

H.R. CONF. REP. 92-746, H.R. Conf. Rep. No. 746, 92ST Cong., 1ST Sess. 1971, 1971 U.S.C.C.A.N. 2247, 1971 WL 11413 (Leg.Hist.)

***2247 P.L. 92-203, ALASKA NATIVE CLAIMS SETTLEMENT ACT**

House Report (Interior and Insular Affairs Committee) No. 92-523,
Sept. 28, 1971 (To accompany H.R. 10367)

Senate Report (Interior and Insular Affairs Committee) No. 92-405,
Oct. 21, 1971 (To accompany H.R. 10367)

House Conference Report No. 92-746,
Dec. 13, 1971 (To accompany H.R. 10367)

Senate Conference Report No. 92-581,
Dec. 14, 1971 (To accompany H.R. 10367)

Cong. Record Vol. 117 (1971)

DATES OF CONSIDERATION AND PASSAGE

House October 20, December 14, 1971

Senate November 1, December 14, 1971

The House bill was passed in lieu of the Senate bill. The House Report and the House Conference Report are set out.

(CONSULT NOTE FOLLOWING TEXT FOR INFORMATION ABOUT OMITTED MATERIAL. EACH COMMITTEE REPORT IS A SEPARATE DOCUMENT ON WESTLAW.)

HOUSE CONFERENCE REPORT NO. 92-746

Dec. 13, 1971

JOINT STATEMENT OF THE COMMITTEE OF CONFERENCE

The Managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the Bill (H.R. 10367) 'to provide for the settlement of certain land claims of Alaska Natives, and for other purposes,' submit this joint statement in explanation of the effect of the language agreed upon by the managers and recommended in the accompanying conference report.

I. GENERAL

A. INTRODUCTION

The language agreed upon by the managers is the result of long and careful consideration of the House passed bill and the Senate's amendment in the nature of a substitute to the House passed bill. The House bill and the Senate

amendment were in major respects substantially different and the conference report-- the compromise between the two measures-- is in respects different from the measures passed by the House and the Senate. The conference report is the final product of nine days of meetings by the conference committee since November 30, 1971.

The conference committee concurs on the relevant history and on the main facts at issue; there is general agreement on the principles of law involved and on the limits within which the formulation of public policies must be conducted, there is general consensus on the structural elements which constitute the settlement; and there is a common recognition that the institutions and machinery of settlement are in large measure dictated by the nature of the problem and the elements of the settlement.

Among individual conferees, and among individual members of the House and the Senate, there are, of course, wide differences of opinions on specific issues: on amounts of money and land; on elements of the settlement; on some of the institutions established; and on emphasis and on detail. The specific resolutions proposed to each of these differences by the conference committee represents a compromise. These compromises were, however, recognized as being essential to the development of a conference report which will do justice to the Native people, insure a viable and economically healthy State government, and allow the fulfillment of the reasonable expectations and legitimate interests of all Alaskans and all Americans.

The conference report reflects a willingness on the part of the individual conferees after careful study of the issues involved to concur in the clear necessity for adoption of a settlement package, while reserving the right of all Members of Congress to debate further, at another time and in connection with other legislation, their individual views on some of the specific policies which are of necessity incorporated in this complex omnibus settlement.

*2248 The major provisions of the conference report are set out below:

1. Land

(a) The Natives will receive title to a total of 40 million acres, both surface and subsurface rights, divided among the some 220 villages and 12 Regional Corporations.

(b) The villages will receive the surface estate only in approximately 18 1/2 million acres of land in the 25 township areas surrounding each village, divided among the villages according to population.

(c) The villages will receive the surface estate in an additional 3 1/2 million acres, making a total of 22 million acres, divided among the villages by the Regional Corporations on equitable principles.

(d) The Regional Corporations will receive the subsurface estate in the 22 million acres patented to the villages, and the full title to 16 million acres selected within the 25 township areas surrounding the villages. This land will be divided among the 12 Regional Corporations on the basis of the total area in each region, rather than on the basis of population.

(e) An additional 2 million acres, which completes the total of 40 million, will be conveyed as follows:

(1) Existing cemetery sites and historical sites will be conveyed to the Regional Corporations.

(2) The surface estate in not more than 23,040 acres, which is one township will be conveyed to each of the native groups that is too small to qualify as a Native village. The subsurface estate will go to the Regional Corporations.

(3) The surface estate in not more than 160 acres will be conveyed to each individual Native who has a principal place of residence outside the village areas. The subsurface estate will go to the Regional Corporations.

(4) The surface estate in not to exceed 23,040 acres will be conveyed to Natives in four towns that originally were Native villages, but that are now composed predominantly of non-Natives. These conveyances will be near the towns, but far enough away to allow for growth and expansion of the towns. The subsurface estate will go to the Regional Corporations.

(5) The balance of the 2 million acres, if any, will be conveyed to the Regional Corporations.

(f) If the entire 40 million acres cannot be selected from the 25 township areas surrounding the villages because of topography or restrictions on the acreage which may be selected from within the Wild-life Refuge System, lieu selection areas will be withdrawn by the Secretary of the Interior as close to the 25 township areas as possible.

2. Money

The Natives will be paid \$462,500,000 over an eleven-year period from funds in the United States Treasury, and an additional \$500,000,000 from mineral revenues received from lands in Alaska hereafter conveyed to the State under the Statehood Act, and from the remaining Federal lands, other than Naval Petroleum Reserve Numbered 4, in Alaska. Most of the \$500,000,000 paid to the Natives would otherwise be paid to the State under existing law, and the State has agreed to share in the settlement of Native claims in this manner.

*2249 3. Corporate organization

(a) The Natives in each of the Native villages will be organized as a profit or non-profit corporation to take title to the surface estate in the land conveyed to the village, to administer, the land, and to receive and administer a part of the money settlement.

(b) Twelve Regional Corporations will be organized to take title to the subsurface estate in the land conveyed to the villages, and full title to the additional land divided among the Regional Corporations. The Regional Corporations will also receive the \$962,500,000 grant, divided among them on the basis of Native population. Each Regional Corporation must divide among all twelve Regional Corporations 70 percent of the mineral revenues received by it.

Each Regional Corporation must distribute among the Village Corporations in the region not less than 50 percent of its share of the \$962,500,000 grant, and 50 percent of all revenues received from the subsurface estate. This provision does not apply to revenues received by the Regional Corporations from their investment in business activities.

For the first five years, 10 percent of the revenues from the first two sources mentioned above must be distributed among the individual Native stockholders of the corporation.

(c) Natives who are not permanent residents of Alaska may, if they desire, organize a 13th Regional Corporation, rather than receive stock in one of the 12 Regional Corporations. The 13th Regional Corporation will receive its pro rata share of the \$962,500,000 grant, but it will receive no land and will not share in the mineral revenues of the other Regional Corporations.

4. Other major provisions

(a) Land use planning

A Joint Federal-State Land Use Planning Commission is established. The Planning Commission has no regulatory or enforcement functions, but has important advisory responsibilities.

(b) National interest areas

The Secretary of the Interior is authorized to withdraw from selection by the State and Regional Corporations (but not the Village Corporations) and from the operation of the public land laws up to, but not to exceed, 80 million acres of unreserved lands which, in his view, may be suitable for inclusion in the National Park, Forest, Wildlife Refuge, and Wild and Scenic River Systems.

(c) Interim operation of the public land laws

The Secretary is authorized, where appropriate, under his existing authority, to withdraw public lands and to classify or reclassify such lands and to open them to entry, location and leasing in a manner which will protect the public interest and avoid a 'land rush' and massive filings on public lands in Alaska immediately following the expiration of the so-called 'land freeze'.

(d) Reservation of easements

Appropriate public access and recreational site easements will be reserved on lands granted to Native Corporations to insure that the larger public interest is protected.

***2250** (e) Attorney and consultant fees

Fees to attorneys and consultants are limited to \$2 million. All contracts based on a percentage fee related to the value of the lands and revenues granted by this Act are declared unenforceable.

(f) Valid existing rights

All valid existing rights, including inchoate rights of entrymen and mineral locators, are protected.

(g) National petroleum reserve No. 4 and wildlife refuges

No surface estate is granted in Naval Petroleum Reserve Numbered 4 or in the National Wildlife Refuges, but an in lieu selection to subsurface estate in an equal amount of acreage outside these areas is provided for the Regional Corporations.

(h) National forests

Appropriate limitations are placed on the amount of lands which may be granted from National Forests to Native villages located in the National Forests.

C. OTHER ISSUES

1. In sections 7 and 8 of the conference report authorizing the creation of Regional and Village Corporations, the conference committee has adopted a policy of self-determination on the part of the Alaska Native People. The conference committee anticipates that there will be responsible action by the board members and officers of the corporations and that there will not be any abuses of the intent of this Act. The conference committee does not contemplate that the Regional and Village Corporations will allow unreasonable staff, officer, board member, consultant, attorney, or other salaries, expenses and fees. The conference committee also contemplates that the Regional and Village Corporations will not expend funds for purposes other than those reasonably necessary in the course of ordinary business operations.

2. The Senate amendment to the House bill provided for the protection of the Native peoples's interest in and use of subsistence resources on the public lands. The conference committee, after careful consideration, believes that all Native interests in subsistence resource lands can and will be protected by the Secretary through the exercise of his existing withdrawal authority. The Secretary could, for example, withdraw appropriate lands and classify them in a manner which would protect Native subsistence needs and requirements by closing appropriate lands to entry by non-residents when the subsistence resources of these lands are in short supply or otherwise threatened. The Conference Committee expects both the Secretary and the State to take any action necessary to protect the subsistence needs of the Natives.

3. Villages located on the Pribilof Islands present a special problem because the fur seals which frequent the islands are the subject of an International Treaty. It is the conference committee's recommendation that the Secretary, after consultation with the Secretary of Commerce, the State and the Planning Commission, reserve the appropriate rights and interests in land to insure the fulfillment of the United States obligations under the Treaty.

*2251 4. Under the provisions of subsection 12(c)(3) "... the Regional Corporation may select only even numbered townships in even numbered ranges and only odd numbered townships in odd numbered ranges." This language is meant to insure 'checkerboard' selections by the Regional Corporations. The State of Alaska would then be permitted to concurrently select lands in the alternate townships not subject to selection by the Regional Corporations.

The effect of this provision of the bill is to limit the selections of the Regional Corporation to townships 2, 4, 6, 8, 10, et cetera, North or South of a principal or special base line, in ranges 2, 4, 6, 8, 10, et cetera, East or West of a principal or special meridian. With respect to odd numbered ranges, East or West of a principal or special meridian, i.e., Range 1 West, Range 1 East, Range 3 West, Range 3 East, et cetera, the Regional Corporation could select from townships 1, 3, 5, 7, 9, et cetera, North or South of a principal or special base line. The numbering system of the townships and ranges is the system used by the United States Land Survey System.

It is recognized that if a principal or special meridian or base line should intersect an area withdrawn for selection, a slightly modified selection pattern might result; however, those cases seemed so limited as to not do substantial violence to the intended 'checkerboard' selection system contemplated.

5. Section 20 provides for the compensation of attorneys and consultants for services and expenses in the representation of Natives, Native Villages, or Native Associations in claims pending before any state or Federal court or the Indian Claims Commission which are dismissed pursuant to this Act, or in the preparation of this Act and previously proposed legislation to settle the Alaska Native claims based upon aboriginal title, use, or occupancy. The Chief Commissioner of the Court of Claims must determine the amount of the claims, within the limit of funds authorized. It is intended that payment for such services shall only be compensated from the funds provided therefor by this section, and penalties are provided in the event other reimbursement is paid.

Under the provisions of subsection 20(g), the Chief Commissioner is also authorized to allow and certify for payment such amounts as he determines are reasonable, but not more than \$600,000 in the aggregate, for actual costs

incurred by Native Association in advancing land claims legislation. Attorney or consultant fees or expenses may not be paid from this sum. The penalty provisions of subsection 20(f)(2) would be applicable to any violation of this section. An attorney or consultant who has already been paid by a Native Association could of course return the payment and submit a claim under the attorney/consultant part of the section.

II. MAJOR Differences BETWEEN THE CONFERENCE REPORT AND THE BILL PASSED BY THE HOUSE

1. Land

Both bills provided for a conveyance to the Natives of 40 million acres. In the House bill, the Natives would have first choice of approximately 18 1/2 million acres from the 25 townships surrounding each Village. The State would then complete its selections under the Statehood Act (about 103 1/2 million acres). After that the Natives *2252 would select the rest of the 40 million acres, but selections would not be limited to the 25 township areas.

In the conference report, the State does not make its selection before all of the Native lands have been selected, but the State's interest are recognized as follows:

(a) State selections made before the date of the Secretarial Order imposing a 'land freeze', amounting to about 26 million acres, are protected against Native selection, except that a Native Village (not the Regional Corporations) may select from the area surrounding the Village not to exceed three townships of the lands previously selected by the State.

(b) The Regional Corporations can select lands within the 25 township areas only on a checkerboard pattern of odd and even numbers, and the State may select the checkerboarded townships not available to the Regional Corporations.

(c) The withdrawal of land to facilitate Native selections will terminate in four years, and State selections will not thereafter be impeded.

(d) State selections may proceed immediately in areas outside the 25 township areas around Native Villages, and lieu selection areas.

2. Money

of which would otherwise go to the State.

In the conference report, the \$425,000,000 grant is increased to \$462,500,000 which is half way between the House figure and the Senate figure.

3. Corporate organization

The Conferees retained the provisions of the House bill providing for twelve Regional Corporations and a Village Corporation for each Native Village, but made one addition and one modification. The addition is the option of the Natives who are not permanent residents of Alaska to organize a 13th Regional Corporation which will receive and administer their share of the \$962,500,000 grant. The modification is the restriction of membership in the Village Corporations to Natives, rather than all residents.

4. Land-use planning

The House bill withdraws all unreserved public lands in Alaska for an indefinite period, and permits the Secretary of the Interior to classify the withdrawn areas and reopen them to entry when he determines that such action is desirable in the public interest.

The Conferees retained the substance of this provision, but made the statutory withdrawal for only ninety days and directed the Secretary to make any further withdrawal that may be needed under his existing authority.

In addition, the Conferees authorized the Secretary to withdraw not to exceed 80 million acres of unreserved public land that he thinks may be suitable for addition to the National Park, Forest, Wildlife Refuge, and Wild and Scenic Rivers Systems. The withdrawal is for a maximum of seven years. The Secretary must submit recommendations to Congress each six months, for two years, and the lands recommended *2253 for addition to the Federal Systems will remain withdrawn until Congress acts, but not to exceed five years. The withdrawal will not affect the right of the Village Corporations and the State to select and get title to lands within the 25 township areas. The withdrawal will prevent the Regional Corporations from getting title to land within the 25 township areas, and the State from getting title to any of the withdrawn areas.

In addition, the Conferees provided for a Joint Federal State Land Use Planning Commission for Alaska, with a life of five years. The Commission has no regulatory authority.

III. MAJOR DIFFERENCES BETWEEN THE CONFERENCE REPORT AND THE SENATE'S AMENDMENT IN THE NATURE OF A SUBSTITUTE TO THE HOUSE PASSED BILL

Set forth below is a brief explanation of the major differences between the conference report recommended by the conference committee and the amendment in the nature of a substitute to the House bill which was adopted by the Senate. The section references below are to the conference report and the discussion following each section indicates the action taken by the conference committee with respect to the appropriate provisions of the Senate passed amendment.

Section 2. Declaration of policy

The substance of the conference report language is the same as section 2 of the Senate amendment. Subsection 2(g) of the conference report is to be strictly construed and the conference committee does not intend that lands granted to Natives under this Act be considered 'Indian reservation' lands for purposes other than those specified in this Act. The lands granted by this Act are not 'in trust' and the Native villages are not Indian 'reservations.'

Subsection 2(e) is from the Senate amendment and makes clear that no change in the present policy with respect to Naval Petroleum Reserve Numbered 4 is intended. Native villages located in the Reserve would receive title to surface estate lands only. All mineral and other subsurface rights within the Reserve remain in the ownership of the United States. To insure that a total of 40 million acres of land in fee title is granted to the Native people by this Act, the appropriate Regional Corporation for these villages is granted the right to select the subsurface estate in an equal amount of acreage outside of the boundaries of the Reserve.

Section 3. Definitions

The language of the Senate amendment defining 'public lands' was adopted by the conference committee. This

language excludes from the definition lands selections by the State under the Statehood Act, but those lands are specifically dealt with elsewhere in the Act.

Section 4. Declaration of settlement

The conference report language is, in substance, the same as the language of the Senate amendment. It is the clear and direct intent of the conference committee to extinguish all aboriginal claims and all aboriginal land titles, if any, of the Native people of Alaska and the language of settlement is to be broadly construed to eliminate such claims and titles as any basis for any form of direct or indirect challenge to land in Alaska. The conference committee added a reference *2254 in this section to claims 'based upon the laws of any other nation.' The purpose of the reference is to extinguish any other claims based upon the laws and legal system of Russia or any other country if any such land claims exist.

Section 5. Enrollment

The conference report language was, for the most part, taken from the House passed bill. The Senate amendment (Section 6) provided for the establishment of an Alaska Native Commission which would prepare the final enrollment, resolve disputes and perform other functions under the Act. The conference report provides that enrollment will be the responsibility of the Secretary of Interior rather than the Native Commission, and that most land and other disputes will be settled by arbitration as provided elsewhere in the conference report.

Subsection 5(c) of the conference report deals with the enrollment of Natives who are not residents of Alaska and provides an opportunity for them to elect to be enrolled in a special thirteenth Regional Corporation if a majority of all eligible non-resident Natives favor the creation of such a corporation.

Section 6. Alaska Native fund

The conference committee split the difference between the \$425 million Federal appropriation in the House passed bill and the \$500 million in subsection 5(a) of the Senate amendment, and recommended \$462,500,000. The payout schedule for the revenues in the Fund is essentially that of the Senate amendment and insures that the bulk of the Federally appropriated funds will be paid out in the early years thus greatly increasing the present worth of the right to receive these revenues.

The conference committee also recommended the adoption of the Senate amendment's limitation on the use of funds received by corporations under the Act for political purposes.

Section 7. Regional corporations

The Senate amendment provided for the creation of two Federally chartered Statewide corporations, one to handle investments, and one to perform social welfare functions and to hold title to the mineral estate of lands granted by the bill. In addition, the Senate amendment required: (a) the establishment of seven business for profit Regional Corporations; (b) the establishment of two corporations to be composed of first, non-resident Natives (the 'National Corporation'), and second, urban Natives (the 'Urban Corporation'); (c) the incorporation of nonprofit membership corporations for each eligible Native Village; and (d) the creation of an Alaska Native Foundation.

The conference report provides for the establishment of 12 Regional Corporations for resident Alaska Natives and permits the creation of a 13th Regional Corporation for non-resident Natives if a majority of non resident Natives so elect. This 13th Regional Corporation, if created, would serve the same purposes and functions which were to be performed by the National Corporation in the Senate amendment (section 12).

The conference report language provides that the Regional Corporations shall be organized as business for profit corporations. This requirement is in accord with the Senate amendment. In addition, the investment functions to be carried out by the Alaska Native Investment *2255 Corporation under section 10 of the Senate Amendment have been assigned in the conference report to the Regional Corporations. Authority to allow the Regional Corporations to join together, to pool investment funds, and to employ the same business management group for the management and administration of investments is found in subsection 7(k) of the conference report. This general grant of authority parallels the specific authority granted to the Investment Corporation in section 10 of the Senate amendment.

The functions to be performed by the Alaska Native Services and Development Corporation under section 8 of the Senate amendment have, for the most part, been redistributed by the conference committee. The Regional Corporations under the conference report language would receive the title to the subsurface estate of the lands granted by the Act. The Regional Corporations would also perform some social welfare functions of regional benefit, would assist the Village Corporations to organize, and would review and advise on the land transactions of the Village Corporations to insure against fraud and overreaching.

The Regional Corporations provided for in the conference report are authorized to merge with other Regional Corporations. This will provide a means of reducing administrative costs and overhead and improving general corporate efficiency.

Section 25 of the Senate amendment would have established an Alaska Native Foundation to carry on the social welfare functions of the Statewide Services and Development Corporation after the Federal charter for the Services Corporation expired. The conference report does not prohibit the Native people from establishing a charitable foundation at some future date and the Senate conferees receded on this item.

The Senate amendment contained specific language in a number of sections which dealt with conflict of laws questions between the Act and State Corporation law. This potential problem is dealt with in subsection 7(p) of the conference report which provides that the provisions of sections 7 and 8 prevail in the event of any conflict.

The conference committee considered, but decided not to adopt, language from the Senate amendment to guard against any special State legislation which might impair the activities and economic viability of the Corporations established by the conference report. It was the conference committee's conclusion that the State would deal fairly in all respects with Native corporations.

Consideration was also given to language in the Senate amendment authorizing Regional Corporations to contribute to the costs of organizing and maintaining local and borough government in rural areas of Alaska. The language was not adopted for the reason that the conference committee concludes that Regional and Village Corporations as established would have this authority.

Section 8. Village corporations

This section was drawn from section 11 of the Senate amendment. The House bill provided for land and revenue grants to units of municipal government, or to Village Corporations. Under the conference report, before any lands may be granted an eligible village must organize as a non-profit or business for profit corporation to hold title to lands.

*2256 Section 9. Revenue sharing

Sections 9 and 10 of the conference report, with minor exceptions, are substantially the same as section 18 of the Senate amendment.

Section 10. Statute of limitations

Section 9 of the conference report is patterned after section 18(g) of the Senate amendment. Congressional authority for enactment of this section and other provisions of the conference report is based, in part, upon section 4 of the Alaska Statehood Act.

Section 11. Withdrawal of public lands

The Senate amendment provided for two optional land grant provisions. The first, in brief, was for 40 million acres (38 1/2 million acres around Villages and 1 1/2 million acres of floating selections). The second was for 50 million acres (20 million acres around Villages; 10 million acres of lands to be selected for economic potential; and 20 million acres of permit lands to provide subsistence use protection). The Natives would select one of the options at an election to be held within one year of the enactment of the Act.

The conference committee concluded that lands granted under the Act should be granted as soon as possible and that the areas from which they would be granted should be immediately identifiable. For this reason, the conference report does not provide for a 'free floating' selection.

Section 11 of the conference report withdraws lands around villages, including villages located on lands selected by or tentatively approved to the State. This section also provides for the withdrawal of in lieu lands adjacent to the 25 township area to insure that the land selection rights of Native Villages and Regional Corporations will be fully protected and will not be frustrated by competing State selections or the creation of new interests in lands under the public land laws.

Subsection 11(b) is, in part, drawn from section 13 of the Senate amendment and provides that Native villages not listed in the bill may, if they meet designated criteria, later qualify for benefits under the Act.

Section 12. Native land selections

Section 12 of the conference report provides for the selection of lands granted to the Native people. In major respects, it parallels section 14 and subsection 13(k) of the Senate amendment.

Section 13. Surveys

Section 13 of the conference report parallels portions of sections 13 and 15 of the Senate amendment and specifies in greater detail, both here and in subsection 22(j), the manner in which land surveys are to be conducted.

Section 14. Conveyance of lands

Section 14 of the conference report provides for the conveyance of lands granted by the Act. This subsection parallels in structure and purpose the provisions of section 15 of the Senate amendment.

Section 15. Timber sale contracts

Section 15 of the conference report authorizes the modification of timber sale contracts and is similar to language in subsection 23(t) of the Senate amendment.

*2257 Section 16. The Tlingit-Haida settlement

Subsection 16 of the conference report provides appropriate and necessary limitations with respect to land grants to Native villages located in the National Forests in Southeast Alaska which participated in the Tlingit-Haida judgment. The parallel language of the Senate amendment is in Section 23.

Section 17. Joint Federal-State Land Use Planning Commission

Section 17 of the conference report is based upon section 24 of the Senate amendment, Section 17 consists of four major sections and these are discussed below.

1. The Planning Commission has been modified by reducing the membership to ten members. In addition, the regulatory powers found in section 24 have been revised so that the Commission's functions are limited to providing advice, coordination and making recommendations to State and Federal government. The enforcement powers granted under section 24(a)(10) have been eliminated and it is the intent of the conference committee that the Federal government and the State will take such actions as are necessary to administer lands under their respective jurisdictions in a manner which will facilitate a process of joint land use planning in Alaska and permit the attainment of both economic requirements and national and state environmental objectives.

2. Subsection 17(b) of the Conference report is substantially the same as section 24(d) of the Senate amendment. This subsection provides for the advance reservation of easements and camping and recreation sites necessary for public access across lands granted to Village and Recreational Corporations.

3. Subsection 17(c) of the conference report provides that if the Secretary should withdraw a utility and transportation corridor across the public lands in Alaska, the State and the Village and Regional Corporations may not select lands from the area withdrawn for the corridor. In making the withdrawal the Secretary would be acting on the basis of his existing authority such as the Pickett Act and the President's implied authority.

The language adopted by the conference committee is new. The Senate's amendment, in subsection 24(b), would have withdrawn the corridor for the proposed trans-Alaska oil pipeline, maintained the corridor under Federal jurisdiction, and established a management regime to insure the protection of adjacent public lands and visitors to the area. While the conference report does not contain these specific provisions, many of them will be within the Secretary's authority to achieve if he should decide to withdraw the corridor.

4. Subsection 17(d) of the conference report is patterned, in major respects, after subsection 24(c) of the Senate amendment and, in part, after subsection 9(g) of the House passed bill.

The language adopted by the conference committee provides in subsection (d)(1) for a 90-day withdrawal of all unreserved public lands in Alaska from all forms of appropriation except locations for metal-liferous minerals. The purpose of this withdrawal is two-fold:

First, to permit the Secretary an opportunity to make the withdrawals for National Park, Forest, Refuge and Wild Rivers directed under subsection 2(A);

*2258 Second, to permit the Secretary time to determine if there are other public land areas in Alaska which should be withdrawn, classified, or reclassified before they are opened to unlimited and uncontrolled entry, location, and leasing under the public land laws. Subsection 9(g) of the House passed bill and subsection 24(c) of the Senate amendment did not limit the time of the withdrawal authority for this second purpose.

The language recommended by the conference committee deals in greater detail with the withdrawal and study of National interest areas and contingencies not dealt with in the House passed bill and the Senate amendment and thus obviates any necessity for providing for a withdrawal of all public lands in Alaska for an unlimited period of time.

The 'classification' and 'reclassification' authority granted under subsection 7(d)(1) is new legislative authority. The authority is limited to Alaska and to the purposes provided for in subsection 17(d). It is, however, a very broad and important delegation of discretion and authority and the conference committee anticipates that the Secretary will use this authority to insure that the purposes of this Act and the land claims settlement are achieved, that the larger public interest in the public lands of Alaska is protected, and that the immediate and unrestricted operation of all the public land laws 90 days after date of enactment-- absent affirmative action by the Secretary under his existing authority-- does not result in a land rush, in massive filings under the Mineral Leasing Act, and in competing and conflicting entries and mineral locations.

Subsection 17(d)(2) of the conference report directs the Secretary to withdraw up to 80 million acres of unreserved public lands including lands previously classified such as lands within the Iliamna, Copper River, Brooks Range, White Mountain and other classification areas which he deems are suitable for consideration by the Congress for addition to or creation as new units of the National Park, Forest, Wildlife Refuge, and Wild and Scenic Rivers Systems. This subsection also provides a procedure and sets time limits for terminating withdrawals, for transmitting recommendations to the Congress, and for in lieu selections by the State and Regional Corporations in the event that Congress enacts legislation setting aside these areas for public use and enjoyment.

Subsection 17(d)(3) of the conference report continues the Secretary's full authority over and responsibility for any lands withdrawn by this section and to make contracts and to grant leases, permits and rights-of-way, or easements over any lands withdrawn under this section by the affirmative action of the Secretary after the date of the enactment of this Act. This authority is necessary to protect the lands involved, to provide for their proper administration, and to insure that the Secretary continues to have the full authority he now possesses under existing law with respect to contracts, leases, permits, rights-of-way, and easements. A similar section on the Secretary's authority to administer lands withdrawn by the operation of this Act is found in subsection 22(f) of the conference report.

A major purpose of both of these provisions is, of course, to insure that the Secretary has the authority to grant any contracts, leases, permits, rights-of-way, or easements which may in the future be necessary in connection with Village and Regional construction and local improvement *2259 projects, State or local highways and roads, electrical transmission lines, and other types of activities and projects which may involve the use of some withdrawn areas. This language would also permit the Secretary, if he should so decide in the future, to grant the necessary rights-of-way, permits, and other legal authority necessary for the construction of the proposed trans-Alaska oil pipeline. The conference committee did not consider the proposed pipeline in connection with the resolution of the differences between the bills, nor did the House or Senate Committees consider the proposed pipeline in connection with hearings on this subject. Accordingly, the conference committee takes no position on what action the Secretary should take with respect to the pending application. The conference committee does, however, want it clearly understood that if the Secretary should, after full and careful evaluation, and after completion of the environmental impact statement required by the National Environmental Policy Act, decide to grant the necessary permits, nothing in this

conference report is intended to, nor should be construed in any manner to limit, diminish, or condition the Secretary's existing authority to take any action required to implement this decision.

Language similar to the provisions discussed above is found in section 24(c)(3) of the Senate amendment and in the House passed bill.

Section 18. Revocation of Indian allotment authority in Alaska

Subsection 19 of the conference report is taken from the House passed bill and requires an election by Natives with respect to whether to pursue their allotment or to take under the provisions of the conference report providing for a grant of title to the lands on which their primary place of residence is located. The comparison provision in the Senate amendment is section 20.

Section 19. Revocation of reservations

Subsection 19 of the conference report is, with a few modifications, taken from the House passed bill. The parallel language of the Senate amendment is found in section 22 and, if adopted by the conference committee would have permitted participation in monetary benefits granted by the Act even if a Native village decided to acquire title to their existing reservation.

Section 20. Attorney and consultant fees

Section 20 of the conference report provides for the payment of attorney and consultant fees. The parallel language of the Senate amendment is section 26. The Senate language is substantially the same, except that the total amount of fees granted has been reduced to \$2 million. In addition, the conference report authorizes the \$600,000 granted by subsection 5(g)(1) of the Senate amendment in this section.

Section 21. Taxation

Section 21 of the conference report provides for the tax treatment to be accorded lands and revenues granted by this Act for the settlement of the Alaska Native claims. It parallels section 27 of the Senate amendment and with some deletions and modifications is substantially the same.

***2260** Section 22. Miscellaneous

The conference committee in Section 22 added a miscellaneous section to the conference report to pick up a number of provisions from both the House passed bill and the Senate amendment and to deal with problems created by the action of the conference committee in combining the two. Set out below is a discussion of those provisions which are not self-explanatory.

(a) Subsection (a) provides that none of the revenues or lands granted by this Act may be subject to any contracts, present or future, which is based on a percentage fee of the value of all or some of the settlement granted. The purpose is, of course, to protect the Native people. This provision would not apply to future percentage fee contracts

which are not related to the value of the settlement and which are to be paid out of investment earnings.

(j) Subsection (j) provides for adjustments in deeds to conform to the United States Land Survey System when the lands conveyed have not been adequately surveyed at the time of conveyance. No similar provision was included in either the House or Senate bill, but the conference committee adopted the language to correct this oversight, and to prevent the delay of conveyance which could occur without this provisions. The language was deemed necessary in view of the short period provided for the selection and conveyance of lands to the Natives.

(k) Subsection (k) provides that sales and timber management of lands granted to the Natives from the National Forests shall, for a period of five years, continue to be in accordance with rules and regulations of the Secretary of Agriculture (sustained yield). A similar provision was contained in the Senate bill.

Section 23. Review by Congress

Both the House and the Senate bills provided for an annual report to Congress on the implementation of the Act; however, the Senate bill provided for reports to be submitted on March 1 of each year for thirteen years. The conference report requires an annual report until 1984, but does not specify a reporting date. The conference report requires a final report in 1985 in lieu of 1992 as required by the House bill. The Senate bill contemplated detailed reports from the Alaska Native Commission, but this provision was deleted as unnecessary since the conference report does not provide for the Commission.

Section 24. Appropriations

The provision adopted by the conference committee is a simple authorization to appropriate 'such sums as are necessary to carry out the provisions of this Act.' It is recognized that the Secretary will require additional personnel and other funds in complying with the directives contained in the conference report, and such sums may be appropriated under this provision. The Senate bill also requested the President to advance moneys from his contingency fund for 'start-up' of the various corporations authorized by the Senate Bills. Due to the different corporate structure and the provision for a \$12.5 million appropriation for 1972, such provisions were not deemed appropriate.

The appropriations for the Federal payments into the Alaska Native Fund are already limited by the provisions of subsection 6(a).

*2261 Section 25. Publication

The conference committee adopted the House language as section 25 of its report, which is almost identical to the Senate language, and is of similar intent.

Section 26. Saving clause

The conference committee adopted the House language as section 26 of its report. The Senate provision contained the statement: 'Except as specifically provided for in this Act, nothing in this Act shall be construed as repealing any other provision of Federal law applicable to Alaska.' That sentence was eliminated as being unnecessary.

Section 27. Separability

The provisions of the House and Senate bills concerning separability were identical, and are included in the conference report as section 21.

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(Note: 1. PORTIONS OF THE SENATE, HOUSE AND CONFERENCE REPORTS, WHICH ARE DUPLICATIVE OR ARE DEEMED TO BE UNNECESSARY TO THE INTERPRETATION OF THE LAWS, ARE OMITTED. OMITTED MATERIAL IS INDICATED BY FIVE ASTERISKS: *****. 2. TO RETRIEVE REPORTS ON A PUBLIC LAW, RUN A TOPIC FIELD SEARCH USING THE PUBLIC LAW NUMBER, e.g., TO(99-495))

H.R. CONF. REP. 92-746, H.R. Conf. Rep. No. 746, 92ST Cong., 1ST Sess. 1971, 1971 U.S.C.C.A.N. 2247, 1971 WL 11413 (Leg.Hist.)

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