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May 4, 2026

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VIA E-MAIL

The Honorable Jesse Bjorkman
Chair, Senate Labor and Commerce Committee
Alaska State Capitol
Juneau, Alaska 99801-1182

Re: Proposed Amendment to AS 45.55.139

Dear Chair Bjorkman and Members of the Committee:

Thank you for the opportunity to testify before the Senate Labor and Commerce Committee (the "Committee") on behalf of the Alaska Native Village Corporation Association in support of the proposed amendment to AS 45.55.139, which would calibrate the 500-shareholder trigger by reference to original ANCSA enrollees rather than total record shareholders. I write to follow up on two questions raised during the hearing, both of which deserve a fuller answer than I was able to provide in the time allotted:

1. What information would an ANC otherwise subject to SEC jurisdiction be required to file publicly that its shareholders would not receive if the corporation were exempt from 3 AAC 08.345?

2. If large public companies are required to file extensive public information with the SEC, why shouldn't ANCs be required to do the same?

The short answer to both is that Congress, through ANCSA Section 1625 (43 U.S.C. § 1625), has already considered and resolved precisely these issues at the federal level, and the proposed Alaska amendment is consistent with, and faithful to, the framework Congress built.

This letter also addresses two further points that bear on the Committee's consideration: (i) the disparate treatment ANCs already receive compared to other non-public Alaska C-corporations, and (ii) the substantial and growing compliance burden imposed by the Division's proxy-solicitation regulations as they apply to ordinary internet and social-media communications about ANC annual meetings.

I. Executive Summary

The proposed amendment to AS 45.55.139 would recalibrate the statute's 500-shareholder trigger by reference to original ANCSA enrollees rather than total record shareholders. The amendment is narrow, principled, and consistent with the federal framework Congress built in ANCSA Section

1625, which itself excludes Settlement Common Stock holders from the SEC's analogous Section 12(g) shareholder-count trigger for the same underlying reason.

Shareholder information rights do not depend on AS 45.55.139 and would not be reduced by the amendment. ANCSA Section 7(o) and Section 1625(c) require every ANC, regardless of size or AS 45.55.139 status, to deliver to its shareholders an annual report containing audited financial statements and a substantive description of operations. The Alaska Corporations Code adds independent inspection rights, financial-statement rights, meeting-and-voting rights, and derivative-action rights. The proposed amendment touches none of this.

ANCs are already subject to far more stringent disclosure than any other non-public Alaska C-corporation. A privately-held Alaska C-corporation files only a biennial report listing its officers and a $100 fee, no financial statements, no audited financials, no governance disclosures, no proxy filings of any kind. ANCs subject to AS 45.55.139, by contrast, file annual reports with audited financials, detailed proxy statements, all proxy forms and solicitation materials, executive compensation and related-party disclosures, participant information, and routine social-media communications about their annual meetings. Even after the proposed amendment, ANCs subject to AS 45.55.139 will continue to face disclosure obligations far exceeding those imposed on any other privately-held Alaska corporation.

Nor should ANCs be equated with publicly traded companies regulated by the SEC. The SEC's public-disclosure regime exists primarily to protect public trading markets, to ensure price formation, equal access to material information, insider-trading prevention, and informed investor decision-making in an environment where shares change hands at market prices. None of those rationales applies to ANC stock, which cannot be sold, pledged, or otherwise voluntarily alienated under ANCSA Section 7(h). There is no public market, no exchange, no continuous price discovery, no traders to protect, and no prospective investors evaluating buying decisions.

Finally, the Division's expansive definitions of "proxy" and "solicitation" in 3 AAC 08.365 — combined with the regulatory presumption in 3 AAC 08.312(b) that any internet posting on an "electronic forum" (Facebook, Instagram, X, LinkedIn, YouTube, and similar platforms) reaches at least 30 Alaska resident shareholders, results in a substantial compliance burden. The cumulative effect is that routine social-media communications about an ANC's annual meeting are presumptively reportable proxy solicitations, requiring concurrent filing with the Division on penalty of civil fines. This burden falls disproportionately on the small village corporations the amendment would relieve from coverage, corporations without dedicated communications staff or in-house counsel, whose board members and shareholders communicate about the annual meeting on community social-media platforms in the ordinary course. The amendment removes this burden from the smallest ANCs without affecting the Division's enforcement authority over the larger ANCs that trigger the threshold based on original ANCSA enrollment.

II. ANC Shareholders Already Have Comprehensive Information Rights Under Federal and State Law — Independent of AS 45.55.139

It is important for the Committee to understand that AS 45.55.139 and the Division's implementing regulations at 3 AAC 08 do not stand alone. They operate on top of a robust federal-and-state floor of mandatory shareholder disclosures that applies to every ANC — large or small, regulated under AS 45.55.139 or not. Removing the smallest ANCs from the AS 45.55.139 regime does not remove that floor.

ANCSA Section 7(o) (43 U.S.C. § 1606(o)) requires every ANC, regardless of size, to furnish shareholders with an annual report that includes audited financial statements, a description of the corporation's operations, and other prescribed information. This obligation runs directly from federal law and is not contingent on the corporation's size or regulatory status under Alaska law.

ANCSA Section 1625(c) (43 U.S.C. § 1625(c)) is even more pointed. It provides that a Native Corporation that "but for this section, would be subject to the provisions of the Securities Exchange Act of 1934 . . . shall annually prepare and transmit to its shareholders a report that contains substantially all the information required to be included in an annual report to shareholders by a corporation subject to that Act." In other words, Congress decided that even though ANCs are exempt from registration and reporting under the Securities Exchange Act of 1934, the corporations large enough to otherwise meet the Securities Exchange Act of 1934 thresholds must still provide their shareholders with substantially the same content that an SEC annual report to shareholders would contain.

ANCSA Section 1625(d) then carefully calibrates the trigger for that obligation. For purposes of determining applicability of the Securities Exchange Act of 1934 registration requirements to a Native Corporation, "holders of Settlement Common Stock shall be excluded from the calculation of the number of shareholders of record pursuant to section 12(g) of that Act." Congress thus expressly recognized that the SEC's 12(g) shareholder-count trigger, designed for public-trading companies, should not sweep in ANCs by virtue of their original ANCSA-enrolled shareholder base. That is the same conceptual move — at the federal level — that the proposed amendment makes at the state level.

Furthermore, the Alaska Corporations Code (AS 10.06) independently affords shareholders of every Alaska corporation, including every ANC, statutory rights to inspect books and records, to receive financial statements, to receive notice of and vote at annual meetings, to demand special meetings under defined circumstances, and to bring derivative actions. None of those rights depend on AS 45.55.139.

The result of this stacked regime is straightforward. A shareholder of an ANC that is exempt from AS 45.55.139 still receives, as a matter of federal and state law: (i) audited annual financial statements, (ii) a narrative annual report substantially equivalent in content to an SEC Securities Exchange Act of 1934 annual report (for any ANC that would otherwise meet the Securities Exchange Act of 1934 threshold), (iii) inspection rights to corporate books and records, (iv) statutory financial statements upon request, and (v) full corporate governance protections under Alaska law. The amendment changes none of this.

III. ANCs Are Already Treated Far More Stringently Than Other Non-Public Alaska C-Corporations

It is also important for the Committee to appreciate the regulatory disparity that already exists between ANCs and other non-public Alaska C-corporations. ANCs, like the vast majority of Alaska corporations, are C-corporations whose stock does not trade on any public exchange. The proposed amendment does not give ANCs a disclosure regime more favorable than other Alaska C-corporations — even after the amendment, ANCs would remain subject to substantially more disclosure obligations than any other privately held Alaska corporation.

An ordinary, privately-held Alaska C-corporation that is not subject to AS 45.55.139 has minimal corporate-level filing obligations with the State. Under the framework administered by the Division of Corporations, Business and Professional Licensing, that corporation files only:

- A biennial report identifying its officers, directors, and registered agent, with basic NAICS code information; and
- A $100 biennial filing fee.

That is the entirety of what a privately-held Alaska C-corporation owes the State by way of corporate-level disclosure. There is no requirement to file financial statements with the State. There is no requirement to file audited financials. There is no narrative business description, no governance disclosure, no proxy filing, no related-party-transaction disclosure, and no annual report of any kind.

ANCs subject to AS 45.55.139, by contrast, even though they are themselves C-corporations whose stock is not publicly traded, are required to file with the Division of Banking & Securities a substantial body of additional material under 3 AAC 08, including:

- Annual reports including audited financial statements;
- Detailed proxy statements with extensive prescribed content (board solicitations under 3 AAC 08.345 and non-board solicitations under 3 AAC 08.355);
- All proxy forms, consents, authorizations, and revocations distributed to shareholders;
- Disclosure of director and executive officer compensation, related-party transactions, financial transactions with shareholders, and substantial direct or indirect interests of participants;
- Information about every participant in any proxy solicitation; and
- All board and shareholder solicitation communications relating to annual meetings, including, as discussed in Section VI below, communications posted to the Internet and social media.

The disparity is striking. An Alaska C-corporation engaged in oil-field services, a privately-held Alaska construction firm, a closely-held Alaska family-owned manufacturing business, an Alaska-incorporated software company, an Alaska-incorporated real estate holding company , none of these are subject to the disclosure regime that ANCs face. Each files a biennial report and a $100 fee. ANCs file all of that and substantially more.

That regulatory mismatch is the rationale for the 500-shareholder threshold in the first place. The threshold was meant to identify only those ANCs of sufficient size and complexity to warrant a public-company-like disclosure overlay. The threshold has become unmoored from its original calibration because of generational inheritance, with the result that smaller and smaller village corporations are being pulled into a regime no other private Alaska C-corporation is subject to. The proposed amendment restores the original calibration. Even after the amendment, ANCs subject to AS 45.55.139 will continue to face disclosure obligations far exceeding those imposed on any other non-public Alaska corporation, and ANCs no longer subject to AS 45.55.139 will continue to provide their shareholders with substantially more disclosure than a privately held Alaska C-corporation provides to its own owners, because federal law requires it.

IV. What Would Be in a Public SEC Filing That Shareholders Would Not Receive Under a 3 AAC 08.345 Exemption?

A public company subject to the Securities Exchange Act of 1934 files (i) a Form 10-K annual report, (ii) Form 10-Q quarterly reports, (iii) Form 8-K current reports for material events, (iv) a Schedule 14A proxy statement in connection with each annual meeting, (v) Section 16 insider transaction reports (Forms 3, 4, and 5), (vi) Schedule 13D and 13G beneficial-ownership reports, and (vii) the glossy "annual report to shareholders" that customarily accompanies the proxy statement. Cumulatively, these filings include:

- Audited financial statements (balance sheet, income statement, cash flow statement, statement of stockholders' equity, and notes);
- Management's Discussion and Analysis of Financial Condition and Results of Operations (MD&A);
- Description of business, properties, and material legal proceedings;
- Risk factors;
- Director and executive officer biographies and qualifications;
- Detailed executive compensation disclosure;
- Related-party transaction disclosures;
- Beneficial-ownership tables for officers, directors, and 5%-or-greater shareholders;
- Director independence determinations and committee composition;
- Audit committee report and audit-fee disclosure;
- Code of ethics disclosures;
- Material current events on Form 8-K (acquisitions, dispositions, debt issuances, leadership changes, and so on); and
- Insider trading reports under Section 16 and beneficial ownership reports under Sections 13(d) and 13(g).

ANCSA Section 7(o) requires every ANC, regardless of size, to provide its shareholders the following:

- an annual report containing audited financial statements (with notes),
- a description of the corporation's operations, and
- a summary of the corporation's business activities, results of operations, and financial condition for the year.

Thus, all ANCs, include those that would fall under the 500 shareholder threshold, are required by ANCSA to provide this information to their shareholders annually. This is a substantial disclosure obligation that is in addition to the Alaska Corporations Code, which gives every ANC shareholder additional rights to inspect books and records, to receive financial statements upon request, and to receive notice of and vote at annual meetings.

V. If Public Companies Must File Publicly with the SEC, Why Shouldn't ANCs?

The SEC's Securities Exchange Act of 1934 public-disclosure regime exists primarily to ensure that public securities markets function fairly and efficiently. Its core animating principles include:

- Market integrity and price formation. When stock trades continuously on a public exchange, investors need timely public information so that prices reflect available facts and so that no participant trades on materially undisclosed information.

- Equal access to material information. The 8-K continuous-disclosure regime, the Regulation FD selective-disclosure prohibition, and the Section 10(b)/Rule 10b-5 prohibition on insider trading all flow from the principle that material information cannot be selectively shared with some market participants while withheld from others.

- Insider-trading prevention. Section 16 insider-trading reports, Schedule 13D/13G beneficial-ownership reports, and Form 4 transaction reports exist to alert the market to ownership changes that may affect trading prices.

- Investor decision-making. Annual and quarterly reports (10-K, 10-Q) and proxy statements (DEF 14A) provide prospective and current investors with the information they need to decide whether to buy, sell, or hold.

Every one of these rationales presupposes a public trading market in which shares change hands between willing buyers and willing sellers at market prices, and SEC disclosures are required to ensure a fair market for investors.

Those rationales do not apply to ANCs because ANC stock does not trade. ANCSA Section 7(h) (43 U.S.C. § 1606(h)) prohibits the sale, pledge, assignment, or other voluntary alienation of ANC stock so long as the alienability restrictions remain in effect, and every ANC has elected to keep those restrictions in place. ANC stock cannot be bought or sold. There is no public market. There is no exchange. There is no continuous price discovery. There are no traders to protect from insider

trading. There are no prospective investors evaluating whether to buy or sell. The only people with an economic interest in an ANC's shares are the existing shareholders themselves — and they receive comprehensive information directly from the corporation under ANCSA Section 7(o), Section 1625(c), and the Alaska Corporations Code.

In other words, the public-disclosure scaffolding the SEC builds for tradable securities is solving problems that ANCs do not have. There is no market that needs material information to set a price. There are no would-be purchasers who need a 10-K to evaluate a buying decision. There are no insiders to police because there are no trades. The same distinction explains why no other privately-held Alaska C-corporation is subjected to Securities Exchange Act of 1934-style public disclosure either.

The proposal before this Committee does not weaken substantive disclosure to shareholders, those rights flow from Section 7(o), Section 1625(c), and the Alaska Corporations Code, none of which the amendment touches. It removes only the state-level public-record layer for the smallest ANCs whose shareholder counts have crossed the 500-person threshold solely through inheritance.

VI. The Significant Compliance Burden Imposed by the Division's Expansive Definition of Proxy and Solicitation

The Division's proxy-solicitation regulations, even apart from the annual report and proxy-statement filing obligations themselves, impose a compliance burden on ANCs that has expanded substantially in the digital era, in ways that would surprise even sophisticated corporate practitioners and that are particularly burdensome for the small village corporations the proposed amendment would relieve from coverage.

Under 3 AAC 08.365(14), a "proxy statement" means "a letter, publication, press release, advertisement, radio/television script or tape, or other communication of any type which is made available to shareholders under circumstances reasonably calculated to result in the procurement, withholding, or revocation of a proxy." Under 3 AAC 08.365(16), "solicitation" correspondingly means a request to execute, not execute, or revoke a proxy, or the distribution of a proxy or "other communication to shareholders under circumstances reasonably calculated to result in the procurement, withholding, or revocation of a proxy."

These definitions reach far beyond what a layperson, or even a non-securities lawyer, would intuitively recognize as a "proxy." They reach virtually any communication that could plausibly be expected to influence whether a shareholder grants, withholds, or revokes a proxy in connection with the annual meeting.

Moreover, 3 AAC 08.312(a) provides that a person who posts "an annual report, proxy, consent or authorization, proxy statement or other material relating to proxy solicitation on the Internet, including on an electric forum, is responsible for filing it with the administrator as required by AS 45.55.139." 3 AAC 08.312(b) then establishes the critical regulatory presumption: "A posting on an electric forum is presumed to be distributed, published, or made available to at least 30 Alaska resident shareholders under AS 45.55.139." "Electronic forum" is in turn defined at 3 AAC

08.365(17) to include blogs, websites that allow reader comments, social-networking websites, microblogging websites, and other online community-communication platforms — i.e., Facebook, Instagram, X (Twitter), LinkedIn, YouTube, TikTok, Reddit, Discord, and effectively any modern internet platform.

The cumulative effect of these provisions is that virtually any internet posting that touches on the corporation's annual meeting, whether by the corporation, by a director, by an officer, or by a shareholder, is presumptively a reportable proxy solicitation, triggering an obligation to file a copy of the posting with the Division concurrent with its publication and to ensure that posting independently complies with the substantive content requirements of 3 AAC 08.345 or 3 AAC 08.355.

In practical terms, this means an ANC must file with the Division the screenshots of social-media posts about its annual meeting. Examples of communications that the regulations, as written and as enforced, treat as reportable proxy solicitations include:

- A Facebook post by a director that mentions the upcoming annual meeting and encourages shareholders to attend or vote;
- An Instagram story announcing a community Q&A about the corporation's annual meeting;
- A blog or news post by a shareholder critical of the slate of board candidates;
- A tweet or X post from the CEO encouraging shareholders to vote;
- A YouTube or Vimeo video from a shareholder advocating for a particular board candidate or against a particular proposal;
- A LinkedIn post discussing the corporation's recent results in connection with the upcoming meeting; and
- A community Facebook group post by an officer reminding shareholders to mail their proxy cards.

Each of those triggers an obligation to file a screenshot or other copy of the post with the Division concurrent with the posting, with all required content disclosures, on penalty of civil fines and other enforcement action.

his burden falls disproportionately on the small ANCs the proposed amendment would relieve. The small village corporations whose shareholder counts have crossed 500 only through inheritance are the ANCs least equipped to bear this compliance burden. They generally do not have dedicated communications staff, in-house counsel, or compliance teams. Board members, officers, and shareholders of these corporations frequently use Facebook, Instagram, and other community platforms to discuss the annual meeting — that is how rural Alaska communities communicate. Each such post creates a filing obligation, with the risk of civil fines for non-compliance and the chilling effect that follows. The result is that small ANCs are forced either to incur outside counsel costs to police every social-media post about their meetings, to risk enforcement action, or to suppress legitimate community communication about the corporation's affairs.

The proposed amendment removes this burden from the smallest ANCs without affecting the Division's authority to enforce the proxy regulations against the larger ANCs that trigger the AS 45.55.139 threshold based on original ANCSA enrollment. The corporations that genuinely warrant a public-company-style proxy regime remain subject to it; the corporations that do not, are relieved of it.

VII. Conclusion

The proposed amendment to AS 45.55.139 does not reduce shareholder protection. It reduces a layer of state public-record duplication for the smallest ANCs, corporations whose shareholder rolls have grown not because of investor demand or corporate growth, but because of generational inheritance over five decades of a closed federal settlement. The information rights that matter to shareholders are preserved by ANCSA Section 7(o), ANCSA Section 1625(c), and the Alaska Corporations Code. The information rights that exist primarily to serve a public trading market do not need to be preserved because no such market exists for ANC stock, a determination Congress itself has already made.

Even after the amendment, ANCs subject to AS 45.55.139 will continue to face disclosure obligations far exceeding those imposed on any other privately held Alaska C-corporation, and ANCs no longer subject to AS 45.55.139 will continue to provide their shareholders with substantially more disclosure than any privately held Alaska C-corporation provides to its own owners — because federal law requires it. The smallest ANCs will, in addition, be relieved of an expansive proxy-solicitation regime that as currently written and enforced makes routine community internet communications about an annual meeting into reportable filings.

I am grateful for the Committee's careful attention to these questions and would welcome the opportunity to provide additional information or testimony if it would assist the Committee's deliberations.

Respectfully,

SCHWABE, WILLIAMSON & WYATT, P.C.

Christopher J. Slottee

CJS:sasc