

# **AFN opposes 1991 legislation in U.S. Senate**

A bill introduced in the U.S. Senate to extend restrictions on the sale of stock in Alaska Native corporations beyond 1991 is flawed and should be amended to meet the needs of Alaska's Native people, according to testimony presented last week by Janie Leask,

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# •Leask explains AFN opposition to bill

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president of the Alaska Federation of Natives.

Speaking in Washington, D.C., Tuesday at a hearing on the Senate bill, Leask explained that this year's bill is almost identical to last year's bill, rejected by AFN delegates at the October 1986 AFN convention.

Leask discussed three main problems with the bill:

- Restrictions on the sale of regional corporation stock would lapse unless a corporation obtained an affirmative vote of its shareholders prior to 1991 to continue the restrictions.

"From the beginning of the 1991 process, AFN and its member corporations have been adamant that village and regional corporation stock must remain inalienable until restrictions are purposefully and knowingly terminated in an affirmative vote of the shareholders," Leask said.

"The so-called 'opt-out' approach is the heart of AFN's 1991 effort. And for good reason. The decision to terminate restrictions on the sale of stock may be the most important decision the shareholders of ANCSA corporations will make in their lifetimes.

"Whatever they decide, their decision will profoundly affect the heritage they leave for future generations and the long-term protection of the land that is the Alaska Native people's greatest legacy and most sacred trust.

"For that reason, if error is made, AFN believes that it should be made on the side of continuing restrictions on the sale of stock."

- The Senate version calls for dissenters' rights to be mandatory rather than optional.

Leask said that allowing a small minority of shareholders to require that they be paid in full before a majority of the shareholders can take ac-

tion to protect the land will prevent the majority from doing so.

She cited NANA Regional Corp. as one example of what could happen if dissenters' rights were mandatory.

"NANA estimates that over 30 years the corporation will earn \$300 million from the Red Dog mine," Leask said.

"If only 10 percent of its shareholders voted against continuing the restrictions on the sale of NANA stock and had a mandatory right to be paid the value of their stock, even undiscounted, that value would be \$30 million on the Red Dog mine alone, not counting the value of NANA's land and other non-cash assets.

"Regardless of the optional payment methods that were included in the Senate amendment, NANA simply cannot raise the cash to pay its dissenters."

- The disclaimer at the end of the amendment is not sovereignty neutral.

"Although the issue is complex, the controversy about the relationship of 1991 legislation to Native sovereignty centers on a disagreement as to whether the federal courts will be more or less likely to find that land conveyed to an ANCSA corporation is 'Indian country' if the corporation conveys the land to an IRA or traditional Native Council," she said.

"Since all versions of the 1991 legislation contain a section that facilitates land transfers to 'qualified transferee entities,' a term that includes IRA and traditional Native councils, opponents of Native sovereignty argue that 1991 legislation is not sovereignty neutral unless it contains a disclaimer that prevents the federal courts from considering the fact that an IRA or traditional Native council owns legal title to ANCSA land.

"Supporters of Native sovereignty

argue that since IRA and traditional Native councils are presently empowered to own ANCSA corporation land — and that at least one does so — a disclaimer that nullifies the legal effect of a land transfer is not sovereignty neutral in that it removes a legal argument IRA and traditional Native Councils were entitled to make prior to the enactment of 1991 legislation into law.

"The evidence in the hearing record is uncontroverted that the business corporation is not well adapted to the

reality of life in many rural Native villages.

"For that reason, including a provision to assist village corporation shareholders to transfer title to village lands from their village corporation to another organization has been an important AFN priority.

"However, it is not more important than ensuring that the rights of Alaska Natives who aspire to exercise governmental authority over their lives, lands and property are respected and protected."