

Convention will consider 1991 legislation

H.R. 4162 (The Alaska Native Claims Settlement Act Amendments of 1986) has undergone some major changes during its review by the Senate. Although most of the major concepts included in the bill when it passed the House of Representatives are still in the legislation, there have been some major structural changes and many of the sections have been further refined in order to resolve concerns raised by the Department of Interior, some Native organizations, and our two senators.

The result of these changes is a bill which is about three times as long as the House bill and much more

dissenters which is votable only if owned by a Native or a descendant of a Native:

- 5) The voting standard for all votes taken by shareholders under the provisions of this bill is a majority of outstanding shares. This standard can be raised by a vote of the shareholders to a maximum of two-thirds of the outstanding shares. This standard can only be lowered for votes to extend stock restrictions (see

"This legislation provides Natives with many protections against loss of land...."

complicated.

The major changes in the Senate bill are as follows:

- 1) Regional corporations must hold a vote of their shareholders in order to extend stock restrictions;
- 2) Regions may provide for a voting standard which is lower than a majority of the outstanding shares for a vote to extend restrictions, if the shareholders vote to do so, but that lower standard will then also be used if the corporation ever votes to remove restrictions on the stock;
- 3) Regions must recognize dissenters' rights for those people who vote against extending restrictions and then decide they wish to be dissenters;
- 4) Regions may either pay their dissenters with cash or bonds. Regions may instead choose to issue saleable stock to the

2 above);

- 6) Stock issued to Natives born after December 18, 1971 will be "life estate" stock and will be cancelled when the shareholder dies.
- 7) Regional corporations may choose a recapitalization plan instead of simply extending stock restrictions. Such a plan would provide for the corporation to continue to be controlled by Native shareholders but would also provide for the issuance of stock which could be bought by outsiders;
- 8) Regional corporations will be able to sign agreements with village corporations which give the village control over the timing and conditions of any development of subsurface resources, and would prevent the region from encumbering the subsur-

face without village approval. This replaces a section in the House bill which would have allowed the regional shareholders to vote to transfer ownership of the subsurface to the villages, but would have kept the income from the subsurface in the regional corporation in order to comply with Section 7 (i) of

ANSCA;

- 9) The disclaimer section, which is designed to assure that this legislation does not make any change in the status of tribal governments, has been completely rewritten. It provides that nothing in this legislation

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can be used to expand the claims of tribal governments. It is also designed to leave in place any legal arguments which may presently exist for tribal governments to claim the existence of Indian Country;

- 10) A new section has been added which provides for a vote of all shareholders before the legislation can take effect. This vote would take place between January 1, 1987 and February 28, 1987; and
- 11) Another new section of the bill allows regional corporations which have voted to remove restrictions on stock to set up a trust to provide Natives who do not want to have their stock made available to outsiders. This section was included at the request of the Department of Interior.

Although there are some major changes in the Senate bill, most of the basic concepts contained in the

AFN Convention resolutions and in the House bill remain. The following paragraphs list many of the remaining provisions.

Village corporations have stock restrictions continued automatically, and the restrictions can only be removed by a vote of a majority of the shareholders.

The shareholders of a Native corporation may vote to add Natives born after December 18, 1971 as shareholders or give special benefits to Native elders (those over 65). Shareholders may also vote to add Natives who missed the original enrollment deadline and issue new classes of stock which would carry certain economic benefits.

The bill also allows shareholders to vote to transfer land and other assets to organizations such as non-profits and IRA councils. It allows the purchase of stock from shareholders who wish to sell, as long as such a purchase does not imperil the financial viability of the corporation.

Shareholders may also vote to provide dissenters' rights in certain circumstances and to limit the value of those dissenters' rights in order to protect those Native shareholders who wish to remain with the corporations.

The legislation also extends protections to undeveloped lands so that they will not be lost because of taxation and other legal actions.

Certain protections are built into the legislation for the United States government against damages which may result due to court action which could result from the legislation.

It extends certain exemptions from federal laws (such as securities laws) for corporations who keep their stock restricted.

The bill also limits in certain ways the transfer of stock to non-Natives by courts and in wills after the death of a shareholder.

The land protection section of the bill now further defines when land is developed and therefore subject to taxes. This definition is based primarily on existing state law and protects subsistence lands from taxation and other involuntary loss.

There is also a provision which allows taxes to be "recaptured" for a two and one-half year period prior to the development of surface land as commercial or residential real estate.

BALLOTING TIME FRAME

January 1, 1987	Deadline for distribution of ballots
February 28, 1987	Deadline for ballot return to corporations
March 8, 1987	Deadline for ballot receipt by corporations
March 9, 1987	Deadline for Regional Boards to certify results
March 16, 1987	Deadline for AFN to certify compiled results

The bill provides that the provisions of Section 7 (i) of ANSCA (sharing of timber and subsurface revenues by regional corporations) shall not be changed by any transfer of lands by regional corporations to other entities.

HR 4162 would also protect Natives from loss of benefits from federal programs when they receive stock, land, dividends, or other benefits from their Native corporation.

Two sections of the bill have been extensively rewritten by the Senate. One of these is the section which provides protections for undeveloped lands from taxation, squatters rights, and involuntary taking by the courts. The legislation now refers directly to the Land Bank provisions in ANILCA (Section 907).

The protections originally provided for in the Land Bank have been strengthened and they are now granted automatically on undeveloped land so that the Native corporation does not have to sign an agreement with the Department of Interior in order to have the land protected. The corporation may still sign an agreement with the Department for cooperative management purposes.

The other section which has been substantially rewritten by the Senate is the one which allows Native corporations to transfer their assets to a "qualified transferee entity." IRA and traditional councils are now specifically mentioned in the legislation as entities to which corporations can transfer their assets.

However, corporations may not make a transfer if they have issued other classes of stock (other than stock to Natives born after 1971 and to elders) and unless they have adopted a plan to satisfy any debts the corporation may have. Regional corporations are prohibited from transferring subsurface and if they transfer timber, it may never be developed.

Transfers made under this section will not result in taxes to the corporation making the transfer, the entity receiving the assets or the shareholders or members of those organizations. Land received by the new entity will be taxed if it becomes developed, just as it would have been if it had remained in the ownership of the Native corporation.

Because of the terms of the disclaimer on sovereignty, the

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Janie Leask and the AFN Board met with Secretary of Interior Donald Hodel last month to discuss pending 1991 legislation.

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ownership of land transferred to an IRA or traditional council under the provisions of this legislation may not be considered in any lawsuit attempting to establish Indian Country.

However, if the land is transferred to an IRA or traditional council under some other law, ownership by the council can be used in legal arguments attempting to establish Indian Country.

In summary, the Senate has made the legislation much more complex

and the legislation does not meet as many of the goals set by the convention resolutions as the House bill did.

However, this legislation does provide Natives with many protections against loss of land and control of the corporations which would not be available without the legislation. The protections are particularly strong for the village corporations.

There has been a great deal of opposition to the legislation from the non-Native community in Alaska and from the Department of Interior. This opposition could further weaken the bill if it does not pass this year or if the legislation is not approved when Native shareholders vote next year.