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SENATE

{ REPORT
104-20

PURCHASE OF COMMON STOCK OF COOK INLET REGION

MARCH 27, 1995.—Ordered to be printed

Mr. MURKOWSKI, from the Committee on Energy and Natural Resources, submitted the following

REPORT

[To accompany S. 444]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 444) 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, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE MEASURE

The purpose of S. 444, as ordered reported, is to amend the Alaska Native Claims Settlement Act (ANCSA) to authorize Cook Inlet Region, Inc. (CIRI), an Alaska Native regional corporation, upon approval of its shareholders, to conduct a “buy-back” of CIRI stock from those shareholders who desire to tender their stock to the company.

BACKGROUND AND NEED

Congress enacted ANCSA in 1971 to address claims to lands by Alaska’s Eskimo, Indian and Aleut Native people. Lands and other benefits transferred to Alaska Natives under the Act were conveyed to corporations formed under the Act. Natives enrolled in these corporations were issued shares of stock in the corporation. CIRI is one of the corporations formed under ANCSA. At the time of incorporation, CIRI had approximately 6,300 Alaska Natives, each of whom was issued 100 shares of stock in the corporation as required by ANCSA.

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

The Congress initially believed that a period of 20 years would be a sufficient amount of time for the restrictions on sale to remain in place. Therefore, the restrictions originally were to expire 20 years after the passage of ANCSA on December 31, 1991.

As 1991 approached, the Alaska Native community grew concerned about the effect of the potential sale of Native stock. In 1987, Congress enacted legislation which reformed the mechanism governing stock sale restrictions in a fundamental way. Under the 1987 Amendments, instead of expiring automatically in 1991, the restrictions on alienability continue automatically unless and until the shareholders of a Native corporation vote to remove them. (The 1987 Amendments provided several procedural mechanisms to bring such a vote, including action by the board of directors and petitions by shareholders.) To date, no Native corporation has sought to lift the alienability restrictions.

Since the 1987 amendments were enacted, CIRI has discovered that the majority of its 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.

On the other hand, 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 but are not limited to elderly shareholders who have real current needs, yet doubt that sale of stock will be available to them in their lifetime; 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 of Alaska).

Under current law, in order 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 of CIRI.

This legislation seeks to address this problem by employing a mechanism that other companies routinely use: the "buying back" of its own stock which would then be canceled. Thus, those who wished to sell could do so (with some limitations) while the corporation would clearly remain in Native control.

LEGISLATIVE HISTORY

S. 444 was introduced by Senators Murkowski and Stevens on February 16, 1995. A companion bill, H.R. 421, was introduced in the House of Representatives on January 4, 1995, and subsequently passed the House on March 14.

At the business meeting on March 15, 1995, the Committee on Energy and Natural Resources ordered S. 444 favorably reported, without amendment.

In the 103rd Congress, similar legislation was introduced as S. 2249, by Senators Murkowski and Stevens on July 29, 1994. A Subcommittee hearing was held on August 4. At the September 21, 1994 business meeting, the Committee on Energy and Natural Resources ordered S. 2249, as amended, favorably reported.

COMMITTEE RECOMMENDATIONS AND TABULATION OF VOTES

The Committee on Energy and Natural Resources, in open business session on March 15, 1995, by a unanimous vote of a quorum present, recommends that the Senate pass S. 444, without amendment.

The roll call vote on reporting the measure was 18 yeas, 0 nays, as follows:

YEAS	NAYS
Mr. Murkowski	
Mr. Hatfield *	
Mr. Domenici	
Mr. Nickles *	
Mr. Craig	
Mr. Thomas	
Mr. Kyl *	
Mr. Grams	
Mr. Jeffords *	
Mr. Burns	
Mr. Campbell	
Mr. Johnston	
Mr. Bumpers	
Mr. Ford	
Mr. Bradley	
Mr. Bingaman *	
Mr. Akaka	
Mr. Wellstone	

* Indicates voted by proxy.

SUMMARY OF MAJOR PROVISIONS

The legislation ensures that any repurchase plan must be put to a shareholder vote and approved by the shareholders as an amendment to the articles of incorporation of CIRI.

The decision to sell stock to CIRI by individual CIRI shareholders will be strictly voluntary.

The company will be required upon repurchase of the stock to cancel the stock.

The offer to repurchase will be made by CIRI on the same terms to all holders of the same class or series of stock.

There will be no repurchase allowed except those purchases conducted by the company. No individual, shareholder, director, or member of management will be allowed to purchase stock. In this way, native ownership and control of CIRI will be maintained, and

no individual shareholder will be allowed to amass stock that has been purchased from other shareholders.

No director or officer of the company will be allowed to tender stock for sale to the company.

Stock held by custodians, guardians, trustees or other similar persons will not be subject to repurchase.

Distributions that are set out in ANCSA that are based on shareholder count (such as section 7(i)) will remain unaffected by the sale of stock.

In determining the terms of any purchase offer, CIRI will be required to obtain the opinion of a recognized firm of investment bankers or other valuation experts, and will be entitled to rely on those good faith opinions.

COST AND BUDGETARY CONSIDERATIONS

The following estimate of costs of this measure has been provided by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, March 17, 1995.

Hon. FRANK H. MURKOWSKI,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 444, 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 Senate Committee on Energy and Natural Resources on March 15, 1995.

S. 444 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 S. 444 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, who can be reached at 226-2860.

Sincerely,

JAMES L. BLUM
(For June E. O'Neill, Director).

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 444. The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy. Little, if any, additional paperwork would result from the enactment of S. 444, as ordered reported.

EXECUTIVE COMMUNICATIONS

On March 21, the Committee on Energy and Natural Resources requested legislative reports from the Department of the Interior and the Office of Management and Budget setting forth Executive agency recommendations on S. 444. These reports had not been received at the time the report on S. 444 was filed. When these reports become available, the Chairman will request that they be printed in the Congressional Record for the advice of the Senate.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill S. 444, as ordered 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):

PUBLIC LAW 92-203 92D CONGRESS, H.R. 10367 DECEMBER 18,
1971

AN ACT to provide for the settlement of certain land claims of Alaska natives, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Alaska Native Claims Settlement Act".

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SEC. 7. * * *

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(h) SETTLEMENT COMMON STOCK

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(4) *COOK INLET REGIONAL CORPORATION.*—(A) *In this paragraph:*

(i) *The term "Cook Inlet Regional Corporation" means Cook Inlet Region, Incorporated.*

(ii) *The term "nonresident distribution right" means the right of owners of nonvillage shares to share in distributions made to shareholders pursuant to subsections (j) and (m).*

(iii) *The term "nonvillage shares" means shares of Settlement Common Stock owned by stockholders who are not residents of a Native village.*

(iv) *The term "nonvoting security" means a security, for only the nonresident rights that attach to a share of Settlement Common Stock, that does not have attached voting rights.*

(B) *Cook Inlet Regional Corporation may, by an amendment to its articles of incorporation made in accordance with the vot-*

ing standards under section 36(d)(1), purchase Settlement Common Stock of Cook Inlet Regional Corporation and all rights associated 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 Settlement Common Stock of the Cook Inlet Regional Corporation, to the Corporation.

(D) No purchase or sale 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 purchase and sale 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 nonvillage 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) nonvillage shares, including 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) nonvillage 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 nonvillage 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 nonvoting security.

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

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

(I) computing distributions under those subsections; and

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

(ii) may be sold to Cook Inlet Regional Corporation; and

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

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

(i) a nonvillage share with the nonresident rights that attach to such a share that is purchased pursuant to this paragraph shall be considered to be—

- (I) an outstanding share; and
- (II) for the purposes of subsection (m), a share of stock registered on the books of the Cook Inlet Regional Corporation in the name of a stockholder who is not a resident of a Native village;
- (ii) any amount of funds that would be distributable with respect to a nonvillage share or nonvoting security pursuant to subsection (j) or (m) shall be distributed by Cook Inlet Regional Corporation to the Corporation; and
- (iii) a village share that is purchased pursuant to this paragraph shall be considered to be—
 - (I) an outstanding share; and
 - (II) for the purposes of subsection (k), shares of stock registered on the books of the Cook Inlet Regional Corporation in the name of a resident of a Native village.
- (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 nonvillage share may rely upon the good faith opinion of a recognized firm of investment bankers or valuation experts.
 - (ii) Notwithstanding any other law, Cook Inlet Regional Corporation, a member of the board of directors of Cook Inlet Regional Corporation, and any firm or member of a firm of investment bankers or valuation experts who assists in a determination made under this subparagraph shall not 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 the 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 a 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 Natives and Native Americans. Proceeds from the sale of Settlement Common Stock shall not be excluded in determining eligibility for any needs-based program that may be provided by a Federal, State, or local agency.

* * * * *
SEC. 8. * * *

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(c) The provision of subsections (g), **[(h)]** *(h)* (other than paragraph (4)), of Section 7 . . .

