

1991 Amendments: a thumbnail sketch of H.R. 278

With the passage of H.R. 278 by the U.S. House of Representatives, there is a need for greater understanding of the basic provisions of the bill by Alaska Natives. This article is offered in the spirit of providing that information. This article is not intended to be definitive. Those wishing a more detailed or complete analysis of the bill should acquire a copy of the legislation itself, along with its Report.

The information provided here is also not intended to follow the order of the bill, section-by-section; it is arranged to show how specific concepts within the legislation address the core issues of "1991," and respond to directives from delegates to the AFN Special 1991 Convention and the 8 Resolutions adopted by them at that time.

Congressional Findings

The first portion of H.R. 278, the 1991 legislation to amend the Alaska Native Claims Settlement Act, is comprised of the title of the bill, its purpose, and what are called the "Congressional Findings." Congressional Findings are the given reasons that the bill is necessary.

In H.R. 278's findings, Congress finds that the intent of ANCSA was to be a fair and just settlement of claims by Alaska Natives based on their aboriginal use and occupancy. The settlement, says Congress, was to address the real social and economic needs of Natives, and that this was to be done in a manner which allowed maximum participation by the Natives themselves in the running of their affairs.

Congress also finds that the corporate model set up to administer the claims is "frequently ill-adapted" to the realities of village life and the values of Alaska's Native people.

Congress also points out in this section that while the settlement was originally intended to be implemented in a rapid manner, that the complexity of the act and the issues involved delayed implementation to the point that the settlement's value to Natives was significantly diminished.

In order to allow Natives the maximum participation in the administration of their assets, then, Congress states that it will be necessary to provide them with enough options to suit each Native corporation's particular circumstances and needs. Congress intends these options to encompass such matters as how best to include

those Native children born after 1971 into the settlement; whether a business corporation is the appropriate entity to hold legal title to their land and other assets; and whether or not to continue restrictions on the sale of stock to non-Natives.

The last of Congress' findings is that ANCSA, as amended, and the amendments themselves are "Indian legislation," meaning, in effect, that they pertain to a special group of people with special rights, granted by virtue of Congress' *plenary* (absolute) authority under the Commerce Clause of the U.S. Constitution to regulate Indian affairs.

New Definitions

Some of the changes offered in this section are technical in nature; one which may be helpful in understanding explanations of later sections of the act is the definition of "Native Common Stock," which is simply a new name for the restricted stock issued to Natives under ANCSA.

Another is "descendant of a Native," which means "a lineal descendant of a Native or of an individual who would have been a Native if he or she were alive on December 18, 1971, or an adoptee of a Native or descendant of a Native whose adoption is recognized at law or in equity."

Alienability Restrictions on Native Common Stock

(fulfills AFN 1991 Resolution #02)

The rights and restrictions on Native Common Stock (the original stock issued by ANCSA regional and village corporations pursuant to the Act) are spelled out in this section. The rights which go with such stock include the right to vote in elections for the Board of Directors and other matters shareholders would commonly participate in; the right to receive dividends and distributions; and all other shareholder rights of Alaska business corporations.

The restrictions attendant on Native Common Stock, until they are lifted or otherwise expire, protect that stock from sale; pledge; lien or judgement; assignment; bankruptcy; or other alienation.

Exceptions to the protections above apply in cases of divorce, separation and child

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support decrees if the court awards such to a Native or a descendant of a Native. They also do not apply in the case of an *inter vivos* (literally, "between living persons") transfers by shareholders in order to avoid conflicts of interest.

These restrictions on stock transfer will remain in effect, says H.R. 278, until they are removed by a shareholders vote.

This section of the bill also spells out the procedures for lifting restrictions on the sale or transfer of stock. If the legislation passes, most of the regions and their villages will have the option to lift the restrictions under the regular "opt-out" route, that is, the legislation will automatically extend the restrictions, and those corporations wishing to lift them must vote to do so.

The "opt-out" procedures are described below:

Anytime after the enactment of the 1991 legislation, whether it is passed before or after 1991, the Board of directors of a corporation may choose to adopt a resolution to terminate restrictions (in other words, to allow the sale of stock). This can be done on the Board's own motion, or as a result of a shareholder petition.

If it is done by shareholder petition, then the petition must be signed by holders of at least 33 1/3 percent of all outstanding shares with voting rights. If the petition is properly prepared and submitted, the Board must submit the proposal to a shareholder vote. The Board may also choose to submit its own supporting or opposing statement and/or an alternative resolution for the shareholders' consideration.

The Board must submit the resolution to an annual or special shareholders meeting. The resolution must tell shareholders the date or the specific events which will terminate the

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restrictions. Written notice must be sent to every recorded shareholder with voting rights at least 50 days and not more than 60 days before the meeting at which the resolution will be considered.

In order for the resolution to be adopted, it must be approved by a majority of all outstanding shares of Native Common Stock with voting rights.

If the resolution is approved, all Native Common Stock is cancelled and replaced, share-for-share, on the termination date.

If the shareholders vote to keep alienability restrictions, dissenter's rights may be granted only by simultaneous adoption (by majority vote of 51 percent quorum) of a separate resolution. If the shareholders vote to allow dissenter's rights, the resolution may set the value of dissenters' stock at its restricted value; or its value may be calculated excluding lands of traditional, cultural, or speculative value. Payment of dissenters may be provided for in cash or by note.

If the resolution is rejected, and restrictions are maintained, there may be additional resolutions and votes at a later date.

Corporate Repurchase of Native Common Stock *(fulfills AFN 1991 Resolution #03)*

If the shareholders vote to allow it, any corporation may amend its articles and repurchase any or all outstanding Native Common Stock and shareholders may sell it. This applies any time that stock remains restricted after the enactment of the Act, before or after 1991.

Petition procedures, quorums and notification requirements are the same for a resolution to allow corporate repurchase as they are to terminate restrictions. The vote standard is somewhat lower, however, the stock repurchase option may be approved by a majority of the 51 percent quorum. The Board of Directors has the additional right to set higher quorum standards, higher voting standards, or both.

In the event that the corporate stock repurchase is approved by the shareholders, the corporation has only two sources from which to pay shareholders for their stock: Unreserved and unrestricted earned surplus (profits from previous years, minus losses), and net profits. In any case, no purchase is permitted which would

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have the effect of rendering the corporation insolvent.

The Board of Directors will set the price to be paid for the repurchase of the stock. If their valuation is accomplished in good faith, the price offered is presumed fair. Valuation may exclude land or land interests received under ANCSA which is used for traditional or cultural purposes, or is of speculative or unknown value. The repurchase offer must be fair and all holders of Native Common Stock must have an equal opportunity to participate.

The repurchased Native Common Stock can either be cancelled under law by the corporation, or it can be reissued as non-voting treasury stock.

New Stock Issuance

(fulfills AFN 1991 Resolution #04)

Each regional corporation is authorized by this legislation to issue as many shares of stock as are necessary to provide each Alaska Native enrolled to that region 100 shares of Native Common Stock. In addition, the shareholders of each corporation may vote to issue up to 100 shares of additional Native Common Stock to so-called "New Natives" (those born after December 18, 1971), Native elders (over 65 years of age), and Natives who for whatever reason, missed the original enrollment. Such stock may be issued for no consideration (no payment of any sort from the person being issued the stock) or for whatever compensation the shareholders think is proper.

The petition procedures and requirements for

notice, quorum and voting standard are all the same as for the resolution to authorize corporate stock repurchase.

The Act would also authorize the issuance of other classes of ANCSA stock, different from Native Common Stock. Shareholder options as to classes and preferences of stock, as well as the limitations and rights those shares would carry, whether they would pay a dividend or not, and the amount of alienability on them, would be pretty much left to the shareholders to decide. However, an amendment to a corporation's articles would have to specify the number of shares and their voting rights. The notification would also have to specify if the issuance put outstanding Native Common Stock in the minority. No issuance could be limited to corporate employees, officers or directors while alienability was restricted.

Revenues distributed under 7(i) would be unaltered by new stock issuance, because 7(i) formula is based on original enrollment figures.

Once again, petition procedures, notice requirements, quorum and voting standards would be the same as for the resolution for corporate repurchase.

No Transfers of Native Common Stock to Non-Native/Non-Descendants

(fulfills AFN 1991 Resolution #05)

When the owner of Native Common Stock dies, the stock can be transferred to anyone, if the deceased shareholder has left a will. If that person's Native Common Stock is inherited by a non-Native, non-descendant, the regional corporation may have the option of purchasing that stock from the person who inherited it. Procedures for petition, notice, quorum, etc. are the same as for corporate repurchase.

If the corporate shareholder who dies has not left a will, however, their stock can only be inherited by a Native or descendant. If the shareholder has no living descendants or Native family members (remember, an adoptee qualifies as a descendant), the stock goes back to the corporation.

Voting rights for those who inherit stock are terminated on the inherited shares, though some measure of voting rights can be restored by a shareholder vote to Natives who inherit.

Voting Rights For Descendants *(fulfills AFN 1991 Resolution #06)*

Native Common Stock which is inherited by

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FIDDLERS' JAM: *The art of Old-Time Athabascan Fiddling is still celebrated in Fairbanks sponsored by the Institute of Alaska Native Arts. photo courtesy IANA*

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non-Natives (defined as someone of less than 25 percent blood quantum), whether the inheritor is a descendant or not, carries no voting rights with it. Lapsed voting rights owned by Natives or descendants of Natives may be restored by a vote of the shareholders.

Procedures for petitioning shareholders, notice requirements, quorum and voting standards are all the same as those required for corporate repurchase option.

Land Protections (fulfills AFN 1991 Resolution #07)

The protections afforded Native land by H.R. 278 are substantial; under the legislation, all land conveyed under ANCSA to any Native individual, group, village corporation (including the four urban VC's) or region, is granted immunity from adverse possession (squatters), taxation (by any government), bankruptcy, judgement and involuntary dissolution. These protections will apply to ANCSA land as long as the land is undeveloped, not leased to a third party, or used only for exploration.

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that requires the Board of directors of those corporations choosing this option to adopt and submit a resolution for the consideration of the shareholders to continue restrictions. If the shareholders of those corporations do not approve such a resolution, the stock will become alienable within one year of their failure to do so, or on December 18, 1991, whichever is later.

Dissenter's rights, many of the procedural issues, and options for valuation of dissenters' stock are much the same as for the corporations not choosing this special option.

The definition of development does not include construction or improvement to assist in subsistence activities or other traditional uses of the land. The protections extended to ANCSA land do not alter any disputes over 7(i) revenues.

All ANCSA land is subject to eminent domain under state law.

Land and Asset Transfers (fulfills AFN 1991 Resolution #08)

Under the legislation, any Native corporation can, by a shareholder vote, transfer any or all of its land and other assets to a "Qualified Transferee Entity," or QTE. The transfer can be for no consideration, or for any consideration the shareholders deem fair.

In order for a group to be a QTE, it must conform to certain guidelines: it must be organized under or recognized by state or federal law; composed of persons whose membership is entirely non-transferable; provide membership for all persons who possess Native Common Stock in the corporation on the day before the transfer of assets is to take place; and except for those non-Native/non-descendants who own Native Common Stock, it must admit only Natives and descendants of Natives as new members.

Revenues distributed according to the 7(i) formula are unaffected by any transfers, and QTE's must agree in writing to waive any sovereign immunity from claims arising due to 7(i), prior to any transfer.