

# WASHINGTON COMMENTS

Sen. Frank Murkowski



## Addressing the "1991" issue

Earlier this year, your Alaska Congressional Delegation introduced a package of amendments to the Alaska Native Claims Settlement Act. Since then, hearings and workshops have been conducted and more are being scheduled in Alaska (including Fairbanks and Anchorage) and in Washington, D.C. on these so-called "1991" amendments. This public process will give an opportunity to all interested Alaskans to make their views heard.

The 1971 Native Claims Act provided many benefits to Alaska. It settled land claims that had been outstanding since 1867, freed-up for private ownership and economic development by the Native corporations 44 million acres of land, permitted the state to go forward with the selection of over 104 million acres of statehood lands, and infused nearly \$1 billion into Alaska's economy.

Rather than asking Congress to set up reservations as was done in resolving Indian claims in the Lower 48, Alaska Natives requested the establishment of corporations as vehicles for managing assets they received under ANCSA. Congress supported this request, and in doing so, assumed that within 20 years the regional and village corporations would be viable and able to provide benefits to their shareholders. In keeping with this assumption, the act prohibited the sale or transfer of corporate stock to persons outside the corporation until 1991.

The reason for the current package of proposed amendments to ANCSA is that this fundamental assumption has not proved valid. Unfortunately, since 1971, implementation of ANCSA has been fraught with litigation and delays. Fifteen years after passage of the act, a substantial portion of ANCSA lands have not been conveyed, and only a fraction of the land conveyed has been patented. Many corporations are struggling to hang on to their ANCSA benefits. Alaska Natives are concerned that in 1991, when under current law shareholders can sell or transfer their stock to persons outside the corporation, there could be an involuntary loss of corporation land through hostile takeovers by outside corporations. After three years of discussion within the Native community, the AFN adopted eight resolutions which formed the basis of the proposed amendment package now before Congress. A major provision of the 1991 amendments would extend stock restrictions indefinitely, or until a majority of the shareholders elect to sell their stock to persons outside the corporation.

I've heard from Alaskans who believe the amendments go beyond being a package of options that would only affect Native corporations. Before outlining some of the comments I've received on the amendments, I want to repeat three ground rules upon which I believe this legislation will move in the Senate. First, Native sovereignty will *not* be considered as part of this bill. Second, I will *not* support tax exemptions for developed, revenue producing land. Finally, there can be no federal or state financial liability created by the 1991 amendments.

Section 7 of the 1991 amendment package has generated more comments than any other provision. It declares that nothing in ANCSA should be construed as "enlarging or diminishing or in any way affecting" the governmental authority of any tribe or Native council or the relationship between Alaska Natives as Native Americans and the federal government.

The phrase "governmental authority" of Native councils and tribes refers to the issue of sovereignty. Sovereignty in Alaska is generally understood to mean the exercise of governmental powers by a Native council over a given territory. Yet, no court has determined the degree of sovereignty, if any, currently possessed by Native councils. The State of Alaska and Department of the Interior have not agreed on the precise nature of the relationship between Alaska Natives and the federal and state governments. These legal issues have been discussed extensively and litigated since 1971, but they have not been resolved. They are *not* resolved in the 1991 amendments and no provision of the bill (including Section 7) should be read to imply otherwise.

I have also received questions about other parts of the bill which are designed to enhance a Native corporation's ability to protect its land. One provision permits a corporation to transfer its land to another entity, such as a Native council organized under the Indian Reorganization Act (IRA). The AFN believes that Native corporations that find it difficult to manage and protect their lands within the corporate structure should have the option to select some other arrangement. The 1991 amendments would give corporations that option.

Another section of the bill would give indefinite tax exempt status to Native corporation land for so long as those lands remain undeveloped. Once those lands are developed or are revenue producing, they should be subject to taxation like any other private land. Similar tax relief based on land use restrictions is provided to owners of land in the Lower 48. For example, in California, agricultural lands receive special tax treatment for as long as they are used for agricultural purposes.

This tax provision does not depart from concepts in existing law. In 1980, Congress adopted a "land bank" tax exemption for undeveloped lands held by Native corporation and other private landowners. However, the federal government has not implemented that law and there are questions whether it is workable. The proposal in the 1991 amendments implements the law for Native corporations that choose to keep their lands undeveloped in order to maintain the traditional lifestyle of the shareholders. Subjecting these lands to taxation could

(Continued on Page Four)

# Washington Comments

(Continued from Page Three)

cause an involuntary loss of lands through an inability to pay taxes. This would be unfair since much of this land is incapable of producing revenue. Also, forced sale of such lands would probably benefit only large outside corporations and not Alaskans.

The provisions for transferring land to a Native council or to another entity, and tax exemption for undeveloped lands, have received much attention. Some Alaskans suggest that either or both can be read as recognizing the existence of "Indian country," which is closely related to the sovereignty issue. Section 7 is intended to block any claim that these provisions or ANCSA establishes "Indian country" in Alaska. It has been suggested, however, that Section 7 is not sufficiently clear. Congress will be addressing this issue and other questions during hearings to clarify this point.

Several Alaskans have written about the provision allowing corporations to issue stock to Natives born after 1971. There is some confusion about where this stock will come from. It is the intention of this bill that newly issued stock should only come from one source - existing shareholder equity. Some Natives are also unsure what the effect of that new stock will be on present shareholders, since giving new stock can reduce the value of currently outstanding stock. However, like the transfer of assets to Native councils, issuing additional stock is an option and is not imposed on any Native corporation. In addressing this question, it must be remembered that the 1991 legislation will not require any additional lands or money from the federal government to prevent a reduction in corporate stock value.

These are some of the initial questions and concerns I've heard so far. I intend to continue examining all possible interpretations of the legislation as we hold hearings and workshops throughout our state. These amendments, like ANCSA itself, are not set in stone. The purpose of the hearing process is to take testimony which will serve as the basis for modifications, if appropriate. I expect to get the views of Alaskans, our governor, the official views of our state legislators and the Secretary of the Department of the Interior.

I want to hear from all interested Alaskans on this important legislation as our hearings continue in Alaska. I look forward to your input.