

UNRECOGNIZED SOUTHEAST ALASKA NATIVE
COMMUNITIES RECOGNITION ACT

SEPTEMBER 15, 1998.—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

DISSENTING VIEWS

[To accompany H.R. 2812]

[Including cost estimate of the Congressional Budget Office]

The Committee on Resources, to whom was referred the bill (H.R. 2812) to provide for the recognition of certain Native communities under the Alaska Native Claims Settlement Act, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE BILL

The purpose of H.R. 2812 is to provide for the recognition of certain Native communities under the Alaska Native Claims Settlement Act, and for other purposes.

BACKGROUND AND NEED FOR LEGISLATION

The purpose of H.R. 2812 is to recognize five communities in Southeast Alaska Haines, Ketchikan, Petersburg, Wrangell, and Tenakee under the Alaska Native Claims Settlement Act (ANCSA), and authorize each to form an urban corporation, except Tenakee which is authorized to form a group corporation. H.R. 2812 does not award any land or compensation to the newly formed corporations. Instead, the bill provides that only a future Act of Congress

may convey compensation (land, money, or other benefits) to the five new Native corporations.

BACKGROUND ON ANCSA

The aboriginal land claims of Alaska Natives were settled in the Alaska Native Claims Settlement Act of 1971 (ANCSA). ANCSA extinguished all Alaska Native claims based on aboriginal title, right, occupancy and use of Alaska's lands and waters. To compensate the Alaska Natives, ANCSA transferred approximately 44 million acres of public land (in fee simple title) and nearly \$1 billion to them. The compensation is intended to meet the social, economic, cultural and other needs of Alaska Natives. The land and cash compensation were not awarded to tribes, clans, or families, but to eligible private corporations organized by Alaska Natives. There are generally two types of corporations: corporations organized by village and those organized according to 12 geographic regions. All Alaska Natives are shareholders of a regional corporation, but not all belong to a village corporation. The law also prescribes the process for selecting, awarding, and distributing lands and funds to qualified corporations.

Generally, Native communities in Alaska are qualified to form Native corporations only if recognized in ANCSA, or if they meet certain criteria. However, section 16 of ANCSA addresses Native communities in the Southeast region of the State separately. Section 16 lists 12 Native communities that may form corporations, ten of which are Native villages, and two of which are "urban" communities (Juneau and Sitka) that were historically Native, but no longer considered "villages." Section 16 does not contain a process to determine whether an unrecognized community in Southeast Alaska is eligible to form a corporation.

There are several reasons for the special consideration given to Southeast Alaska Native communities. One is that there was an earlier land claims settlement for them: the 1959 Tlingit and Haida Settlement, which awarded \$7.5 million to tribes in Southeast. Another is that demographic and land ownership patterns in this area of Alaska are considerably different from the rest of the State.

Each corporation formed pursuant to section 16 was awarded 23,040 acres of land around the core township. Such property can be valuable for timber harvesting and for social, cultural, and subsistence benefits. Native residents of unrecognized communities in Southeast Alaska remain eligible to be at-large shareholders of Sealaska, the regional Native corporation.

LAND CLAIMS OF UNRECOGNIZED COMMUNITIES IN SOUTHEAST ALASKA

Haines, Ketchikan, Petersburg, Wrangell, and Tenakee, all located in Southeast Alaska, were not recognized under section 16 of ANCSA. After ANCSA was enacted, Native residents of these "unrecognized" communities appealed to the Secretary of the Interior to be included in the land claims settlement. Administrative appeals and mechanisms were subsequently exhausted by the villages without success.

The five unrecognized communities continued to press the government for recognition and inclusion in ANCSA. In response, Con-

gress in 1993 directed the Secretary of the Interior to examine why these five communities were not recognized in ANCSA. The Institute of Social and Economic Research (University of Alaska Anchorage) was contracted to study the issue, and in 1994 produced *A Study of Five Southeast Alaska Communities*. The report thoroughly examines the history and describes the status of the five communities' Native claims, and compares the attributes of these communities with those of Southeast Alaska communities that were allowed to form Native corporations. It notes that "the omission of the [five] communities is not clearly explained in any provision of ANCSA or in the accompanying conference report."

Despite appeals to the Interior Department, the land claims of the five unrecognized Native villages of Haines, Ketchikan, Petersburg, Wrangell, and Tenakee are unresolved.

SUMMARY OF H.R. 2812

H.R. 2812 grants recognition under the Alaska Native Claims Settlement Act to the five unrecognized Native communities. Haines, Ketchikan, Petersburg, and Wrangell are authorized to form urban corporations, and Tenakee is authorized to form a group corporation. However, the legislation neither authorizes the conveyance of land or compensation to the new corporations, nor creates an entitlement to public lands. Instead, the bill directs the Secretary of the Interior to submit a report to Congress recommending what land or other appropriate compensation should be awarded to the corporations. As introduced, the bill provides that any land or compensation to fully settle the unrecognized villages' land claims must be authorized by a separate Act of Congress.

H.R. 2812 justly and fairly grants the recognition sought by the five communities. Congress unintentionally left the five Native villages in Southeast Alaska out of ANCSA. The 1993 study referenced above provides a historical summary of Natives' ties to these communities. A close examination of the historical, cultural, and demographic characteristics of these communities establish the basis for recognizing their land claims, which have at least as much standing as those of several other Southeast Alaska Native villages recognized under section 16. Deprived of recognition and with an incomplete explanation for their omission from ANCSA, the five villages have been unable to form Native corporations, and do not share in the same social, cultural, and economic benefits as residents of villages elsewhere in the State.

This bill does not affect the land entitlements of the existing ANCSA Native corporations and has no impact on the ANCSA section 7(i) entitlements of the regional corporations

COMMITTEE ACTION

H.R. 2812 was introduced on November 4, 1997, by Congressman Don Young (R-AK). The bill was referred to the Committee on Resources. On February 25, 1998, the Committee held a hearing on H.R. 2812, where the Administration testified in opposition to the bill, the coalition of five communities recognized under the legislation testified in support, and an environmental organization testified in opposition. On May 20, 1998, the full Resources Committee

met to consider H.R. 2812. No amendments were offered and the bill was ordered favorably reported to the House of Representatives by a rollcall vote of 21 to 5, with one voting present, as follows:

Committee on Resources
U.S. House of Representatives
105th Congress

Full Committee

Date 5-20-98Roll No. 1

Bill No. H.R. 2812 Short Title "Unrecognized Southeast Alaska Native
Communities Recognition Act"

Amendment or matter voted on: FINAL PASSAGE

Member	Yea	Nay	Pres	Member	Yea	Nay	Pres
Mr. Young (Chairman)	X			Mr. Miller		X	
Mr. Tauzin	X			Mr. Markey			
Mr. Hansen	X			Mr. Rahall			
Mr. Saxton	X			Mr. Vento			
Mr. Gallegly	X			Mr. Kildee		X	
Mr. Duncan				Mr. DeFazio			
Mr. Hefley		X		Mr. Faleomavaega		X	
Mr. Doolittle	X			Mr. Abercrombie		X	
Mr. Gilchrest				Mr. Ortiz			
Mr. Calvert	X			Mr. Pickett			
Mr. Pombo	X			Mr. Pallone			
Mrs. Cubin	X			Mr. Dooley			
Mrs. Chenoweth			X	Mr. Romero-Barcelo			
Mrs. Linda Smith	X			Mr. Hinchey			
Mr. Radanovich	X			Mr. Underwood			
Mr. Jones				Mr. Farr			
Mr. Thornberry	X			Mr. Kennedy			
Mr. Shadegg	X			Mr. Adam Smith			
Mr. Ensign	X			Mr. Delahunt	X		
Mr. Bob Smith				Mr. John			
Mr. Cannon	X			Ms. Green			
Mr. Brady	X			Mr. Kind			
Mr. Peterson	X			Mr. Doggett			
Mr. Hill	X						
Mr. Schaffer	X						
Mr. Gibbons	X						
Mr. Crapo				TOTAL	21	5	1

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

With respect to the requirements of 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 on Resources' oversight findings and recommendations are reflected in the body of this report.

CONSTITUTIONAL AUTHORITY STATEMENT

Article I, section 8 of the Constitution of the United States grants Congress the authority to enact H.R. 2812.

COST OF THE LEGISLATION

Clause 7(a) 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. 2812. 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. 2812 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. 2812.

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. 2812 from the Director of the Congressional Budget Office.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 9, 1998.

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

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2812, the Unrecognized Southeast Alaska Native Communities Recognition Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Victoria V. Heid (for

federal costs), and Marjories Miller (for the state, local, and tribal impact).

Sincerely,

JUNE E. O'NEILL, *Director*.

Enclosure.

H.R. 2812—Unrecognized Southeast Alaska Native Communities Recognition Act

Summary: H.R. 2812 would amend the Alaska Native Claims Settlement Act by allowing five communities in southeast Alaska to organize as Native corporations: four as urban corporations and one as a group corporation.

CBO estimates that implementing this bill would cost about \$1 million over the 1999–2003 period for grants to the five communities, assuming appropriation of the authorized amounts. Enacting the bill would not affect direct spending or receipts; therefore, pay-as-you-go procedures would not apply. H.R. 2812 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would have no significant impact on the budgets of state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 2812 is shown in the following table. The costs of this legislation fall within budget function 300 (natural resources and the environment).

[By fiscal year, in millions of dollars]

	1998	1999	2000	2001	2002	2003
SPENDING SUBJECT TO APPROPRIATION						
Estimated authorization level	0	1	0	0	0	0
Estimated outlays	0	(¹)	(¹)	(¹)	0	0

¹ Less than \$500,000.

Basis of estimate: H.R. 2812 would amend the Alaska Native Claims Settlement Act by allowing the Native residents of Haines, Ketchikan, Petersburg, and Wrangell, in southeast Alaska, to organize as urban corporations, and by allowing the Native residents of Tenakee, Alaska, to organize as a group corporation. H.R. 2812 would authorize grants of \$250,000 to each of the five Native communities for planning, development, and organization of the new corporations. The bill states that none of the changes made by H.R. 2812 would create any entitlement to federal lands for the new corporations without a subsequent act of the Congress. The bill would direct the Secretary of the Interior to prepare, by December 31, 1998, a report making recommendations to the Congress regarding lands and other appropriate compensation to be provided to the new corporations. CBO expects that preparing the report would have a negligible cost.

Pay-as-you-go considerations: None.

Estimated impact on State, local and tribal governments: H.R. 2812 contains no intergovernmental mandates as defined in UMRA and would have no significant impact on the budgets of state, local, or tribal governments. This bill would give the new corporations no rights to property or resources, but it would direct the Secretary of the Interior to make recommendations to the Congress regarding

lands and other appropriate compensation to be provided to these corporations. Further legislation would be required to provide any such compensation.

Estimated impact on the private sector: This bill would impose no new private-sector mandates as defined in UMRA.

Estimate prepared by: Federal Costs: Victoria V. Heid. Impact on State, Local, and Tribal Governments: Marjorie Miller.

Estimate approved by: Robert A. Sunshine, Deputy Assistant Director for Budget Analysis.

COMPLIANCE WITH PUBLIC LAW 104-4

H.R. 2812 contains no unfunded mandates.

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 (new matter is printed in italic and existing law in which no change is proposed is shown in roman):

ALASKA NATIVE CLAIMS SETTLEMENT ACT

* * * * *

REGIONAL CORPORATIONS

SEC. 7. (a) * * *

* * * * *

(j) During the five years following the enactment of this Act, not less than 10% of all corporate funds received by each of the twelve Regional Corporations under section 6 (Alaska Native Fund), and under subsection (i) (revenues from the timber resources and subsurface estate patented to it pursuant to this Act), and all other net income, shall be distributed among the stockholders of the twelve Regional Corporations. Not less than 45% of funds from such sources during the first five-year period, and 50% thereafter, shall be distributed among the Village Corporations in the region and the class of stockholders who are not residents of those villages, as provided in subsection to it. In the case of the thirteenth Regional Corporation, if organized, not less than 50% of all corporate funds received under section 6 shall be distributed to the stockholders. *Native members of the communities of Haines, Ketchikan, Petersburg, Tenakee, and Wrangell who become shareholders in an Urban or Group Corporation for such a community shall continue to be eligible to receive distributions under this subsection as at-large shareholders of Sealaska Corporation.*

* * * * *

(r) *No provision of the Unrecognized Southeast Alaska Native Communities Recognition Act shall affect the ratio for determination of distribution of revenues among Native Corporations under this section of the Act and the 1982 Section 7(i) Settlement Agreement among the Regional Corporations or among Village Corporations under subsection (j).*

VILLAGE CORPORATIONS

SEC. 8. (a) * * *

* * * * *

(d)(1) *The Secretary shall enroll to each of the Urban Corporations for Haines, Ketchikan, Petersburg, or Wrangell those individual Natives who enrolled under this Act to Haines, Ketchikan, Petersburg, or Wrangell, and shall enroll to the Group Corporation for Tenakee those individual Natives who enrolled under this Act to Tenakee.*

(2) *Those Natives who, pursuant to paragraph (1), are enrolled to an Urban Corporation for Haines, Ketchikan, Petersburg, or Wrangell, or to a Group Corporation for Tenakee, and who were enrolled as shareholders of the Regional Corporation for southeast Alaska on or before March 30, 1973, shall receive 100 shares of Settlement Common Stock in such Urban or Group Corporation.*

(3) *A Native who has received shares of stock in the Regional Corporation for southeast Alaska through inheritance from a decedent Native who originally enrolled to Haines, Ketchikan, Petersburg, Tenakee, or Wrangell, which decedent Native was not a shareholder in a Village, Group or Urban Corporation, shall receive the identical number of shares of Settlement Common Stock in the Urban Corporation for Haines, Ketchikan, Petersburg, or Wrangell, or in the Group Corporation for Tenakee, as the number of shares inherited by that Native from the decedent Native who would have been eligible to be enrolled to such Urban or Group Corporation.*

(4) *Nothing in this subsection shall affect entitlement to land of any Regional Corporation pursuant to section 12(b) or section 14(h)(8).*

* * * * *

THE TLINGIT-HAIDA SETTLEMENT

SEC. 16. (a) * * *

* * * * *

(e)(1) *The Native residents of each of the Native villages of Haines, Ketchikan, Petersburg, and Wrangell, Alaska, may organize as an Urban Corporation.*

(2) *The Native residents of the Native village of Tenakee, Alaska, may organize as a Group Corporation.*

(3) *Nothing in this subsection shall affect any entitlement to land of any Native Corporation pursuant to this Act or any other provision of law.*

* * * * *

DISSENTING VIEWS ON H.R. 2812

We strongly oppose this legislation.

H.R. 2812 designates five new Native development corporations to be capitalized with land from the Tongass National Forest or other assets as determined by a future Congress. The premise underlying the bill is that Natives in these five Southeast Alaska communities did not receive the same benefits from the 1971 Alaska Native Claims Settlement Act as did Natives in other Alaskan villages.

We oppose reopening the 27 year-old settlement on the rationale that some Alaska Natives got a better deal than others. In enacting the 1971 Settlement Act—which conveyed over 40 million acres of land and nearly \$1 billion in compensation to Alaska Natives—Congress in fact did not exclude Natives in these five Southeast communities. All eligible Natives were enrolled as at-large shareholders in the Sealaska regional corporation. In addition to financial compensation, Sealaska received about 313,000 acres of surface lands and 589,000 acres of subsurface, including some of the most productive timber lands in Southeast Alaska.

It is important to recognize that Natives in these five communities are not “landless.” They are shareholders of Sealaska, one of the most land-rich Native regional corporations in Alaska, a corporation that has generated significant revenues, primarily from clear-cutting the old-growth forest on its lands and exporting the logs.

There is no question that the 1971 Alaska Native Claims Settlement Act did not treat equally every community and every region in Alaska. There are thousands of other “at-large” shareholders of regional corporations who did not receive dual-enrollment in village corporations and who are not included in this bill. Native shareholders of some regional corporations, such as the Arctic Slope Regional Corporation on the North Slope, received more economically valuable assets than did other regional corporations such as Calista in the southwest. In recognition of these regional inequities, Congress included section 7(I) in the 1971 Settlement Act, requiring that revenue from timber, mineral and oil and gas development in any one region be distributed amongst all the regions.

Both the Secretaries of Agriculture and Interior have stated that they will recommend this bill be vetoed if enacted by Congress. The Administration testified before the Committee that there is “no legal or equitable justification” for Congress to rewrite the 1971 Settlement Act as provided for in H.R. 2812.

Among the Administration’s concerns is the likelihood of future land conveyances from the Tongass National Forest if five new development corporations are created by Congress. Diverse interests in Alaska, including the Southeast Alaska Conservation Council and the Alaska Outdoor Council (an affiliate of the National Rifle

Association), also oppose this bill because of concerns that it will ultimately lead to additional conveyances of important national forest lands out of public ownership.

We share these concerns and urge the House to reject this legislation.

GEORGE MILLER.
BRUCE F. VENTO.
MAURICE HINCHEY.

