

SETTLEMENT COMMON STOCK OF COOK INLET REGION

FEBRUARY 21, 1995.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. YOUNG of Alaska, from the Committee on Resources,
submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany H.R. 421]

[Including cost estimate of the Congressional Budget Office]

The Committee on Resources, to whom was referred the bill (H.R. 421) to amend the Alaska Native Claims Settlement Act to provide for the purchase of common stock of Cook Inlet Region, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment (stated in terms of the page and line numbers of the introduced bill) is as follows:

Page 6, strike line 12 and all that follows through line 17, and insert the following:

“(ii) Neither Cook Inlet Regional Corporation nor a member of the board of directors or officers of Cook Inlet Regional Corporation shall be liable for damages resulting

PURPOSE OF THE BILL

The purpose of H.R. 421 is to amend the Alaska Native Claims Settlement Act to provide for the purchase of common stock of Cook Inlet Region, and for other purposes.

BACKGROUND AND NEED FOR LEGISLATION

Congress enacted the Alaska Native Claims Settlement Act (ANCSA) in 1971 (Public Law 92-203) to address claims to lands in Alaska by its Eskimo, Indian and Aleut Native people. Lands and other benefits transferred to Alaska Natives under the Act were conveyed to thirteen corporations formed under the Act. Alaska Natives enrolled to each of these corporations were issued shares in the corporation. Cook Inlet Region, Inc. (CIRI) is one of the corporations formed under ANCSA and has approximately 6,262 Alaska Natives enrolled, each of whom were issued 100 shares of stock in CIRI as required under ANCSA.

ANCSA stock (unlike most corporate stock) can not be sold, transferred or pledged by the owners of the shares. Instead transfers can only happen through inheritance or in limited cases by court decree. The ANCSA provisions restricting the sale of stock were put in place to protect Native shareholders from unscrupulous transactions, and to allow the corporations to grow and mature to provide long-lasting benefits to its shareholders.

The original authors of ANCSA initially believed that a period of twenty years would be a sufficient amount of time for the restrictions on the sale of shareholder stock to remain in place. The restrictions originally were to expire on December 31, 1991.

As 1991 approached, bringing with it the impending change in the alienability of Native stock, the Alaska Native community grew concerned about the effect of the potential stock sale. The Alaska Federation of Natives, a statewide organization representing the State's 90,000 Alaska Natives, spearheaded a legislative initiative to address the 1991 stock sale issue. Many of the Native corporations, including CIRI, actively solicited their shareholders' views on this critical matter, through meetings, questionnaires, polling and formal votes. In 1987, Congress amended ANCSA to reform the mechanism governing stock sale restrictions in a fundamental way. Under the 1987 amendments, the restrictions on alienability continue automatically unless and until the shareholders of a Native corporation vote to remove them. The 1987 amendments also provided several procedural mechanisms to bring such a vote, including action by the corporate Board of Directors and petitions by shareholders.

To date, no Native Corporation has sought to lift the alienability restrictions because Native shareholders continue to value Native ownership of the corporations and Native control of the lands and other assets held by them.

CIRI has conducted a number of continuing surveys, focus groups and special shareholders' meetings to ascertain the views of its shareholders regarding the alienation restrictions on CIRI stock. Two results have consistently stood out in these assessments.

First, the great majority of CIRI shareholders favor maintaining Native ownership and control of CIRI. These shareholders see economic benefits in the continuation of Native ownership, and also value the important cultural goals, values and activities of their ANCSA corporation.

Second, a significant percentage, albeit a minority of shareholders, favor accessing some (or all) of the value of their CIRI stock

through sale of that stock. These shareholders include elderly shareholders who have real current needs, yet doubt that the sale of stock will be available to them in their lifetimes; holders of small, fractional shares received through one or more cycles of inheritance; non-Natives who have acquired stock through inheritance but without attendant voting privileges; and shareholders who have few ties to the corporation or to Alaska (25 percent of CIRI shareholders live outside Alaska).

Under current law, these two legitimate but conflicting concerns cannot be addressed, because lifting restriction on the sale of stock is an all or nothing proposition. To allow the minority of shareholders to exercise their desire to sell some or all of their stock, the majority of shareholders would have to sacrifice their important desire to maintain Native control and ownership to CIRI.

CIRI believes this conflict will eventually leave the interests of the majority of its shareholders vulnerable to political instability. CIRI recognizes that responding to the desire of those shareholders who wish to sell CIRI stock is a legitimate corporate responsibility. More importantly, CIRI believes that there is a way to address the needs and desire of both groups of shareholders so that the sale of stock will not compromise the "Nativeness" of the company, and will not jeopardize the economic future of the company for those who choose not to sell. H.R. 421 authorizes a third option for CIRI. The Board of Directors of CIRI may propose an amendment to its articles of incorporation which would authorize a board-approved plan allowing CIRI to purchase common stock from its shareholders on a voluntary basis. All stock would be immediately canceled by the corporation upon purchase. Approval of the amendment by the shareholders would require a 50-percent-plus-one majority vote of all outstanding stock that carries voting rights. This option applies only to CIRI and does not apply to any other ANCSA corporation.

COMMITTEE ACTION

H.R. 421 was introduced by Congressman Don Young of Alaska on January 4, 1995, and referred to the Committee on Resources. The bill was identical to H.R. 4665 introduced in the 103rd Congress, was the subject of hearings held by the Subcommittee on Oversight and Investigations of the Committee on Natural Resources on September 22, 1994, and part of a bill ordered reported by the Committee on Natural Resources on September 27, 1994.

On February 8, 1995, H.R. 421 was considered by the Committee on Resources. At that time, Congressman George Miller offered an amendment to clarify liability for the CIRI Board of Directors or corporate officers in relation to the sale of the CIRI stock. The amendment was adopted by voice vote. The Committee ordered the bill favorably reported, as amended by a voice vote, in the presence of a quorum.

SECTION-BY-SECTION ANALYSIS

Section (1)(a) amends section 7(h) of ANCSA by inserting a new paragraph (4). New paragraph 4(A) defines "Cook Inlet Regional Corporation". New paragraph 4(B) of ANCSA allows CIRI, by

amendment to its articles of incorporation, to purchase common stock from its shareholders. New Paragraph 4(C) allows the shareholders to sell their shares to CIRI. New paragraph 4(D) requires the prior approval of the CIRI Board of Directors before any sale or purchase of the shares. New paragraph 4(E) authorizes the Board of Directors to recognize the different rights that accrue to any class or series of shares of common stock.

New paragraph 4(F) provides that any shareholder who accepts an offer shall receive consideration for his or her share of common stock and a security for the non-resident rights that attach to such share. New paragraph 4(G) authorizes the issuance of a non-voting security. New paragraph 4(H) provides that any shares purchased by the corporation shall be cancelled and provides how distributions shall be calculated. New paragraph 4(I) excludes certain persons from participating in an offer by the corporation to purchase shares. New paragraph 4(J)(i) provides that the Board of Directors may determine the terms of an offer to purchase shares and that in determining the terms of a purchase offer, CIRI can rely on the good faith opinion of any firm or member of a firm of investment bankers or valuation experts. New paragraph 4(J)(ii) provides that the CIRI Board of Directors and officers of CIRI cannot be held liable for damages resulting from an offer made in connection with the sale of any stock if the offer was made in good faith, in reliance on a good faith opinion of a recognized firm of investment bankers or valuation experts, and otherwise in accordance with paragraph (4). New paragraph 4(K) provides that consideration to purchase shares may be in the form of cash, securities, or a combination of cash and securities. New paragraph 4(L) provides that the sale of settlement common stock shall not diminish a shareholder's status as an Alaska Native for the purpose of qualifying for government programs and further provides that the proceeds from the sale of stock shall not be excluded in determining eligibility for any government needs-based program.

Section 1(b) of H.R. 421 is a conforming amendment to section 8(c) of ANCSA which provides that ANCSA section 7(h)(4) shall not apply to village, urban and group corporations.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Pursuant to clause 2(l)(3) of rule XI of the Rules of the House of Representatives and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the body of this report.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee estimates that the enactment of H.R. 421 will have no significant inflationary impact on prices and costs in the operation of the national economy.

COST OF THE LEGISLATION

Clause 7 of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out H.R. 421. However,

clause 7(d) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974.

COMPLIANCE WITH HOUSE RULE XI

1. With respect to the requirement of clause 2(l)(3)(B) of rule XI of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, H.R. 421 does not contain any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

2. With respect to the requirement of clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives, the Committee has received no report of oversight findings and recommendations from the Committee on Government Reform and Oversight on the subject of H.R. 421.

3. With respect to the requirement of clause 2(l)(3)(C) of rule XI of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for H.R. 421 from the Director of the Congressional Budget Office:

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, February 15, 1995.

Hon. DON YOUNG,
*Chairman, Committee on Resources,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 421, a bill to amend the Alaska Native Claims Settlement Act to provide for the purchase of common stock of Cook Inlet Region, and for other purposes, as ordered reported by the House Committee on Resources on February 8, 1995.

H.R. 421 would provide the Cook Inlet Regional Corporation in Alaska, one of twelve Native corporations created by the Alaska Native Claims Settlement Act of 1971, additional flexibility in handling its corporate stock. Based on information provided to us by the Department of the Interior, we estimate that enactment of this bill would not affect the federal budget or the budgets of state or local governments. Because enactment of H.R. 421 would not affect direct spending or receipts, pay-as-you-go procedures would not apply to the bill.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Theresa Gullo.

Sincerely,

ROBERT D. REISCHAUER, *Director.*

DEPARTMENTAL REPORTS

The Committee received a report on H.R. 421 from the Department of the Interior on February 8, 1995. No reports have been received on H.R. 421.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, DC, February 8, 1995.

Hon. DON YOUNG,
*Chairman, Committee on Resources,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: This is to provide views of this Department concerning two bills, which are expected to be marked up in the near future by your Committee. They are H.R. 402, "To amend the Alaska Native Claims Settlement Act, and for other purposes," and H.R. 421, "To amend the Alaska Native Claims Settlement Act to provide for the purchase of common stock of Cook Inlet Region, Inc., and for other purposes."

These bills were considered in the 103rd Congress but were not passed. The bills represent areas where a great deal has already been accomplished through informal discussion and cooperative efforts of the Committee and the progress that has been shown in this legislation to date. While we do have some concerns with the bills, a substantial amount of agreement has been achieved on them through the cooperative efforts.

H.R. 402

We will consider first H.R. 402. The bill would amend various provisions of the Alaska Native Claims Settlement Act ("ANCSA") (43 U.S.C. §1601 et seq.) and would otherwise provide for certain conveyances of land or interests therein. We reported on the predecessor bill in the 103rd Congress, H.R. 3612. Several of the provisions of the bill have been removed and are not included in H.R. 402 because agreement has been reached and/or because the Alaska Federation of Natives (AFN) has withdrawn them. Most of the provisions in H.R. 402 reflect suggestions this Department made to H.R. 3612.

Comments are as follows:

Section 1. Ratification of certain Caswell Creek and Montana Creek conveyance

In 1974, Montana Creek Native Association, Inc. (MCNA) and Caswell Native Association, Inc. (CNA) withdrew their applications for village status then pending before the Department. Instead of applying for a withdrawal and selecting lands, the two groups and Cook Inlet Region, Inc. (CIRI) entered into an agreement. CIRI conveyed 11,520 acres to each group. Under the Department's regulations, each group would have been eligible for a maximum of 7,680 acres. CIRI has requested that the conveyances from it to the groups be ratified by Congress and that the groups' lands be treated as lands conveyed pursuant to ANCSA. This amendment would make the lands eligible for fire protection under section 22(e) of ANCSA, 43 U.S.C. §1621(e) and eligible for a land bank status under section 907 of the Alaska National Interest Lands Conservation Act (ANILCA) (43 U.S.C. §1636, as amended). The Department supports the ratification of CIRI's transfer. We note that two changes were made to the bill last year based on Interior's com-

ments, and those changes have been retained in H.R. 402. They are included at page 2, lines 8–17.

We do have an additional amendment which we believe is necessary in connection with the earlier changes. In the second sentence, page 2, the reference to section 14(h)(2) of ANCSA (43 U.S.C. § 1613(h)(2)) should be deleted, and the reference to § 1613(h)(2) in line 4 should be changed to simply § 1601 et seq. The lands should be deemed as ANCSA conveyances in order to have all the protection of § 21 of ANCSA (43 U.S.C. § 1620) and § 907 of ANILCA. Without the deletion, it could be argued that 23,000 acres must be deleted from lands available to other regions under § 14(H)(8) of ANCSA (43 U.S.C. § 1613(h)(8)), which would be inconsistent with the agreed goal of making these lands available to the other regions.

2. Mining claims after lands conveyed to Alaska regional corporation

When lands were patented to the regional corporations under the provisions of ANCSA sections 11(a)(1), 11(a)(2) and 16, they were conveyed “subject to valid existing rights.” This included valid mining claims. Under the holding in *Alaska Miners v. Andrus*, 662 F.2d 577 (9th Cir. 1981), miners were not compelled to file for patent on such claims, but by failing to apply for a patent in the time permitted by ANCSA, mining claimants lost the right to obtain a patent to their mining claims from the federal government. Accordingly, BLM has taken the position that after the transfer of title it cannot accept FLPMA filings on such mining claims, nor has BLM been willing to accept annual rental payments. This has created confusion about mining regulatory authority over these mining claims.

The purpose of this amendment is to clarify who has mining regulatory authority over these claims. Under the amendment, the regional corporations are explicitly given the authority to regulate the mining claims under the mining laws of the United States, as such laws are amended. Adoption of this legislation would have the desired effect of bringing clarity to the relationship between the miner/inholder and the Regional Corporation.

The Department supports an amendment to ANILCA on this subject. We proposed substitute language last year to that which was proposed in H.R. 3612. That proposed substitute language, which more clearly gives management authority to the Regional Corporations, has now been adopted in H.R. 402. We endorse this section with the new language.

3. Settlement of claims arising from hazardous substance contamination of transferred lands

Native corporations have selected and the United States has conveyed lands which contain contaminants. The nature of the contamination may come in various forms including residue from abandoned upstream mining operations, and in many cases substances now considered contaminants were not so considered at the time of the transfer. AFN contends that it is unfair for the regional corporations to shoulder the entire burden of cleaning up contaminated sites where the contamination is not the fault of the Native

corporations. However, we have insufficient information at this time to address this issue. We support the provision for a study to develop recommendations on how to deal with the problem. We appreciate that the current provision represents a substantial change from settlement provisions in earlier versions of the bill which we strongly opposed.

While we support the basic terms of the section, we recommend refinements which we believe are important to the effectiveness of the provision. We believe the section should be consistent with terms in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 U.S.C. §9601, et seq.). Two different terms are used in the operable portion of the study, “contaminants”, which is defined in the proposed revision to ANCSA subsection 40(a)(1), and “hazardous substances”, which is not defined. Since both terms are already defined and understood in environmental law, it make sense to adopt those definitions for both terms. Subsection (a)(1) should read:

“(1) The term “contaminant” means hazardous substance(s), pollutants, or contaminants as defined in Public Law 96-510, Title I, §101, Dec. 11, 1980, 94 Stat. 2767, as amended, 42 U.S.C. §9601 (14) and (33).”

Subsection (b) should be amended, for consistency and because the required report must address contaminants and not just hazardous substances, to replace the term “hazardous substances” on page 5, line 4, with the term “contaminants.”

We recommend the definition of term “lands” be deleted in section 40(a) on page 4. We believe it is unnecessary and potentially confusing because the word “lands” is fully described in subsection 40(b), and subsections 40(b) (1)-(4) refer back to that description through the use of the term “such lands”.

Section (b)(2) should be amended by adding the word “on” after “existing information”. This small but important word makes a big difference in terms of personnel time and money. With the word, the report is required to state where the information is located. Without the word, the statutory directive will be to list all available information in the report, wherever it may exist.

Subsection (b)(2), page 5, line 12, should be amended by changing the term “amelioration” to “remediation”, since “remediation”, like “removal”, is a term used in CERCLA, while “amelioration” is not.

4. Authorization of appropriations for the purpose of implementing required reconveyances

ANCSA section 14(c) requires village corporations to reconvey certain land within their patented selections. The problems associated with the reconveyance of lands to individuals and municipalities within the village patents are complex and technically difficult.

This proposed amendment would constitute an authorization for appropriations to provide technical assistance to villages for section 14(c) reconveyances.

The Department notes that the provision has been amended substantially as suggested by the Department in its report of last year. It is our understanding that AFN concurs with these changes.

5. Native allotments

Two native allotments in the National Petroleum Reserve—Alaska (NPR-A), totalling less than 240 acres, are surrounded by lands conveyed to the village corporation of Nuiqsut. The subsurface estate under Nuiqsut village lands has been conveyed to Arctic Slope Regional Corporation (ASRC) pursuant to Section 1431(o) of Alaska National Interest Lands Conservation Act. In the absence of this amendment, the United States is expected to own the oil and gas estate under the two allotments.

This amendment would permit conveyance to ASRC of the federally owned oil and gas estate under the Native allotments for the purpose of consolidating subsurface interests in the area and eliminating isolated tracts of public land. Any oil and gas recoverable from the Native subsurface would, in all likelihood, have only a limited market in Nuiqsut. The lands have not been deemed valuable for coal. The State of Alaska has consented to the transfer of the reserved minerals to the Corporation. Furthermore, this amendment would not result in a net loss of subsurface estate to the United States. We support this technical amendment. As we suggested in our report of last year, the bill has been amended to delete the words “a Village” and substitute the word “Kuukpik” (the name of the ANCSA corporation at Nuiqsut) in the first sentence of proposed Section 1431(o)(5).

6. Report concerning open season for certain Native Alaskan veterans for allotments

The Alaska Native Allotment Act of 1906 was repealed by ANCSA on December 18, 1971. During 1970 and 1971, a concerted effort was made by the Bureau of Indian Affairs, Ruralcap and Alaska Legal Services to notify as many Alaskan Natives as possible of the upcoming repeal and the need to apply for an allotment. Individuals who were otherwise entitled to apply for an allotment but who were on active military duty during 1970 and 1971 may have been deprived of an opportunity to apply for such allotments.

We note that the bill has been amended from last year's bill to reduce the eligible parties and to provide for a report on the problem and suggested solutions. We believe this is far preferable to the original provision in earlier bills, and we support the provision. However we strongly recommend that the time for the report be extended to 12 months. We do not think it can be done in 6 months.

7. Transfer of Wrangell Institute

The Wrangell Institute was originally withdrawn in 1956 for the administration of Native Affairs. That use terminated with the passage of ANCSA. The property was excessed by BIA to GSA in 1975 and subsequently 31 acres were transferred to the city of Wrangell. In 1977 CIRC requested that the remaining 140 acres be made available for selection. CIRC was issued a revocable license on May 11, 1977. In August 1978, this land and the buildings thereon were the subject of an interim conveyance to CIRC.

This amendment would cause ten acres of that conveyance together with the structures to be returned to the United States. The section would also hold CIRC harmless for any and all claims aris-

ing from either federal or CIRI ownership of the land prior to its return to the United States. CIRI is seeking a credit to its property account in the amount of \$382,305, the estimated worth of the property. In addition to the costs of supplementing the CIRI property account, the U.S. would have to assume the liability for the clean up of the property which could include the destruction and removal of all buildings on the property which have deteriorated since the cessation of maintenance by CIRI.

Asbestos products were properly used in construction of the buildings and were properly maintained at the time of conveyance; and this fact is not unique to CIRI. It is specifically the Department's position that the asbestos was not considered a pollutant at the time of transfer, and it was not friable. CIRI had the option of containing the asbestos as opposed to abandoning the building, but did not do so. It is our understanding that the asbestos became friable after the building was abandoned.

Furthermore, CIRI had specifically requested that the property be made available for selection and had the fullest opportunity to evaluate the Wrangell property prior to selecting it, having held a revocable license to the property for over one year prior to conveyance, for this purpose.

The Department cannot support the relief sought for CIRI. Under the facts we do not believe CIRI is entitled to the relief sought, and to do so would require relief for others similarly situated. We are not in a position to assume that very extensive liability at this time. It is the Department's understanding, for example, that there are over 200 other conveyed buildings which contained non-friable asbestos. We do not believe that as a matter of law the United States must reimburse CIRI for its investment or hold them harmless for the time of their ownership. Moreover, it is not feasible to reimburse all entities to whom the United States has conveyed buildings that contained non-friable asbestos or who may not be satisfied with their land. We do not support this amendment. It is our understanding that GSA also opposes this amendment for similar reasons.

We have serious concerns with the section, both on the facts of the particular case, and because of the precedent it would set.

Although we do not support section 7, the Department does support reviewing the Wrangell Institute situation in the context of the section 3 contamination study discussed earlier in these comments. The section 3 study will provide a comprehensive review of the problem of the presence of contaminants on conveyed lands. We believe that this is the more appropriate course of action under the circumstances, and it would place CIRI in the same position as other Alaska Native corporations with respect to consideration of the circumstances involving the presence of any contaminants, and identification of possible remedies.

8. Shishmaref Airport amendment

This section of the bill would allow the Department of reacquire Shishmaref Airport, originally conveyed to the State of Alaska, and to immediately transfer it to the Shishmaref Native Corporation. The bill attempts to apportion fairly any potential liability for cleanup of hazardous or solid wastes on the property.

We recommend the following amendment to section 8, beginning at line 13: delete all after "airport." on line 13, through "and," on line 15, and revise to read follows: "* * * airport. *The Administrator of the Federal Aviation Administration is hereby directed to exercise said reverter in Patent No. 1240529 in favor of the United States within 12 months of the date of enactment of this section. Upon revesting of title, notwithstanding any other provision of law, the Secretary shall * * **"

This is a preferable means of executing the transfer, and the Secretary is not called upon to reacquire the land.

With this amendment, the Department supports the section.

With the amendments proposed above, including the deletion of section 7 as written, the Department supports the enactment of H.R. 402.

H.R. 421

H.R. 421 would amend the Alaska Native Claims Settlement Act to provide for the purchase of common stock of the Cook Inlet Corporation.

In 1971, the Alaska Native Claims Settlement Act (ANCSA) was enacted to settle and resolve the claims of Alaska Natives to most of the State of Alaska. The settlement recognized title to 44 million acres of land to be held for Native Corporations and approximately \$1 billion in monetary compensation for the loss of the remaining lands. Under ANCSA, 12 geographic regions were created with five incorporators authorized under each region. Each regional corporation was formed under the laws of Alaska to conduct business for profit and was managed by a board of directors. Alaska Natives, living on the date of enactment, were issued stock in the corporations and the right to vote in elections for the board of directors and on other issues of importance to the stockholders.

ANCSA provided that for a period of 20 years Native corporation stock could not be sold, transferred, pledged, subjected to a lien or judgment execution, assigned in present or future or otherwise alienated; and could only be transferred through inheritance or in limited cases of court decree. In 1987, Congress amended the restrictions on stock sale, instead of expiring at the end of 20 years (1991), the stock restrictions on alienability would continue automatically until the shareholders of a Native corporations voted to remove them.

H.R. 421 amends ANSCA, authorizing the Cook Inlet Regional Corporation, with approval of the shareholders, to offer shareholders a repurchase of corporation stock from those who want to sell their stock to the corporation.

Our understanding is that the Cook Inlet Regional Corporation has conducted a poll of its shareholders and found them to be in favor of this action. Once legislation is passed, the bill provides that the issue will be put to a formal vote of the shareholders for their approval. In light of this, we have no objection to the passage of H.R. 421. We do have two recommendations, however.

Paragraph (J)(ii) on page 6 would hold harmless any director of Cook Inlet Regional Corporation and any firm or member of a firm of investment bankers or valuation experts who assist in the determination of the terms of an offer to purchase, from damages for

terms made in an offer. We are opposed to this provision. As to directors we do not believe that we should change through a federal act the terms of state law as to the standards of responsibility for directors of corporations, particularly as to Native corporations in which shareholders cannot as easily shed their interests as shareholders in most corporations can do. We should not weaken the protections afforded shareholders. Moreover, we fail to see the rationale for absolving bankers and valuation experts from responsibility for doing precisely what they are hired and well paid to do, and we believe this holds unnecessary risks to the shareholders.

Paragraph (L) on page 7 provides that proceeds from sale of stock shall not be excluded from eligibility determinations for needs-based government programs. We approve of the provision, but would defer to the views of other agencies more directly affected. We recommend, however, the inclusion in line 13, after the word "Proceeds", the following, ". . . in excess of \$2,000 received by any individual stockholder . . ." This would exclude from eligibility determinations the first \$2,000 received by a shareholder. The purpose of this provision is simply to clarify that the bill is consistent with the provision and policy enacted by the Congress in section 15 of the 1991 Amendments to section 29 of ANCSA (43 U.S.C. 1607(c)).

This concludes our comments.

The Office of Management and Budget advises that it has no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

GEORGE T. FRAMPTON, Jr.,
*Assistant Secretary,
 Fish and Wildlife and Parks.*

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

ALASKA NATIVE CLAIMS SETTLEMENT ACT

* * * * *

REGIONAL CORPORATIONS

SEC. 7. (a) * * *

* * * * *

(h)(1) * * *

* * * * *

(4)(A) *As used in this paragraph, the term "Cook Inlet Regional Corporation" means Cook Inlet Region, Incorporated.*

(B) *The Cook Inlet Regional Corporation may, by an amendment to its articles of incorporation made in accordance with the voting standards under section 36(d)(1), purchase Settlement Common Stock of the Cook Inlet Regional Corporation and all rights associ-*

ated with the stock from the shareholders of Cook Inlet Regional Corporation in accordance with any provisions included in the amendment that relate to the terms, procedures, number of offers to purchase, and timing of offers to purchase.

(C) Subject to subparagraph (D), and notwithstanding paragraph (1)(B), the shareholders of Cook Inlet Regional Corporation may, in accordance with an amendment made pursuant to subparagraph (B), sell the Settlement Common Stock of the Cook Inlet Regional Corporation to itself.

(D) No sale or purchase may be made pursuant to this paragraph without the prior approval of the board of directors of Cook Inlet Regional Corporation. Except as provided in subparagraph (E), each sale and purchase made under this paragraph shall be made pursuant to an offer made on the same terms to all holders of Settlement Common Stock of the Cook Inlet Regional Corporation.

(E) To recognize the different rights that accrue to any class or series of shares of Settlement Common Stock owned by stockholders who are not residents of a Native village (referred to in this paragraph as "non-village shares"), an amendment made pursuant to subparagraph (B) shall authorize the board of directors (at the option of the board) to offer to purchase—

(i) the non-village shares, including the right to share in distributions made to shareholders pursuant to subsections (j) and (m) (referred to in this paragraph as "nonresident distribution rights"), at a price that includes a premium, in addition to the amount that is offered for the purchase of other village shares of Settlement Common Stock of the Cook Inlet Regional Corporation, that reflects the value of the nonresident distribution rights; or

(ii) non-village shares without the nonresident distribution rights associated with the shares.

(F) Any shareholder who accepts an offer made by the board of directors pursuant to subparagraph (E)(ii) shall receive, with respect to each non-village share sold by the shareholder to the Cook Inlet Regional Corporation—

(i) the consideration for a share of Settlement Common Stock offered to shareholders of village shares; and

(ii) a security for only the nonresident rights that attach to such share that does not have attached voting rights (referred to in this paragraph as a "non-voting security").

(G) An amendment made pursuant to subparagraph (B) shall authorize the issuance of a non-voting security that—

(i) shall, for purposes of subsections (j) and (m), be treated as a non-village share with respect to—

(I) computing distributions under such subsections; and

(II) entitling the holder of the share to the proportional share of the distributions made under such subsections;

(ii) may be sold to Cook Inlet Region, Inc.; and

(iii) shall otherwise be subject to the restrictions under paragraph (1)(B).

(H) Any shares of Settlement Common Stock purchased pursuant to this paragraph shall be canceled on the conditions that—

(i) non-village shares with the nonresident rights that attach to such shares that are purchased pursuant to this paragraph shall be considered to be—

(I) outstanding shares; and

(II) for the purposes of subsection (m), shares of stock registered on the books of the Cook Inlet Regional Corporation in the names of nonresidents of villages;

(ii) any amount of funds that would be distributable with respect to non-village shares or non-voting securities pursuant to subsection (j) or (m) shall be distributed by Cook Inlet Regional Corporation to itself; and

(iii) village shares that are purchased pursuant to this paragraph shall be considered to be—

(I) outstanding shares, and

(II) for the purposes of subsection (k) shares of stock registered on the books of the Cook Inlet Regional Corporation in the names of the residents of villages.

(I) Any offer to purchase Settlement Common Stock made pursuant to this paragraph shall exclude from the offer—

(i) any share of Settlement Common Stock held, at the time the offer is made, by an officer (including a member of the board of directors) of Cook Inlet Regional Corporation or a member of the immediate family of the officer; and

(ii) any share of Settlement Common Stock held by any custodian, guardian, trustee, or attorney representing a shareholder of Cook Inlet Regional Corporation in fact or law, or any other similar person, entity, or representative.

(J)(i) The board of directors of Cook Inlet Regional Corporation, in determining the terms of an offer to purchase made under this paragraph, including the amount of any premium paid with respect to a non-village share, may rely upon the good faith opinion of a recognized firm of investment bankers or valuation experts.

(ii) Neither Cook Inlet Regional Corporation nor a member of the board of directors or officers of Cook Inlet Regional Corporation shall be liable for damages resulting from terms made in an offer made in connection with any purchase of Settlement Common Stock if the offer was made—

(I) in good faith;

(II) in reliance on a determination made pursuant to clause

(i); and

(III) otherwise in accordance with this paragraph.

(K) The consideration given for the purchase of Settlement Common Stock made pursuant to an offer to purchase that provides for such consideration may be in the form of cash, securities, or a combination of cash and securities, as determined by the board of directors of Cook Inlet Regional Corporation, in a manner consistent with an amendment made pursuant to subparagraph (B).

(L) Sale of Settlement Common Stock in accordance with this paragraph shall not diminish a shareholder's status as an Alaska Native or descendant of a Native for the purpose of qualifying for those programs, benefits and services or other rights or privileges set out for the benefit of Alaska Natives and Native Americans. Proceeds from the sale of Settlement Common Stock shall not be ex-

cluded in determining eligibility for any needs-based programs that may be provided by Federal, State or local agencies.

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VILLAGE CORPORATIONS

SEC. 8. (a) * * *

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(c) APPLICABILITY OF SECTION 7.—The provisions of subsections (g), **[(h)]** (h) (other than paragraph (4)), and (o) of section 7 shall apply in all respects to Village Corporations, Urban Corporations, and Group Corporations.

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ADDITIONAL VIEWS OF REPRESENTATIVE GEORGE MILLER

This legislation could significantly impact 6,500 Alaska Native shareholders of the Cook Inlet Region, Inc. (CIRI) if the authority to buy-back shareholder stock is exercised.

H.R. 421 would authorize CIRI's board of directors to propose a plan to purchase settlement common stock from shareholders of the corporation. CIRI's management argues that this is a preferable alternative to voting to remove all restrictions on selling CIRI stock, allowing CIRI to remain a Native-owned and controlled corporation while at the same time allowing some disgruntled shareholders to cash out.

While I am not enthusiastic about H.R. 421, I did not oppose the legislation because: (1) there is no congressional mandate that CIRI amend its articles of incorporation or exercise authority to purchase stock from its shareholders; (2) the CIRI shareholders must vote to approve a buy-out plan adopted by the board; and (3) the buy-out option does not apply to any Alaska Native corporation other than CIRI.

I'm concerned, however, that the bill favors the interests of CIRI management over the shareholders. As introduced, H.R. 421 provided immunity from "notwithstanding any other provision of law" for CIRI, its board, and "any firm or member of a firm of investment bankers or valuation experts" involved in the offer to purchase shareholder stock if they act in "good faith."

Clearly, terminating participation in the corporation established pursuant to the Alaska Native Claims Settlement Act would be a major decision for the CIRI shareholders. CIRI is among the most financially successful Alaska Native corporations, with real estate and other investments across the nation. Valuation of its assets for purposes of a shareholder buy-out could be a complex endeavor. At a minimum, each shareholder needs to know whether a stock buy-out offer reflects its full and fair value.

To better protect the shareholder, I offered an amendment which was accepted by the Committee to eliminate the "notwithstanding any other provision of law" language and also to delete the immunity from damages for outside investment bankers or valuation experts. As a matter of Federal law, the board and officers of CIRI may act in "good faith" reliance on advice from investment bankers or valuation experts. By eliminating the reference to "notwithstanding any other provision of law," the amendment assures that standards of care applicable under Alaska law will continue to apply to CIRI and its board's activities.

In enacting H.R. 421, it is important to note that the Committee is not endorsing the adoption of any buy-out plan nor concluding

that selling stock would be in the long-term best interests of CIRI or its shareholders.

GEORGE MILLER.

