C55B57

"An Act relating to the merger or consolidation of certain corporations; and providing for an effective date."

COMMITTEE REPORT

3/14/75

HOUSE

Mr. Speaker: Date 3/12/75

The Committee on Commerce has had CSSB 57 under consideration. A Majority of the members of the Committee

(X) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

( ) recommends it BE REPLACED WITH CS FOR _____ AND THAT CS FOR _____ DO PASS

( ) "and" recommends it BE REFERRED TO THE _____ COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

_____ _____ _____

_____ _____ _____

_____ _____ _____

_____ _____ _____

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ Chairman

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File

March 11, 1975

Senator Frank Ferguson
Pouch V
Juneau, Alaska 99801

Re: NANA Regional Corporation, Inc. - Merger

Dear Frank:

In light of our telephone conversation of yesterday, we enclose herewith a copy of S.685, introduced by Senator Stevens on February 17, 1975, authorizing mergers or consolidations of corporations formed under the Alaska Native Claims Settlement Act. You will note that Section 1(c) of the bill clearly provides that stockholders voting on the merger may exercise dissenters' rights accorded them under Alaska law. Without this provision the question of dissenters' rights would have remained ambiguous.

Sincerely yours,

WILKINSON, CRAGUN & BARKER

By: Foster De Reitzes

enc.

cc: (w/enc.) William H. Timme, Esquire

MEMORANDUM

RE: A Bill Relating to the Merger or Consolidation of Corporations Organized Pursuant to the Alaska Native Claims Settlement Act

This memorandum is submitted to provide back ground information on legislation being sought by certain of the corporations formed pursuant to the Alaska Native Claims Settlement Act (P.L. 92-203; 85 Stat. 688) (The "Settlement Act"). I submit the bill on behalf of my constituents in the northwest region of Alaska, centered around Kotzebue. However, the bill has general application throughout the State and the reason my constituents need the legislation is as equally compelling for many of the other corporations in the State formed pursuant to the Settlement Act.

The regional corporation for my region is NANA Regional Corporation, Inc. The Region has eleven village corporations. It is anticipated that the stockholders of some of all of these corporations will vote at their next stockholders' meetings, scheduled for this April, on a proposal to merge corporations.

The proposed bill is intended to facilitate mergers or consolidations among these corporations. It applies, however, only to mergers or consolidations within a given region. Under AS 10.05.500, any merger or consolidation requires the affirmative vote of the holders of at least two thirds of the outstanding shares of each participating

corporation. If a class of shares of a corporation is entitled to vote as a class, the merger or consolidation also needs the affirmative vote of the holders of at least two-thirds of the outstanding shares of that class. The proposed bill changes these vote requirements for any mergers or consolidations in which all participating corporations were organized pursuant to the Settlement Act. It also would apply if corporations resulting from such mergers subsequently merged with each other or with additional corporations in the region organized under the Settlement Act.

The bill lowers the affirmative vote requirement for any such mergers from two-thirds of the outstanding shares of the corporation to a majority of the outstanding shares. A meeting, of course, cannot transact any business unless the quorum requirements are met. Similarly, if class voting is applicable, the amendment lowers the affirmative vote requirement to a majority of the outstanding shares of the class.

It should be mentioned that almost any merger that might take place between Settlement Act corporations will be subject to review by the Securities and Exchange Commission. This certainly is true in my Region. In addition, any plan of merger or consolidation must be approved first by the respective boards of directors of

the merging or consolidating corporations prior to presentation for vote to the respective shareholders. In addition, dissenting shareholders will retain their rights under AS 10.05.417, et seq. The amendment, therefore, will not have the effect of making mergers easy, nor is there any reason to fear it will leave stockholders without a complete vote. Corporate by-laws mandate every shareholder be sent a proxy form and sufficient notice and agenda provided each shareholder.

The need for this bill arises from the realization by the boards of the various corporations in the NANA Region that the only hope for long-term survival of their corporations is to merge either with each other or with the Regional corporation. Many of the village corporations are quite small and receive only small amounts of funds under the Settlement Act. They do not feel that they have any significant chance of ever becoming profitable business corporations on their own. They are, in effect, living off themselves, and this cannot last. However, if several of these small corporations merge into one or merge into NANA, the resulting larger corporation would have a much better opportunity of becoming a viable business enterprise, and its chances for survival would be vastly improved.

In my Region, infusion of capital from NANA and the village corporations has helped everyone in the area. I am certain this is true throughout the State.

One of the main obstacles to the corporations'

successfully carrying through any plan of merger or consolidation is the requirement, in section 390 of the Alaska Business Corporation Act, that a merger must be approved by at least two-thirds of the outstanding shares of each corporation. Past experience in the bush areas shows that because of communication problems, transportation considerations and the fact that corporate activity and the rights of stockholders is new, if not alien, to many of the shareholders, it is difficult to secure major vote turnouts. If presented with a proposal for merger, the shareholders might neither appear at the meeting to vote in person, nor vote by proxy. Among stockholders who actively participate in their corporations, a large majority favor merger, and among these, receiving a two-thirds affirmative vote is not viewed as presenting any serious problem. However, even if 100% of these involved shareholders vote in favor of merger, the merger of some corporations stands to be defeated simply because another segment of stockholders have not voted. Regardless of the reasons for abstention, such a group of stockholders through its inaction could frustrate perpetually the wish of the other stockholders from ever being carried out, and, as noted, without merger, it is expected that many of these corporations eventually will be bankrupt.

For this reason, it appears eminently fair to change the degree of approval required for these corporations from two-thirds of all outstanding shares to a

majority of the outstanding shares. This would preclude a vitally necessary merger from being perpetually defeated solely by inaction on the part of one group of stockholders. No one would be deprived of his vote or of the right to help determine the outcome. Any stockholder wishing to defeat a merger proposal always could do so by voting against it either at the meeting or by proxy. Only if the stockholder did not bother to cast a vote would his shares not be counted in determining whether the merger will be approved.

Two other features of the bill should be mentioned. First, it is limited in time to December 17, 1991, at which time the corporations will have been in existence for almost twenty years and at which time the stock of the corporations no longer will be inalienable. This time frame seems appropriate, for it lasts only as long as these corporations are treated legally somewhat different from other Alaska corporations and it will provide sufficient time for these new corporations to sort out the many problems of adjustment and development and give adequate time for them to see if they can make it on their own.

Second, the bill affects only mergers within a given region pursuant to the Settlement Act.