

Calendar No. 182

109TH CONGRESS }
1st Session }

SENATE

{ REPORT
{ 109-112

TO FACILITATE SHAREHOLDER CONSIDERATION OF PROPOSALS TO MAKE SETTLEMENT COMMON STOCK UNDER THE ALASKA NATIVE CLAIMS SETTLEMENT ACT AVAILABLE TO MISSED ENROLLEES, ELIGIBLE ELDERS, AND ELIGIBLE PERSONS BORN AFTER DECEMBER 18, 1971, AND FOR OTHER PURPOSES

JULY 28, 2005.—Ordered to be printed

Mr. MCCAIN, from the Committee on Indian Affairs,
submitted the following

R E P O R T

[To accompany S. 449]

The Committee on Indian Affairs, to which was referred the bill (S. 449), to facilitate shareholder consideration of proposals to make Settlement Common Stock under the Alaska Native Claims Settlement Act available to missed enrollees, eligible elders, and eligible persons born after December 18, 1971, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The bill's purpose is to rectify a problem in the Alaska Native Claims Settlement Act of 1971 (ANCSA), 43 U.S.C. § 1601 *et seq.* As the law now exists, Alaska Native Corporations (ANCs) may issue new stock to children of their original shareholders born after 1971 and missed enrollees and additional stock to Native Elders, but they may not do so unless a majority of the corporation's shares approve such a change at a meeting of the corporation's shareholders. Because not all shareholders attend corporation meetings, however, it is difficult at any meeting to achieve a vote in which a majority of all shareholders, whether or not represented at the meeting, agree to have new stock issued. The bill amends the law to require that only a majority of shares represented at the meeting itself assent to the issuance of new stock, so long as a quorum is present, in order for new stock to be issued.

BACKGROUND

Enacted in 1971, ANCSA was the vehicle through which Congress resolved the aboriginal land claims of Alaska Natives. ANCSA created 13 regional and over 200 village corporations. ANCSA provided that each Alaska Native living on December 18, 1971, was entitled to receive 100 shares of stock in a regional Alaska Native Corporation and 100 shares of stock in a village Alaska Native Corporation. ANCSA defines the term "Alaska Native" to mean 25% Alaska Native blood.

ANCSA stock is subject to restrictions on sale and transfer. These restrictions remain in place until lifted by a vote of the corporation's shareholders. As originally enacted, descendants of a Native corporation's original shareholders could only acquire stock in the corporation by inheritance. ANCSA was then amended to allow the shareholders of a Native corporation to gift shares to close relatives. Neither of these options was deemed adequate to assure that the children of ANCSA's original shareholders would have the opportunity to participate in the corporation.

At the request of the Alaska Native community, ANCSA was amended in 1988 to allow ANCs to issue up to 100 shares of new stock to:

- (1) Alaska Natives and their descendants born after December 18, 1971,
- (2) persons eligible to receive stock in an ANC under the 1971 legislation who failed to make timely application ("missed enrollees"), and
- (3) Native Elders, age 65 and over.¹

Corporations had difficulty issuing new stock under these amendments, however, because ANCSA requires that a majority of all existing corporation shares assent to the issuance of new shares during a shareholder meeting. In contrast, other business items presented at a shareholder meeting can ordinarily be approved by a simple majority of the shareholders present and voting at that meeting. This supermajority voting requirement—that all shares, not just shares represented at the meeting, assent to issuance of new stock—has proven unworkable because of the very large percentage of shares needed to be represented at the meeting in order for the proposal to be approved. As an example of the difficulty in achieving a supermajority vote, only three of the 13 regional Alaska Native Corporations have been able to take advantage of these provisions to issue new stock.

SUMMARY OF MAJOR PROVISIONS

The purpose in amending Pub. L. 92-203 through S. 449 is to enable Alaska Native Corporations that wish to issue new stock to more easily amend their articles of incorporation. The bill therefore includes articles of incorporation as a type of document that may be amended by a majority of the shareholders represented at a shareholder meeting. This amends the current law, which requires

¹Pub. L. 100-241. A subsequent amendment to ANCSA, Pub. L. 102-415, eliminated the 25% blood quantum requirements for issuing stock to afterborns and allowed corporations to issue stock to those born after December 18, 1971, based upon descendency rather than blood quantum.

that a majority of all shareholders vote to amend articles of incorporation.

LEGISLATIVE HISTORY

S. 449 was introduced on February 17, 2005, by Senator Murkowski, and was referred to the Committee on Indian Affairs. On June 29, 2005, the Committee favorably reported S. 449 for consideration by the full Senate.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTE

On June 29, 2005, at an open business meeting duly noticed, the Committee considered S. 449 and ordered the bill favorably reported to the full Senate with a recommendation that the bill do pass.

COST AND BUDGETARY CONSIDERATIONS

A nearly identical version of S. 449 passed out of Committee during the 108th Congress as part of a larger bill, S. 2843, The Native American Technical Corrections Act of 2004. The Congressional Budget Office estimated that implementing S. 2843 would have no significant impact on the federal budget and that enacting the bill would not affect direct spending or revenues. S. 2843 contained no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments. Because S. 449 is nearly identical to S. 2843, the Committee concludes that S. 449 has no cost or budgetary effects.

REGULATORY AND PAPERWORK IMPACT STATEMENT

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires that each report accompanying a bill evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill. The Committee has concluded that S. 449 will have few, if any, regulatory or paperwork requirements and impacts.

EXECUTIVE COMMUNICATIONS

The Committee has received no communications from the Executive Branch regarding S. 449.

CHANGES IN EXISTING LAW

In compliance with subsection 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill S. 449, 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

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(d) VOTING STANDARDS.

(1) Except as otherwise set forth in subsection [(d)](3) of this section, an amendment or resolution described in subsection (a)

shall be considered to be approved by the shareholders of a Native Corporation if it receives the affirmative vote of shares representing—

(A) a majority of the total voting power of the corporation, or

(B) a level of the total voting power of the corporation greater than a majority (but not greater than two-thirds of the total voting power of the corporation) if the corporation establishes such a level by an amendment to its articles of incorporation.

(2) A Native Corporation in amending its articles of incorporation pursuant to section 7(g)(2) to authorize the issuance of a new class or series of stock may provide that a majority (or more than a majority) of the shares of such class or series must vote in favor of an amendment or resolution described in subsection (a) (other than an amendment authorized by section 37 in order for such amendment or resolution to be approved.

(3) A resolution described in subsection (a)(3) **of this section** or an amendment to articles of incorporation under section 7(g)(1)(B) shall be considered to be approved by the shareholders of a Native Corporation if it receives the affirmative vote of shares representing—

(A) a majority of the shares present or represented by proxy at the meeting relating to **[such resolution,]** *the resolution or amendments to articles of incorporation*; or

(B) an amount of shares greater than a majority of the shares present or represented by proxy at the meeting relating to **[such resolution]** *the resolution or amendment to articles of incorporation* (but not greater than two-thirds of the total voting power of the corporation) if the corporation establishes such a level by an amendment to its articles of incorporation.