

HOUSE BILL NO. 501

**IN THE LEGISLATURE OF THE STATE OF ALASKA
EIGHTEENTH LEGISLATURE - SECOND SESSION**

BY REPRESENTATIVE WILLIAMS BY REQUEST

Introduced: 2/14/94

Referred: Community & Regional Affairs, Judiciary

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to Native corporations; and providing for an effective date."**

2 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

3 *** Section 1. AS 10.06 is amended by adding a new section to read:**

4 **Sec. 10.06.959. NATIVE CORPORATION SHAREHOLDER VOTES ON**
5 **PETITION OR DEMAND. (a) When this chapter or another law, including 43 U.S.C.**
6 **1629b, entitles shareholders of a corporation to petition or otherwise demand to bring**
7 **a matter to the shareholders for a vote, the procedure for securing the approval of the**
8 **requisite number of shareholders to present the petition must comply with this section,**
9 **if the corporation is organized under 43 U.S.C. 1601 - 1629e (Alaska Native Claims**
10 **Settlement Act).**

11 **(b) Before undertaking to obtain shareholder signatures for a petition, the**
12 **sponsor of the petition shall first apply in writing to the secretary of the corporation**
13 **at the corporation's registered office for a petition form to begin the undertaking. The**
14 **application must identify the petition sought to be made to the corporation, the name**

1 and address of every sponsor of the petition, the source of any actual, proposed, or
2 anticipated funding or contribution of goods or services to the petition solicitation
3 effort in excess of \$500 in the aggregate, and the name and address of a contact person
4 and an alternate contact person to whom all correspondence relating to the petition
5 may be sent.

6 (c) If the secretary determines that an application for a petition form meets the
7 requirements of (b) of this section, the secretary shall issue a petition form to the
8 contact person designated in the application and to each sponsor who appears in person
9 in the secretary's office or whose mailing address is provided to the secretary.

10 (d) The petition form issued by the secretary under (c) of this section must
11 contain

12 (1) the subject matter of the petition, including, in the case of a petition
13 to remove a director, the name of the director to be removed, the date the director's
14 current term expires, and the sponsor's nominee, if any, to serve the unexpired portion
15 of the director's term;

16 (2) a statement whether the subject matter of the petition is intended
17 to be binding or nonbinding on the corporation and, if the subject matter involves
18 amending the articles or bylaws of the corporation, the proposed language of the
19 amendment;

20 (3) the date the petition form is issued by the secretary;

21 (4) a notice that the subject matter of the petition is to be voted on at
22 an annual or a special meeting of shareholders;

23 (5) spaces for each signature on the petition, the printed name of the
24 signer, the number of shares held by the signer in the corporation, the date of the
25 signature, and the residence and mailing addresses of the signer;

26 (6) a statement, prepared by the secretary, of the total number of shares
27 that must be represented by signatures on the petition to entitle the subject matter of
28 the petition to be considered at a meeting of shareholders;

29 (7) a space for indicating the number of signatures on the petition;

30 (8) a statement, with spaces for the sponsor's sworn signature and date
31 of signing, that the sponsor personally circulated the petition, that all signatures were

1 made in the presence of the sponsor, and that the sponsor believes the signatures to be
2 those of the persons whose names they propose to be.

3 (e) A petition containing the minimum number of signatures required by this
4 chapter, another law, or the corporation's articles or bylaws, to entitle the subject
5 matter of the petition to be considered at a meeting of shareholders may be filed with
6 the secretary within 60 days after the secretary mails a copy of the petition form to the
7 contact person designated for the sponsor, as provided in (c) of this section, or within
8 five business days after the sponsor has obtained signatures representing the minimum
9 number of shares specified by the secretary under (d)(6) of this section, whichever
10 event is later.

11 (f) The petition statement required by (d)(8) of this section shall be completed
12 and signed by a sponsor on each petition form. Signatures on a petition form must be
13 in ink or indelible pencil, and must be legible or accompanied by a legible printed
14 name. Copies of the signed petition forms shall be assembled and submitted to the
15 secretary as a single instrument. The signatures on the petition must be valid and
16 represent the minimum number of shares required by this chapter, another provision
17 of law, or the articles or bylaws of the corporation, to entitle the subject matter of the
18 petition to be presented to and voted upon at a meeting of shareholders.

19 (g) The petition forms shall be filed with the secretary within the time period,
20 if any, required by this chapter or by the articles or bylaws of the corporation before
21 the next shareholder meeting.

22 (h) Within 10 days after the date an executed petition form is submitted to the
23 secretary for verification, the secretary shall verify the validity of the signatures on the
24 petition. If the valid signatures do not meet the minimum number specified by (d)(6)
25 of this section, the secretary shall notify by certified mail the contact person designated
26 under (b) of this section of each signature that the secretary determines to be invalid.
27 The notification must specify the nature of the invalidity.

28 (i) The secretary shall determine that a signature is invalid if the signer has
29 withdrawn the signature by written notice filed with the secretary before the petition
30 is verified by the secretary, if the signature is illegible and not accompanied by a
31 legible printed name, if the signature consists of an "X" or similar designation and is

1 not accompanied by the signatures of two witnesses other than a sponsor of the
2 petition, and if the secretary determines on the basis of substantial objective evidence
3 that the signature is not a legally authorized and binding signature.

4 (j) Petition forms that do not contain valid signatures representing the
5 minimum number of shares specified by (d)(6) of this section may be supplemented
6 with additional signatures obtained and submitted to the secretary before the 11th day
7 after the day when the secretary furnishes the notice of the invalidity of the signatures
8 to the contact person if

9 (1) the petition forms contain signatures representing the minimum
10 number of shares specified in (d)(6) of this section, including both valid and invalid
11 signatures; and

12 (2) the supplementary petition is filed within the minimum period of
13 time required by this chapter, another law, or the articles or bylaws of the corporation.

14 (k) The secretary shall reject a petition that does not contain valid signatures
15 representing the minimum number of shares specified in (d)(6) of this section unless
16 supplemented under (j) of this section. Within 10 days after a supplementary submittal
17 under (j) of this section, the secretary shall verify the supplemental signatures if the
18 secretary determines that they are valid. If, after the petitions have been supplemented
19 once under (j) of this section, the petitions still do not contain valid signatures
20 representing the minimum number of shares specified by (d)(6) of this section, the
21 secretary shall reject the petition in writing and notify the contact person by certified
22 mail of the rejection.

23 (l) If the secretary rejects the petition, the sponsors of the petition may file a
24 protest with the commissioner within seven days after receipt of the notice of rejection.
25 The commissioner shall hold a hearing and decide the protest. If the commissioner
26 upholds the protest, the subject matter of the petition shall be considered at the next
27 shareholders' meeting of the corporation, if a shareholders' meeting is to be held more
28 than 60 days following the commissioner's upholding the protest. If the next
29 shareholders' meeting is to be held within 60 days of the action of the commissioner,
30 the corporation may, instead of considering the subject matter at the meeting, call a
31 special meeting of the shareholders to be held within 120 days of the date of action

1 of the commissioner, and the subject matter shall be considered at the meeting.

2 (m) If, within 60 days after the secretary makes the petition form available
3 under (c) of this section, the sponsor of the petition does not present to the corporation
4 signatures representing the minimum number of shares required by this chapter,
5 another law, or the articles or bylaws of the corporation, to entitle the subject matter
6 to be presented to the shareholders for a vote, a person may not undertake to secure
7 signatures for a petition with respect to the same subject matter until a year has
8 elapsed from the date the application is filed with the corporation under (b) of this
9 section.

10 (n) If the petition is verified under (h) or (k) of this section, or if the
11 commissioner sustains a protest under (l) of this section, the corporation shall place the
12 subject matter of the petition on the agenda of the next succeeding annual meeting of
13 shareholders, or call and conduct a special meeting of shareholders, as required under
14 this chapter, another law, or the articles or bylaws of the corporation. If the
15 corporation fails or refuses to call a special meeting as required by this subsection, the
16 sponsors of the petition may call the special meeting or petition the superior court
17 under AS 10.06.407 to order the corporation to call the special meeting, and unless
18 otherwise ordered by the superior court, the special meeting shall be conducted by the
19 corporation.

20 (o) If the subject matter of a petition is presented to and voted on at an annual
21 or special meeting and is rejected, and if the proponents of the petition do not receive
22 votes representing a majority of the outstanding voting shares of the corporation, a
23 person may not undertake to secure signatures for a petition for consideration of the
24 same subject matter at an annual or special meeting of shareholders until after the
25 second annual meeting that follows the meeting that voted on and rejected the subject
26 matter.

27 (p) A petition under this section for a shareholder vote is a proxy solicitation
28 under AS 45.55.139(b). Every document or statement that is distributed to a
29 shareholder with the intention of influencing the shareholder's vote on the matter that
30 is the subject of the petition is a proxy solicitation and must be filed with the secretary
31 and with the commissioner under AS 45.55.139(b).

1 (q) A sponsor of a petition under this section shall disclose to the secretary and
2 the commissioner a change in the information disclosed under (d) of this section within
3 five business days of the change. A sponsor shall also disclose to the secretary and
4 the commissioner, within five business days of receipt, a contribution of money, goods,
5 or services with a value of more than \$500 in the aggregate from a single source.

6 (r) A sponsor of a petition under this chapter may not knowingly misrepresent
7 the number of signatures obtained. A knowing misrepresentation is an untrue
8 statement of a material fact under AS 45.55.160.

9 (s) This section does not limit the ability of a corporation to provide in its
10 articles or bylaws that in order for a petition to be considered at an annual or special
11 meeting of shareholders, the petition or proposal must be filed with the corporation
12 within a minimum period of time, not exceeding 90 days, before the date of the
13 meeting.

14 (t) In this section,

15 (1) "corporation" means a corporation organized under 43 U.S.C. 1601
16 - 1629e (Alaska Native Claims Settlement Act);

17 (2) "petition" means a petition or other demand by shareholders to
18 bring a matter to the shareholders for a vote;

19 (3) "secretary" means the secretary of the corporation.

20 * Sec. 2. AS 10.06.960 is amended by adding new subsections to read:

21 (j) Notwithstanding AS 10.06.228, a corporation organized under the act may
22 not amend or repeal a bylaw that is properly adopted or amended by the shareholders
23 unless the amendment or repeal is approved by the shareholders.

24 (k) Notwithstanding AS 10.06.230(c), if a corporation was organized under the
25 act before July 1, 1989, the board of the corporation may adopt a bylaw that specifies
26 or changes a fixed number of directors or the maximum or minimum number of
27 directors, or that changes the board from a fixed to a variable board or from a variable
28 to a fixed board.

29 (l) Notwithstanding AS 10.06.405(c) and 10.06.465(c), a corporation that is
30 organized under the act may not hold a special meeting of shareholders unless

31 (1) the meeting is called by the board of directors or by a person

1 authorized by the corporation's articles or bylaws to call the meeting; or

2 (2) the holders of at least 10 percent of all the votes entitled to be cast
3 on an issue proposed to be considered at the proposed special meeting sign, date, and
4 deliver to the corporation's secretary a written demand for the meeting; the demand
5 must describe a lawful purpose for holding the meeting; if not otherwise established
6 by this chapter, the record date for determining the shareholders entitled to demand a
7 special meeting is the date when the demand is delivered to the corporation's secretary;
8 in this paragraph, "lawful purpose" does not include presenting for a shareholder vote
9 an issue that is improper or that the shareholders may not decide under this chapter.

10 (m) Notwithstanding AS 10.06.460(a), if a corporation is organized under the
11 act, the shareholders may not demand the removal of a director without reason unless
12 the secretary of the corporation verifies a petition for the removal under
13 AS 10.06.959(h) or (k) for shareholders representing at least 25 percent of the number
14 of votes cast at the last regular election of directors held before the issuance date of
15 the petition, or the commissioner upholds a protest for the petition under
16 AS 10.06.959(l), and written or printed notice of intention to seek removal under this
17 subsection is delivered either personally or by mail to each shareholder of record
18 entitled to vote at the meeting. If notice of intention to seek removal under this
19 subsection is

20 (1) delivered to the president or secretary of the corporation at least 75
21 days before the date of the annual meeting, it must be included on the notice stating
22 the place, day, and hour of the annual meeting without cost to the shareholder seeking
23 removal; or

24 (2) not timely under (1) of this subsection, the shareholders seeking
25 removal may, at the expense of those shareholders, deliver either personally or by mail
26 the notice required by this subsection at any time up to 20 days before the date set for
27 the annual meeting at which the shareholders seek removal under this subsection; if
28 mailed, notice is considered delivered when deposited with postage prepaid in the
29 United States mail addressed to the shareholder at the address appearing on the stock
30 transfer books of the corporation.

31 (n) In addition to the causes for removal stated under AS 10.06.463, if the

1 corporation is organized under the act, the superior court may remove a director from
2 office under AS 10.06.463 if the director fails to meet the qualifications to serve as a
3 director of the corporation, as those qualifications may be established under
4 AS 10.06.230(e)(4) by the corporation's bylaws, and may bar the removed director
5 from reelection for a period established by the court.

6 (o) Notwithstanding AS 10.06.470(a), if a corporation is organized under the
7 act, a regular or special meeting of the corporation's board or a committee of the board
8 may not be called unless it is called by the chair of the board, the president, a
9 vice-president, the secretary, or one-quarter of the directors.

10 * Sec. 3. AS 10.06 is amended by adding a new section to read:

11 Sec. 10.06.962. COURT ORDERED MEETING OF NATIVE
12 CORPORATION. (a) If a corporation is organized under 43 U.S.C. 1601 - 1629e
13 (Alaska Native Claims Settlement Act), the superior court of the judicial district where
14 a corporation's registered office is located may order the corporation to hold a meeting
15 if an application for the meeting is made to the court by a shareholder of the
16 corporation who

17 (1) is entitled to participate in an annual meeting if an annual meeting
18 is not held within the earlier of six months after the end of the corporation's fiscal year
19 or 15 months after its last annual meeting; or

20 (2) signed a special meeting demand that is valid under this chapter if

21 (A) notice of the special meeting is not given within 30 days
22 after the date the demand is delivered to the secretary of the corporation; or

23 (B) the special meeting is not held in accordance with the
24 notice.

25 (b) In an order under (a) of this section, the court may fix the time and place
26 of the meeting, determine the shares entitled to participate in the meeting, set a record
27 date for determining the shareholders who are entitled to notice of and to vote at the
28 meeting, establish the form and content of the meeting notice, fix the quorum required
29 for specific matters to be considered at the meeting, direct that the votes represented
30 at the meeting constitute a quorum for action on the matters to be considered at the
31 meeting, and enter other orders necessary to accomplish the purpose of the meeting.

1 * Sec. 4. AS 45.55.139 is amended to read:

2 **Sec. 45.55.139. REPORTS OF CORPORATIONS. Except as provided under**
3 **(b) of this section, a [A] copy of all annual reports, proxies, consents or**
4 **authorizations, proxy statements, and other materials relating to proxy solicitations**
5 **distributed, published, or made available by any person to at least 30 Alaska resident**
6 **shareholders of a corporation ~~that~~ [WHICH] has total assets exceeding \$1,000,000 and**
7 **a class of equity security held of record by 500 or more persons and ~~that~~ [WHICH]**
8 **is exempted from the registration requirements of AS 45.55.070 by AS 45.55.138, shall**
9 **be filed with the administrator concurrently with its distribution to shareholders.**

10 * Sec. 5. AS 45.55.139 is amended by adding a new subsection to read:

11 (b) If the proxy solicitation is for a corporation that is organized under 43
12 U.S.C. 1601 - 1629e (Alaska Native Claims Settlement Act), a copy of all annual
13 reports, proxies, consents or authorizations, proxy statements, and other materials
14 relating to proxy solicitations distributed, published, or made available by any person
15 to at least 150 Alaska resident shareholders of a corporation that has total assets
16 exceeding \$5,000,000 or a class of equity security held of record by 500 or more
17 persons and that is exempted from the registration requirements of AS 45.55.070 by
18 AS 45.55.138, shall be filed with the administrator concurrently with its distribution
19 to shareholders. A filing under this subsection shall be supplemented as often as the
20 contents of the filing change materially.

21 * Sec. 6. This Act takes effect immediately under AS 01.10.070(c).