of programs, functions,

services, and activities as authorized under this Act and meet the planning phase requirement of subsection (e). An Indian tribe or tribal organization may chose to meet the planning phase requirement without applying for a grant under this subsection. No Indian tribe or tribal organization may receive more than 1 grant under this subsection.

(2) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated \$600,000 for each of the 2 fiscal years immediately following the date of the enactment of this Act to fund planning grants under this section.

SEC. 4. KOYUKUK AND KANUTI NATIONAL WILDLIFE REFUGES DEMONSTRATION PROJECT.

(a) IN GENERAL.—The Secretary shall enter into contracts, compacts, or funding agreements under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) with the Koyukuk River Basin Moose Co-Management Team, Inc., upon receipt of authorizing resolutions from its member tribal or village councils, to establish a demonstration project providing programs, functions, services, and activities of the Koyukuk and Kanuti National Wildlife Refuges.

(b) ASSIGNMENT OF EMPLOYEES.—To the maximum extent possible, contracts and compacts under subsection (a) shall provide that the United States Fish and Wildlife Service shall assign employees assigned to the Koyukuk and Kanuti National Wildlife Refuges to the contractor pursuant to the Intergovernmental Personnel Act (5 U.S.C. 3371 et seq.) with all such employees maintained as Federal employees retaining all benefits and status of Federal service.

SEC. 5. DEFINITIONS.

For the purposes of this Act:

(1) CONSERVATION SYSTEM UNIT.—The term “conservation system unit” shall have the meaning given that term in section 102(4) of the Alaska National Interest Lands Conservation Act.

(2) INDIAN TRIBE.—The term “Indian tribe” shall have the meaning given that term in section 4(e) of the Indian Self-Determination and Education Assistance Act.

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

(4) TRIBAL ORGANIZATION.—The term “tribal organization” shall have the meaning given that term in section 4(l) of the Indian Self-Determination and Education Assistance Act.

PURPOSE OF THE BILL

The purpose of H.R. 4734 is to expand Alaska Native contracting of Federal land management functions and activities and to promote hiring of Alaska Natives by the Federal government within the State of Alaska, and for other purposes.

BACKGROUND AND NEED FOR LEGISLATION

The Alaska National Interest Lands Conservation Act (ANILCA) was enacted on December 2, 1980 as Public Law 96–487. Since then, Congress has passed several public laws that have amended ANILCA. Some of the major purposes of ANILCA are to create and expand federal conservation system units (CSU’s) in Alaska; provide for the maintenance of sound populations of, and habitat for, fish and wildlife; provide for the continued opportunity for subsistence uses by local Alaska Native residents; and protect archaeological sites associated with Alaska Native cultures.

Many rural Alaska Native communities are located within close proximity of CSU’s that play an important role in the culture of Alaska Natives and other residents in rural Alaska. Congress, through sections 1306 and 1307 of ANILCA, directed the Secretary of the Interior to establish programs whereby Native lands were given preference for siting of CSU facilities, and gave Native Corporations a preference in providing certain visitor services on CSU’s. Through Section 1308, Congress recognized that the Natives whose front and back yards were now part of the federal parks, preserve, refuge, monument, and wilderness systems should be in-

volved in the administering of the lands because of their special knowledge and expertise concerning the natural or cultural resources of such areas.

Public Law 106-488 authorized two pilot projects in the Bering Straits and NANA Region in northwest Alaska. These include the following preserves: Bering Land Bridge National Preserve; Cape Krusenstern National Monument; Kobuk Valley National Park; and Noatak National Preserve. Neither of these projects have been implemented.

Twenty-two years have passed since ANILCA was enacted, and Congress' goals regarding contracting and Native-hiring remain unfulfilled by the Department of the Interior. H.R. 4734 would remedy this by directing the Department of the Interior to implement sections 1307 and 1308 of ANILCA and enter into demonstration projects with no less than six eligible Alaska Native tribes or tribal organizations in fiscal years 2003 and 2004.

H.R. 4734 also authorizes the Secretary of the Interior to enter into a demonstration project with the Koyukuk River Basin Moose Co-Management Team, Inc. (Team) to assume operation of services, functions, and activities of the Koyukuk River National Wildlife Refuge and Kanuti National Wildlife Refuge. The contract would require the Team and the United States Fish and Wildlife Service to enter into Intergovernmental Personnel Act (IPA) transfer agreements to maintain the current refuge staff. All current staff would be maintained as federal employees, retaining all benefits and status of federal service.

COMMITTEE ACTION

H.R. 4734 was introduced on May 14, 2002 by Congressman Don Young (R-AK). The bill was referred to the Committee on Resources. On June 5, 2002, the Committee held a hearing on the bill. On September 12, 2002, the Committee met to consider the legislation. Congressman Don Young offered an amendment in the nature of a substitute that deletes references to subsistence, spells out each of the contractible functions allowed in the bill, prohibits the Department of the Interior to contract out the management of permits, licenses or contracts that are related to sport hunting and fish guiding activities in the state of Alaska, and adds a new section 4 which clarifies that the bill would not enlarge or diminish the responsibility or the authority of the State of Alaska for the management of fish and wildlife on public lands. The amendment 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 of the Constitution of the United States grants 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. 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 expand Alaska Native contracting of Federal land management functions and activities and to promote hiring of Alaska Natives by the Federal Government within the State of Alaska, and for other purposes.

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:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 4, 2002.

Hon. JAMES V. HANSEN,
*Chairman, Committee on Resources,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 4734, the Alaska Federal Lands Management Demonstration Project Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Megan Carroll (for federal costs) and Marjorie Miller (for the state and local impact).

Sincerely,

BARRY B. ANDERSON
(For Dan L. Crippen, Director).

Enclosure.

*H.R. 4734—Alaska Federal Lands Management Demonstration
Project Act*

CBO estimates that implementing H.R. 4734 would cost \$1.2 million over the 2003–2004 period, assuming appropriation of the authorized amounts. The bill would not affect direct spending or revenues.

H.R. 4734 would direct the Secretary of the Interior to establish a pilot program for Alaska Native tribes to apply for contracts to perform certain services on federal lands in Alaska. The bill would require tribes to complete certain planning requirements prior to entering into a contract with the Department of the Interior (DOI)

and would authorize the appropriation of \$600,000 in each of years 2003 and 2004 for the Secretary to make grants to help tribes meet those requirements. Assuming appropriation of the specified amounts, we estimate that the Secretary would spend \$600,000 in each of those years for those grants. If the Secretary enters into a contract with a tribe to provide certain services, the bill would direct the Secretary to provide the tribe with funds at least equal to what the federal government would have otherwise spent for such services. Based on information from DOL, we estimate that any increase in federal spending for these activities, which would be subject to appropriation, would not be significant.

H.R. 4734 also would direct the Secretary, subject to appropriation of the necessary funds, to enter into a contract with the Koyukuk River Basin Moose Co-Management Team, Inc., to authorize that organization to manage wildlife resources within the Koyukuk and Kanuti National Wildlife Refuges in Alaska. Based on information from a representative of that organization, CBO estimates that implementing this provision would not significantly affect federal spending for resource management.

H.R. 4734 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments. Any tribe choosing to enter into a contract authorized by this bill would do so voluntarily.

The CBO staff for this estimate are Megan Carroll (for federal costs) and Marjorie Miller (for the state and local impact). This estimate was 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

If enacted, this bill would make no changes in existing law.

DISSENTING VIEWS OF REPRESENTATIVE GEORGE MILLER

H.R. 4734 as introduced would mandate an unprecedented delegation of land management authorities for national parks and national wildlife refuges to private Alaska Native corporations and other entities. Contrary to existing laws, it removes the Secretary of the Interior's discretion and even provides for the transfer of federal employees. The substitute, which was developed without consultation and not provided to Democratic Members prior to the markup is narrower in scope but remains flawed.

H.R. 4734 has created an unusual alliance of opponents, including the Bush Administration, the Speaker of the House and the President of the Senate in the Alaska legislature, environmental groups and the AFL-CIO.

As the Department of the Interior noted in a June 21, 2002 letter opposing H.R. 4734, its non-discretionary contracting provisions so beyond the Indian Self Determination and Education Assistance Act contracting rules which currently apply to Indian tribes and Alaska Natives:

Currently, Title I of the ISDEAA does not apply to units of the National Park System and the National Wildlife Refuge System as they are not "programs for the benefit of Indians because of their status as Indians." Rather they are programs—conservation system units—established for the American people as a whole. * * * With parks and refuges, as opposed to programs for Indians, there are no issues of self-determination, and there is no basis for excepting the parks and refuges from the normal contracting rules.

While the stated goals of this legislation—to increase the "local hire" employment of Alaskans and enhance contracting opportunities between Native entities and the Department of the Interior—are laudable, the means of effectuating those ends in the bill as reported are not. The case has not been to create new and non-discretionary contracting rules applicable only to national parks and national wildlife refuge management in Alaska. The Department has ample authority under current laws, including the Alaska National Interest Lands Conservation Act, to employ Alaskans and to contract with Native corporations and other entities. Rather than passing new and untested legislation, we should instead be encouraging the Bush Administration to use the authority they already possess to increase employment and contracting opportunities in a responsible manner.

GEORGE MILLER.

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