HB
484

March 2, 1988

Representative Adelheid Herrmann
Alaska House of Representatives
Box V
Juneau, Alaska 99811

Re: HB 484 - An Act Relating to the Capital of Native Corporations

Dear Representative Herrmann:

Sealaska Corporation has noted with interest your introduction of HB 484, relating to the capital of Native corporations. As the largest of the 12 Alaska Native regional corporations, with nearly 16,000 shareholders, Sealaska believes that it will be the entity most impacted by this proposed legislation. Because of the large number of shareholders enrolled in Sealaska, Sealaska receives the largest portion of § 7(i) revenues shared by other regional corporations. Conversely, because Sealaska produces substantial resource-related revenues, each year it pays out substantial revenues to the other regional corporations.

In your memorandum of February 8, 1988, to all Bush Caucus members, you identified two effects of the proposed legislation. First, you indicated that revenues under § 7(i) of ANCSA "do not have to be considered income to the corporation receiving them, § 7(i) revenue can be considered capital." Second, you advised that the Native "corporations will have greater discretion in determining what will be paid out in dividends." You further stated that since § 7(i) revenue would be reported under "paid in capital" the use of these funds to pay dividends would be at the discretion of the corporation.

We have had the chance to evaluate HB 484, as finally proposed, and have concluded that the actual statutory language does not achieve its intended purposes. First, not only would the § 7(i) proceeds "not have to be considered income," such revenues <u>could not</u> be considered income under the proposed new law. They must be booked as capital. Our reading of this provision is that it does not create greater discretion on the part of the corporations as to how to book these revenues. The provision simply requires that the revenue be booked as capital instead of income. This result may or may not be desirable, depending upon the circumstances of each corporation.

With respect to the exercise of discretion by the corporation in paying dividends, it would appear that the new provision would actually decrease the availability of funds from which the corporation could pay dividends, and really would increase the corporation's discretion to <u>not</u> pay dividends. Since § 7(i) revenues would be booked as capital, any distribution from that source would be subject to the statutory requirements for distributions in partial liquidation, which are more restrictive than those required for paying dividends from income, i.e., earned surplus or retained earnings. A distribution in partial liquidation of capital also requires a shareholder vote, while a dividend distribution is uniquely within the purview of the corporation's board of directors. (<u>See</u>, AS 10.05.207).

We have also consulted our accountants and tax advisers concerning the proposed bill to see what, if any, impact it would have on federal and state corporate income tax and financial statement reporting issues. We are advised, at least as the bill is presently constructed, that it would be unlikely to have any impact on either federal or state tax liabilities of the Native corporations. To the extent that § 7(i) revenues are presently considered income if they are retained by the corporation and not passed through pursuant to § 7(j), they would continue to be considered income for federal income tax purposes regardless of HB 484. It is a tenet of federal income tax law that state statutory classification of funds does not impact treatment of such funds for federal tax purposes.

In fact, it would also appear that this legislation might create something of an imbalance since the regional corporations must pay out 70% of their resource-derived revenues, which reduces their earnings, but under this proposal, would be required to book their share of other corporations' resource revenues as capital. In other words, the corporations would be paying out income and getting back capital, thereby creating a potentially negative impact on the "bottom line." This apparent result, combined with what we perceive to be reduced discretion to pay dividends to our shareholders, causes us to question this proposal. We note that, at least within Sealaska, we have had no particular difficulty in dealing with the present law.

Sealaska has not determined what position, if any, it will take with respect to HB 484. At this point, we are simply addressing our concerns to you as the prime sponsor in an effort to gain a more thorough understanding of the language and purpose of the bill. We hope that by expressing these concerns to you, we can assist in promoting a full discussion of the possible impacts of this legislation. We would appreciate the opportunity of participating in any such discussion and would request that you contact me either directly or through our counsel, Budd Simpson or Jon Tillinghast at the Birch, Horton law firm, so that we might participate in the hearing process on this matter.

Thank you very much for taking the time to review these issues, and for your continuing interest in and support of issues of importance to Native and rural Alaskans.

Sincerely,

SEALASKA CORPORATION

Chris E. McNeil, JR./EH

Chris E. McNeil, Jr.
Senior Vice President and
General Counsel

CEM/amt
cc: Rep. F. Kay Wallis
Rep. Albert P. Adams
Rep. Bette Cato
Rep. Max F. Gruenberg, Jr.
House Labor & Commerce Committee
Marlene A. Johnson, Chairman of the Board, Sealaska Corporation
Byron I. Mallott, CEO, Sealaska Corporation
William M. Howe, President and COO, Sealaska Corporation
Division of Banking, Securities & Corporations
Attn: Larry Carroll
E. Budd Simpson, Birch, Horton, Bittner

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: HB 484
PUBLISH DATE:

FISCAL NOTE

REQUEST:

Revision Date:
Title: An Act relating to the capital of Native corporations
Sponsor: Herrmann, et al.
Requester:

Agency Affected: Commerce & Econ. Dev.
BRU: Banking, Securities & Corporations
Components:

EXPENDITURES / REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-

REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULLTIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: Willis F. Kirkpatrick, Director
Phone: 465-2521
Division: Banking, Securities and Corporations
Date: 2/26/88

Approved by Commissioner: J. Anthony Smith
Date: 2/26/88
Agency: Department of Commerce and Economic Development

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