

SB

204

STATE OF ALASKA
THE LEGISLATURE

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JUNEAU ALASKA 99811
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LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

May 4, 1989

SUBJECT: HCS CSSB 204(Jud)
(W.O. 6-0953H)

TO: Representative Peter Goll

FROM: Theresa L. Bannister^{TB}
Legislative Counsel

This memo accompanies the draft of HCS CSSB 204(Jud) that you requested. The bill contains certain provisions that provide unique treatment for native corporations, specifically sec. 10.06.960(g) - (h) and sec. 62 (a) - (b). If the situations addressed by these provisions also occur in corporations that are not native corporations it is possible that the provisions could be challenged as violating the state or federal equal protection clauses unless sufficient rationale exists to justify the limitation under the particular equal protection clause being used for the challenge. Although it may exist, I am not aware of a rationale that would justify limiting the provisions to native corporations (except where sec. 10.06.960(g) refers to provisions of the Alaska Native Claims Settlement Act).

If I may be of further assistance, please advise.

TB:gc
WKG10/049

Enclosure

Original sponsor: Rules/Legislative Council

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 HOUSE CS FOR CS FOR SENATE BILL NO. 204 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to corporations; and providing for
7 an effective date."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 * Section 1. AS 10.06.010 is amended to read:

10 Sec. 10.06.010. GENERAL POWERS. Subject to the limitations in
11 its articles of incorporation, the provisions of this chapter and
12 other applicable law, a corporation has all the powers of a natural
13 person in carrying out its business activities, including, without
14 limitation, the power to

15 (1) have perpetual succession by its corporate name;

16 (2) sue and be sued in its corporate name;

17 (3) adopt a corporate seal and alter it, and use it by
18 having it or a facsimile of it impressed, affixed, or reproduced;

19 (4) buy, take, receive, lease, or otherwise acquire, own,
20 hold, improve, use, and otherwise deal in, real or personal property
21 or an interest in the property, wherever situated;

22 (5) sell, convey, mortgage, pledge, lease, exchange, trans-
23 fer, and otherwise dispose of all or a part of its property and as-
24 sets;

25 (6) lend money, if properly approved, to its employees,
26 [AND, IF PROPERLY APPROVED, TO ITS] officers, and directors, and
27 otherwise assist its employees, officers, and directors;

28 (7) buy, take, receive, subscribe for, or otherwise ac-
29 quire, own, hold, vote, use, employ, sell, mortgage, lend, pledge, or

1 otherwise dispose of, and otherwise use and deal in shares or other
2 interests in, or obligations of, other domestic or foreign corpora-
3 tions, associations, partnerships, or individuals, or direct or indi-
4 rect obligations of the United States or of any other government,
5 state, territory, governmental district or municipality or an instru-
6 mentality of these;

7 (8) make contracts and guarantees, incur liabilities,
8 borrow money at the rates of interest the corporation determines,
9 issue notes, bonds, and other obligations, and secure its obligations
10 by mortgage or pledge of all or any of its property, franchise and
11 income;

12 (9) lend money for its corporate purposes, invest and
13 reinvest its money, and take and hold real and personal property as
14 security for the payment of money loaned or invested;

15 (10) conduct business, carry on operations, and have offices
16 and exercise the powers granted by this chapter in a state, territory,
17 district, or possession of the United States, or in a foreign country;

18 (11) elect or appoint officers and agents of the corporation
19 and define their duties and fix their compensation;

20 (12) make and alter bylaws not inconsistent with its arti-
21 cles of incorporation or with state law, for the administration and
22 regulation of the affairs of the corporation;

23 (13) donate for the public welfare or for charitable, scien-
24 tific or educational purposes, and in time of war donate in aid of war
25 activities;

26 (14) transact lawful business in time of war in aid of the
27 United States in the prosecution of the war;

28 (15) pay pensions and establish pension plans, pension
29 trusts, profit-sharing plans, stock bonus plans, stock option plans

1 and other incentive plans for its directors, officers, and employees;

2 (16) cease its corporate activities and surrender its corpo-
3 rate franchise;

4 (17) have and exercise the powers of a limited or general
5 partner [PARTNERSHIP] or a joint venturer [ADVENTURER] in association
6 with one or more persons, corporations, partnerships, or associations;

7 (18) have and exercise all powers necessary or convenient to
8 carry out the purposes for which the corporation is organized.

9 * Sec. 2. AS 10.06.020 is amended to read:

10 Sec. 10.06.020. LIMITATIONS ON AUTHORITY OF CORPORATE AGENTS. A
11 limitation upon the powers of the shareholders, officers, or direc-
12 tors, or the manner of exercise of their powers, contained in or
13 implied by the [ARTICLES OF INCORPORATION,] bylaws, by [OR] action of
14 the board, [OR] by AS 10.06.605 - 10.06.678, [OR] 10.06.705 - 10.06.-
15 788, or by a shareholders' agreement may not be asserted as between
16 the corporation or a shareholder and a third person, except in a
17 proceeding

18 (1) by a shareholder or the state to enjoin the doing or
19 continuance of unauthorized business by the corporation or its offi-
20 cers, or both, in a case where a third party has not acquired rights
21 under AS 10.06.025(a);

22 (2) to dissolve the corporation; or

23 (3) by the corporation or by a shareholder suing in a
24 representative suit against the officers or directors of the corpo-
25 ration for violation of their duty.

26 * Sec. 3. AS 10.06.025(a) is amended to read:

27 (a) A contract or conveyance made in the name of the corporation
28 that is authorized or ratified by the board, or is done within the
29 scope of the authority, actual or apparent, conferred by the board or

1 within the agency power of the officers executing it, except as the
2 board's authority is limited by law [OTHER THAN THIS CHAPTER], binds
3 the corporation, and the corporation acquires rights under the con-
4 tract, whether the contract is executed or is wholly or in part execu-
5 tory.

6 * Sec. 4. AS 10.06.105(c) is amended to read:

7 (c) A person may not adopt a name that contains the word "corpo-
8 ration", "incorporated", or "limited", or an abbreviation of one of
9 these words, unless the person has been issued a certificate of incor-
10 poration, or, in the case of a foreign corporation, a certificate of
11 authority, by the commissioner. This subsection does not prohibit a
12 limited partnership from using the word "limited" or an abbreviation
13 of "limited" in its name.

14 * Sec. 5. AS 10.06.130 is amended to read:

15 Sec. 10.06.130. USE OF SAME OR DECEPTIVELY SIMILAR NAME. Incor-
16 poration, obtaining a certificate of authority by a foreign corpora-
17 tion, or registration [REGISTRATION] of a corporate name gives the
18 exclusive right to the use of the name. The person who has incorpo-
19 rated, received a certificate of authority, or registered the corpo-
20 rate name under this chapter may enjoin the use of the same or decep-
21 tively similar name and has a cause of action for damages against a
22 person who uses the same or deceptively similar name.

23 * Sec. 6. AS 10.06.230(a) is amended to read:

24 (a) Unless a provision is contained in the articles, the bylaws
25 shall state the number of directors of the corporation or state that
26 the number of directors may not be less than a stated number or more
27 than a stated number, with the exact number of the directors to be
28 fixed, within the limits specified, by approval of the board or the
29 shareholders in the manner provided in the bylaws. [THE STATED

1 MAXIMUM NUMBER OF DIRECTORS MAY NOT BE GREATER THAN TWO TIMES THE
2 STATED MINIMUM NUMBER MINUS ONE AND THE NUMBER OF MINIMUM NUMBER OF
3 DIRECTORS MAY NOT BE LESS THAN THREE.] If the articles provide for
4 the number of directors, the number of directors may only be changed
5 by an amendment to the articles.

6 * Sec. 7. AS 10.06.343 is amended to read:

7 Sec. 10.06.343. STOCK RIGHTS AND OPTIONS. Subject to a pro-
8 vision in its articles, a corporation may create and issue, whether or
9 not in connection with the issuance and sale of any of its shares or
10 other securities, rights or options entitling the holders of the
11 rights or options [SHARES] to purchase from the corporation shares of
12 any class or classes. These rights or options shall be evidenced in
13 the manner the board approves and, subject to the provisions of the
14 articles, must [SHALL] set out the terms upon which, the time within
15 which, and the price at which the shares may be purchased from the
16 corporation upon the exercise of the right or option. If the rights
17 or options are to be issued to directors, officers, or employees of
18 the corporation or of a subsidiary of the corporation and not to the
19 shareholders generally, their issuance shall be authorized by the
20 approval of the outstanding shares or must [SHALL] be consistent with
21 a plan so approved or ratified. In the absence of fraud in the trans-
22 action, the judgment of the board as to the adequacy of the considera-
23 tion received for the rights or options is conclusive.

24 * Sec. 8. AS 10.06.348 is amended to read:

25 Sec. 10.06.348. CERTIFICATES REPRESENTING SHARES. Except as
26 otherwise provided under AS 10.06.349. the [THE] shares of a corpo-
27 ration shall be represented by certificates signed by the president or
28 vice-president and the secretary or an assistant secretary of the
29 corporation, and may be sealed with the seal of the corporation or a

1 facsimile of the seal. The signatures of the president or vice-
2 president and the secretary or assistant secretary upon a certificate
3 may be facsimiles if the certificate is countersigned by a transfer
4 agent or registered by a registrar, other than the corporation itself
5 or an employee of the corporation. If an officer who has signed or
6 whose facsimile signature has been placed on the certificate ceases to
7 be an officer before the certificate is issued, the certificate may be
8 issued by the corporation with the same effect as if the officer were
9 an officer at the date of its issue.

10 * Sec. 9. AS 10.06 is amended by adding a new section to read:

11 Sec. 10.06.349. SHARES WITHOUT CERTIFICATES. (a) Unless the
12 articles or bylaws provide otherwise, the board of directors may
13 authorize the issuance without certificates of some or all of the
14 corporation's classes or series of shares. The authorization does not
15 affect shares that are already represented by certificates until the
16 certificates are surrendered to the corporation.

17 (b) Within a reasonable time after the issuance or transfer of
18 shares without certificates, the corporation shall send the share-
19 holder a written statement giving the information required by AS 10.-
20 06.350 to be on certificates, and, if applicable, the information
21 required by AS 10.06.424(c) to be disclosed to the shareholder when
22 there is no certificate.

23 * Sec. 10. AS 10.06.353 is amended to read:

24 Sec. 10.06.353. FULL PAYMENT REQUIRED FOR CERTIFICATE. A share
25 with or without a certificate may not be issued [FOR A SHARE] until
26 the share is fully paid.

27 * Sec. 11. AS 10.06.355 is amended to read:

28 Sec. 10.06.355. ISSUANCE OF FRACTIONAL SHARES OR SCRIP. (a) A
29 corporation may issue a [CERTIFICATE FOR A] fractional share, and, by

1 action of its board, may issue, instead of a fractional certificate,
2 scrip in registered or bearer form that entitles the holder to receive
3 a [CERTIFICATE FOR A] full share upon the surrender of the scrip
4 aggregating a full share.

5 (b) A [CERTIFICATE FOR A] fractional share entitles the holder
6 to exercise voting rights, to receive dividends, and to participate in
7 the assets of the corporation in the event of liquidation. Unless
8 otherwise provided in the scrip, scrip does not entitle the holder to
9 exercise voting rights, to receive dividends, or to participate in the
10 assets of the corporation in the event of liquidation.

11 (c) The board may issue scrip subject to the condition that it
12 is void if not exchanged for [CERTIFICATES REPRESENTING] full shares
13 before a specified date, or subject to the condition that the shares
14 for which the scrip is exchangeable may be sold by the corporation and
15 the proceeds distributed to the holders of that scrip, or subject to
16 other conditions that [WHICH] the board considers advisable.

17 * Sec. 12. AS 10.06 is amended by adding a new section to read:

18 Sec. 10.06.356. SHARES HELD BY NOMINEES. (a) A corporation may
19 establish a procedure by which the beneficial owner of shares that are
20 registered in the name of a nominee is recognized by the corporation
21 as the shareholder.

22 (b) The procedure may set out

23 (1) the types of nominees to whom it applies;

24 (2) the rights or privileges that the corporation recog-
25 nizes in a beneficial owner;

26 (3) the manner in which the procedure is selected by the
27 nominee;

28 (4) the information that must be provided when the proce-
29 dure is selected;

1 (5) the period when selection of the procedure is effec-
2 tive; and

3 (6) other aspects of the rights and duties created.

4 * Sec. 13. AS 10.06.358(c) is amended to read:

5 (c) For the purposes of this chapter, the amount of a distribu-
6 tion payable in property shall be determined on the basis of the value
7 at which the property is carried on the corporation's financial state-
8 ments in accordance with this section [GENERALLY ACCEPTED ACCOUNTING
9 PRINCIPLES].

10 * Sec. 14. AS 10.06.358(d) is amended to read:

11 (d) Only a corporation that classifies its assets as current
12 assets and fixed assets in accordance with this section [UNDER GEN-
13 ERALLY ACCEPTED ACCOUNTING PRINCIPLES] is governed by (a)(2)(B) of
14 this section.

15 * Sec. 15. AS 10.06.358 is amended by adding new subsections to read:

16 (e) For the purposes of this section, the board of directors may
17 base a determination that a distribution is not prohibited either on
18 financial statements prepared in accordance with generally accepted
19 accounting principles or on the basis of accounting practices and
20 principles that are fair and reasonable in the circumstances.

21 (f) Financial statements and determinations prepared or arrived
22 at in accordance with generally accepted accounting principles are
23 fair and reasonable. The fair and reasonable quality of statements
24 and determinations prepared under other practices and principles shall
25 be proved by the corporation.

26 * Sec. 16. AS 10.06.360 is amended to read:

27 Sec. 10.06.360.~ PROHIBITED DISTRIBUTION; INABILITY TO MEET
28 MATURING DEBTS AND LIABILITIES. A corporation or subsidiary of a
29 corporation may not make a distribution to the corporation's

1 shareholders if the corporation or the subsidiary making the distri-
2 bution is, or as a result of the distribution would be, [LIKELY TO BE]
3 unable to meet its liabilities as they mature.

4 * Sec. 17. AS 10.06.385(b) is amended to read:

5 (b) Subject to any provisions in its articles [OF INCORPORATION]
6 with respect to the notice required for redemption of shares, the
7 corporation may give notice of the redemption of any or all shares
8 subject to redemption by publishing a notice of redemption in a news-
9 paper of general circulation in the judicial district in which the
10 principal executive office of the corporation is located at least once
11 a week for two successive weeks, beginning not earlier than 60 nor
12 later than 20 days before the date fixed for redemption. The notice of
13 redemption shall set out the following:

14 (1) the class or series of shares or part of any class of
15 series of shares to be redeemed;

16 (2) the date fixed for redemption;

17 (3) the redemption price; and

18 (4) the place at which the shareholders may obtain payment
19 of the redemption price upon surrender of their share certificates or
20 certificateless shares.

21 * Sec. 18. AS 10.06.385(d) is amended to read:

22 (d) On or before the date fixed for redemption of redeemable
23 shares, a corporation may deposit with a bank or trust company in this
24 state as a trust fund a sum sufficient to redeem the shares called on
25 the date fixed for redemption, with irrevocable instructions to the
26 bank or trust company to publish a notice of redemption, or to com-
27 plete the publication if begun, and to pay, on and after or before the
28 date fixed for redemption, the redemption price of the shares to
29 holders of the shares upon the surrender of their share certificates

1 or certificateless shares. From and after the date of the deposit
2 with the bank or trust company, although before the date fixed for
3 redemption, the shares called for redemption are redeemed and divi-
4 dends on those shares cease to accrue after the date fixed for redemp-
5 tion. The deposit constitutes full payment of the shares to their
6 holders and from and after the date of the deposit the shares are no
7 longer outstanding and the holders of the shares cease to be share-
8 holders with respect to the shares and have no rights with respect to
9 the shares except the right to receive from the bank or trust company
10 payment of the redemption price of the shares without interest, upon
11 surrender of the certificates for the shares or the certificateless
12 shares, and any right to convert the shares that may exist and con-
13 tinue for a period fixed by the terms of the shares.

14 * Sec. 19. AS 10.06.405 is amended by adding a new subsection to read:

15 (d) The failure of a corporation to hold an annual meeting at
16 the time stated in or fixed under its bylaws does not cause the corpo-
17 ration to forfeit its status, does not cause a dissolution of the
18 corporation, and does not affect the validity of corporate action.

19 * Sec. 20. AS 10.06.410 is amended to read:

20 Sec. 10.06.410. NOTICE OF SHAREHOLDERS' MEETINGS. Written or
21 printed notice stating the place, day, and hour of the meeting and, in
22 the case of a special meeting, the purpose for which the meeting is
23 called, shall be delivered not less than 10 [20] or more than 60 days
24 before the date of the meeting, either personally or by mail, by or at
25 the direction of the president, the secretary, the officer, or persons
26 calling the meeting, to each shareholder of record entitled to vote at
27 the meeting. If mailed, the notice is considered delivered when
28 deposited with postage prepaid in the United States mail addressed to
29 the shareholder at the address of the shareholder as it appears on the

1 stock transfer books of the corporation, or, if the shareholder has
2 filed with the secretary of the corporation a written request that
3 notice be mailed to a different address, addressed to the shareholder
4 at [THE CORPORATION SHALL MAIL THE NOTICE TO] the new address. An
5 affidavit of the secretary or other person giving the notice or of a
6 transfer agent of the corporation that the notice required by this
7 section has been given, is prima facie evidence of the facts stated in
8 the affidavit.

9 * Sec. 21. AS 10.06.413(a) is amended to read:

10 (a) At least 10 [20] days before each meeting of shareholders,
11 the officer or agent having charge of the stock transfer books for
12 shares of a corporation shall make a list of the shareholders entitled
13 to vote at the meeting or an adjournment of the meeting arranged in
14 alphabetical order, with the address of and the number of shares held
15 by each shareholder. The list shall be kept on file at the registered
16 office of the corporation and is subject to inspection by a share-
17 holder or the agent or attorney of a shareholder at any time during
18 usual business hours for a period of 10 [20] days before the meeting.
19 The list shall also be produced and kept open at the time and place of
20 the meeting and shall be subject to the inspection of a shareholder
21 during the meeting. The original stock transfer books are prima facie
22 evidence as to the shareholders who are entitled to examine the list
23 or transfer books or to vote at a meeting of shareholders.

24 * Sec. 22. AS 10.06.413(c) is amended to read:

25 (c) An officer or agent having charge of the stock transfer
26 books who fails to prepare the list of shareholders, keep it on file
27 for a period of 10 [20] days, or produce and keep it open for inspec-
28 tion at the meeting, as provided in this section, is liable for a
29 penalty of \$5,000 and shall pay this sum to a shareholder who makes a

1 written request for performance of the duties imposed by this section.

2 * Sec. 23. AS 10.06.418(b) is amended to read:

3 (b) A proxy is not valid after the expiration of 11 months from
4 the date of the proxy unless it qualifies as an irrevocable proxy
5 under (e) of this section. A proxy continues in full force and effect
6 until revoked by the person executing it, except as provided in this
7 section. A person may revoke a proxy by a writing delivered to the
8 corporation stating that the proxy is revoked, by a subsequent proxy
9 executed by the person executing the prior proxy and delivered [PRE-
10 SENTED] to the corporation [MEETING], or by attendance at the meeting
11 and voting in person by the person executing the proxy. The dates
12 contained on the forms of proxy presumptively determine the order of
13 execution, regardless of the postmark dates on the envelopes in which
14 the proxies are mailed.

15 * Sec. 24. AS 10.06.418(e) is amended to read:

16 (e) Notwithstanding (c) of this section, a proxy that states
17 that it is irrevocable is irrevocable for the period specified in the
18 proxy when it is held by the following or a nominee of the following:

19 (1) a person to whom the shares are pledged for the perfor-
20 mance of an obligation or the payment of a debt [PLEDGEE];

21 (2) a person who has purchased, agreed to purchase, or
22 holds an option to purchase the shares or a person who has sold a
23 portion of the shares of the person in the corporation to the maker of
24 the proxy;

25 (3) a person who has contracted to perform services as an
26 employee of the corporation, if a proxy is required by the contract of
27 employment and if the proxy states that it was given in consideration
28 of the contract of employment, the name of the employee, and the
29 period of employment contracted for;

1 (4) a person designated by or under an agreement under
2 AS 10.06.425 [AS 10.06.425(b)]; or

3 (5) a beneficiary of a trust with respect to shares held by
4 the trust.

5 * Sec. 25. AS 10.06.418(f) is amended to read:

6 (f) Notwithstanding the period of irrevocability specified in a
7 proxy, the proxy becomes revocable when the pledge is redeemed, the
8 option or agreement to purchase is terminated or the seller no longer
9 owns any shares of the corporation or dies, the period of employment
10 provided for in the contract of employment has terminated, the agree-
11 ment under AS 10.06.425 [AS 10.06.425(b)] has terminated, or the
12 person ceases to be a beneficiary of the trust. In addition, a proxy
13 may be made irrevocable if it is given to secure the performance of a
14 duty or to protect a title, either legal or equitable, until the
15 happening of events that, by its terms, discharge the obligations
16 secured by it.

17 * Sec. 26. AS 10.06.418(g) is repealed and reenacted to read:

18 (g) Notwithstanding a provision in a proxy that makes the proxy
19 irrevocable, a proxy is revoked when the shares are transferred unless
20 the transferee knows about the provision or the proxy, or the irrevocability or notice of the proxy appears on a certificate representing
21 the shares.

22 * Sec. 27. AS 10.06.420(e) is repealed and reenacted to read:

23 (e) Except as prohibited in this subsection, shares standing in
24 the name of another corporation may be voted by the officer, agent, or
25 proxy as the bylaws of the other corporation may prescribe, or, in the
26 absence of a provision, as the board of the other corporation may
27 determine. The shares of a corporation may not be voted if they are
28 owned, directly or indirectly, by a second corporation, domestic or
29

1 foreign, and the first corporation owns, directly or indirectly, a
2 majority of the shares entitled to vote for the directors of the
3 second corporation.

4 * Sec. 28. AS 10.06.420(i) is amended to read:

5 (i) Beginning on the date on which written notice of redemption
6 of redeemable shares has been mailed to the holders of the shares and
7 a sum sufficient to redeem the shares has been deposited with a bank
8 or trust company with irrevocable instruction and authority to pay the
9 redemption price to the holders of the shares upon surrender of the
10 certificates for the shares or the certificateless shares, the shares
11 may not vote on any matter and are not considered to be outstanding
12 shares.

13 * Sec. 29. AS 10.06 is amended by adding a new section to read:

14 Sec. 10.06.421. CORPORATION'S ACCEPTANCE OF CERTAIN DOCUMENTS.

15 (a) If the name signed on a vote, consent, waiver, or proxy appoint-
16 ment corresponds to the name of a shareholder, the corporation, if
17 acting in good faith, is entitled to accept the document and give it
18 effect as the act of the shareholder.

19 (b) If the name signed on a document does not correspond to the
20 name of its shareholder, the corporation, if acting in good faith, is
21 nevertheless entitled to accept the document and give it effect as the
22 act of the shareholder if

23 (1) the shareholder is an entity and the name signed pur-
24 ports to be that of an officer or agent of the entity;

25 (2) the name signed purports to be that of an administra-
26 tor, executor, guardian, or conservator representing the shareholder
27 and, if the corporation requests, evidence of fiduciary status accept-
28 able to the corporation has been presented with respect to the docu-
29 ment;

1 (3) the name signed purports to be that of a receiver or
2 trustee in bankruptcy of the shareholder and, if the corporation
3 requests, evidence of this status acceptable to the corporation has
4 been presented with respect to the document;

5 (4) the name signed purports to be that of a pledgee,
6 beneficial owner, or attorney-in-fact of the shareholder and, if the
7 corporation requests, evidence acceptable to the corporation or the
8 signatory's authority to sign for the shareholder has been presented
9 with respect to the document;

10 (5) two or more persons are the shareholder as cotenants or
11 fiduciaries, the name signed purports to be the name of at least one
12 of the coowners, and the person signing appears to be acting on behalf
13 of all the coowners.

14 (c) The corporation is entitled to reject a document if the
15 secretary or other officer or agent authorized to tabulate votes,
16 acting in good faith, has a reasonable basis to doubt the validity of
17 the signature on the document or the signatory's authority to sign for
18 the shareholder.

19 (d) The corporation and its officer or agent who accepts or
20 rejects a document in good faith and in accordance with the standards
21 of this section are not liable in damages to the shareholder for the
22 consequences of the acceptance or rejection.

23 (e) Corporate action based on the acceptance or rejection of a
24 document under this section is valid unless a court of competent
25 jurisdiction determines otherwise.

26 (f) In this section, "document" means vote, consent, waiver, or
27 proxy appointment.

28 * Sec. 30. AS 10.06 is amended by adding a new section to read:

29 Sec. 10.06.424. SHAREHOLDER AGREEMENTS. (a) The shareholders

1 of a corporation may enter into an agreement among all the sharehold-
2 ers to impose restrictions on the transfer or registration of shares
3 of the corporation to

4 (1) maintain the corporation's status, including election
5 of S corporation status under 26 U.S.C. (Internal Revenue Code), when
6 the status depends on the number or identity of its shareholders; in
7 this paragraph, "S corporation" has the meaning given in 26 U.S.C.
8 1361;

9 (2) preserve exemptions under federal or state securities
10 laws;

11 (3) ensure that shareholders will be able to control who
12 may participate in the corporation's business;

13 (4) ensure that shareholders who wish to retire will be
14 able to liquidate their investments without disrupting corporate af-
15 fairs;

16 (5) ensure that estates of deceased shareholders will be
17 able to liquidate the decedents' shares in the corporation;

18 (6) obligate the shareholder first to offer to the corpo-
19 ration or other persons, separately, consecutively, or simultaneously,
20 an opportunity to acquire the restricted shares;

21 (7) obligate the corporation or other persons, separately,
22 consecutively, or simultaneously, to acquire the restricted shares;

23 (8) require the corporation, the holder of any class of its
24 shares, or another person, to approve the transfer of restricted
25 shares, if the requirement is not manifestly unreasonable; and

26 (9) accomplish another reasonable purpose.

27 (b) The shareholders of a corporation may enter into an agree-
28 ment among all of the shareholders to provide for the selection of
29 directors and officers.

1 (c) The existence of a shareholders' agreement that is consis-
2 tent with this section shall be noted conspicuously on the front or
3 back of each stock certificate together with a statement indicating
4 that the agreement, or a copy of the agreement, is on file at the
5 principal office of the corporation and that the corporation will
6 allow inspection of the agreement or furnish a copy of the agreement
7 without charge. If the share has been issued under AS 10.06.349
8 without a certificate, a statement that discloses the existence of the
9 shareholders' agreement shall be sent within a reasonable time to the
10 shareholder.

11 (d) Shares issued before compliance with (c) this section, if
12 acquired by a person without knowledge of the shareholders' agreement,
13 are not subject to the shareholders' agreement.

14 (e) A shareholders' agreement may not alter or waive AS 10.06.-
15 350, 10.06.358, 10.06.360, 10.06.430, 10.06.438, 10.06.544, 10.06.570,
16 10.06.633, 10.06.648, or 10.06.653.

17 (f) In this section, "shares" includes a security that is con-
18 vertible into shares or that carries a right to subscribe for or
19 acquire shares.

20 * Sec. 31. AS 10.06.425(a) is amended to read:

21 (a) Any number of shareholders of a corporation may create a
22 voting trust for the purpose of conferring upon a trustee or trustees
23 the right to vote or otherwise represent their shares, for a period
24 not to exceed 10 years, by entering into a written voting trust agree-
25 ment specifying the terms and conditions of the voting trust, by
26 depositing a copy of the agreement with the corporation at its regis-
27 tered office, and by transferring their shares to the trustee or
28 trustees for the purpose of the agreement. The trustee or trustees
29 shall keep a record of the holders of voting trust certificates

1 evidencing a beneficial interest in the voting trust, giving the names
2 and addresses of all the holders and the number and class of the
3 shares for which the voting trust certificates are issued, and shall
4 deposit a copy of the record with the corporation at its registered
5 office. The copies of the voting trust agreement and the record
6 deposited with the corporation are subject to the same right of ex-
7 amination by a shareholder of the corporation, in person or by agent
8 or attorney, as are the books and records of the corporation under
9 AS 10.06.430, and the copies of the agreement and the record are
10 subject to examination by a holder of record of voting trust certifi-
11 cates, either in person or by agent or attorney, at a reasonable time
12 for a proper purpose. This subsection does not invalidate an irrevoc-
13 able proxy complying with AS 10.06.418(e).

14 * Sec. 32. AS 10.06.425(b) is repealed and reenacted to read:

15 (b) Shareholders may enter into a voting agreement or any other
16 agreement if the agreement is consistent with this chapter.

17 * Sec. 33. AS 10.06.430(a) is amended to read:

18 (a) A corporation organized under this chapter shall keep cor-
19 rect and complete books and records of account, minutes of proceedings
20 of its shareholders, board, and committees of the board, and a record
21 of its shareholders, containing the names and addresses of all share-
22 holders and the number and class of the shares held by each. The
23 books and [,] records of account, [AND] minutes, and the record of
24 shareholders may be in written form or in any other form capable of
25 being converted into written form within a reasonable time.

26 * Sec. 34. AS 10.06.430(b) is amended to read:

27 (b) A corporation organized under this chapter shall make its
28 books and records of account, or certified copies of them, reasonably
29 available for inspection and copying at the registered office or

1 principal place of business in the state [BY THE DEPARTMENT OR] by a
2 shareholder of the corporation. Shareholder inspection shall be upon
3 written demand stating with reasonable particularity the purpose of
4 the inspection. The inspection may be in person or by agent or attor-
5 ney, at a reasonable time and for a proper purpose. Only books and
6 records of account, minutes, and the record of shareholders directly
7 connected [RELEVANT] to the stated purpose of the inspection may be
8 inspected or copied.

9 * Sec. 35. AS 10.06.430(c) is amended to read:

10 (c) An officer or agent who, or a corporation that, refuses to
11 allow a shareholder, or the agent or attorney of the shareholder, to
12 examine and make copies from its books and records [RECORD] of ac-
13 count, minutes, and record of shareholders, for a proper purpose, is
14 liable to the shareholder for a penalty in the amount of 10 percent of
15 the value of the shares owned by the shareholder or \$5,000, whichever
16 is greater, in addition to other damages or remedy given the share-
17 holder by law. It is a defense to an action for penalties under this
18 section that the person suing has within two years sold or offered for
19 sale a list of shareholders of the corporation or any other corpo-
20 ration or has aided or abetted a person in procuring a list of share-
21 holders for this purpose, or has improperly used information secured
22 through a prior examination of the books and records of account, [OR]
23 minutes, or record of shareholders of the corporation or any other
24 corporation, or was not acting in good faith or for a proper purpose
25 in making the person's demand.

26 * Sec. 36. AS 10.06.433(a) is amended to read:

27 (a) The board shall send an annual report to the shareholders
28 not later than 180 days after the close of the fiscal year or the date
29 on which notice of the annual meeting in the next fiscal year is sent

1 under AS 10.06.410, whichever is first. A [, UNLESS IN THE CASE OF A]
2 corporation with less than 100 holders of record of its shares, as
3 determined under AS 10.06.408, is exempt from this annual requirement
4 unless its articles or bylaws impose the requirement [IS EXPRESSLY
5 WAIVED IN THE ARTICLES OF INCORPORATION]. The annual report must
6 [SHALL] contain a balance sheet as of the end of the fiscal year and
7 an income statement and statement of changes in financial position for
8 the fiscal year, accompanied by a report on the fiscal year by inde-
9 pendent accountants or, if there is no such report, the certificate of
10 an authorized officer of the corporation that the statements were pre-
11 pared without audit from the books and records of the corporation.

12 * Sec. 37. AS 10.06.435(a) is amended to read:

13 (a) An action may be brought in the right of a domestic or
14 foreign corporation to procure a judgment in its favor by a holder of
15 shares of the corporation or voting trust certificates of the corpo-
16 ration, or of a beneficial interest in shares [OR CERTIFICATES] of the
17 corporation.

18 * Sec. 38. AS 10.06.450(c) is repealed and reenacted to read:

19 (c) A director is not acting in good faith if the director has
20 knowledge concerning the matter in question that makes reliance other-
21 wise permitted by (b) of this section unwarranted.

22 * Sec. 39. AS 10.06.450 is amended by adding a new subsection to read:

23 (f) A director who makes a business judgment in good faith
24 fulfills the duty of care under this section if the director

25 (1) is not interested in the subject of the business judg-
26 ment;

27 (2) is informed about the subject of the business judgment
28 to the extent the director reasonably believes to be appropriate under
29 the circumstances; and

1 (3) rationally believes that the business judgment is in
2 the best interest of the corporation.

3 * Sec. 40. AS 10.06.453(a) is repealed and reenacted to read:

4 (a) The board of directors shall consist of one or more members.
5 The number of directors shall be fixed by, or in the manner provided
6 in, the bylaws, unless the articles fix the number of directors, in
7 which case a change in the number of directors shall be made only by
8 amendment of the articles. If the number of directors is not other-
9 wise set, the number of directors is three.

10 * Sec. 41. AS 10.06.453(b) is amended to read:

11 (b) Except as otherwise provided in AS 10.06.230 and this sec-
12 tion, the [THE] number of directors may be increased or decreased by
13 amendment of the articles or the bylaws or by action of the board or
14 the shareholders under the specific provisions of an article or a
15 bylaw adopted by approval of the outstanding shares. A change in the
16 number of directors, including by amendment of the articles, is [,]
17 subject to the following limitations:

18 (1) if [IF] the board is authorized by the articles or the
19 bylaws to change the number of directors, whether by amending the
20 bylaws or by taking action under the specific provision of an article
21 or a bylaw adopted by approval of the outstanding shares, the amend-
22 ment or action shall require the vote of a majority of the entire
23 board; [.]

24 (2) a [A] decrease in the number of directors may not
25 shorten the term of an incumbent director.

26 * Sec. 42. AS 10.06.465(d) is amended to read:

27 (d) Notwithstanding AS 10.06.453(e), a [A] director may resign
28 effective upon giving written notice to the chairman of the board, the
29 president, the secretary, or the board of directors of the

1 corporation, unless the notice specifies a later time for the effec-
2 tiveness of the resignation. [NOTWITHSTANDING THE EFFECTIVENESS OF
3 THE RESIGNATION, UNDER AS 10.06.453(d) A DIRECTOR HOLDS OFFICE UNTIL A
4 SUCCESSOR HAS BEEN ELECTED AND QUALIFIED.] If the resignation is
5 effective at a future time, a successor may be elected to take office
6 when the resignation becomes effective.

7 * Sec. 43. AS 10.06.470(a) is amended to read:

8 (a) A regular or special meeting of the board or a committee of
9 the board may be called by the chairman of the board, the president, a
10 vice-president, the secretary, or a director [TWO DIRECTORS] and may
11 be held at any place inside or outside this state.

12 * Sec. 44. AS 10.06.470(b) is amended to read:

13 (b) A regular meeting of the board or a committee designated by
14 the board may be held without notice if the time and place of the
15 meeting is fixed by the bylaws or the board. A special meeting of the
16 board or a committee designated by the board shall be held as provided
17 in the bylaws or, in the absence of bylaw provision, after [UPON]
18 either notice in writing sent 10 [20] days before the meeting or
19 notice by electronic means, personal messenger, or comparable person-
20 to-person communication given at least 24 [72] hours before the meet-
21 ing. Unless otherwise provided in the bylaws [IN THE CASE OF A SPE-
22 CIAL MEETING] the notice of a special meeting shall include disclosure
23 of the business to be transacted and the purpose of the meeting.

24 * Sec. 45. AS 10.06.483(d) is amended to read:

25 (d) Subject to the provisions of AS 10.06.020 [AS 10.06.020(a)],
26 a note, mortgage, evidence of indebtedness, contract, [SHARE CERTIFI-
27 CATE,] conveyance, or other instrument in writing, and an assignment
28 or endorsement of these, executed or entered into between the corpora-
29 tion and another person, if signed by two individuals, one of whom is

1 the chairman of the board, the president, or a vice-president and the
2 other of whom is the secretary, an assistant secretary, the treasurer,
3 or an assistant treasurer of the corporation, is not invalidated as to
4 the corporation by a lack of authority of the signing officers in the
5 absence of actual knowledge on the part of the other person that the
6 signing officers had no authority to execute the instrument.

7 * Sec. 46. AS 10.06.483(e) is amended to read:

8 (e) An officer shall perform the duties of the office [AN OFFI-
9 CER] in good faith and with that degree of care, including reasonable
10 inquiry, that an ordinarily prudent person in a like position would
11 use under similar circumstances. Except as provided in (f) of this
12 section, an officer is entitled to rely on information, opinions,
13 reports or statements, including financial statements and other finan-
14 cial data in each case prepared or presented by legal counsel or
15 public accountants.

16 * Sec. 47. AS 10.06.483 is amended by adding new subsections to read:

17 (f) An officer is not acting in good faith if the officer has
18 knowledge concerning the matter in question that makes reliance other-
19 wise permitted by (e) of this section unwarranted.

20 (g) An officer who makes a business judgment in good faith
21 fulfills the duty of care under this section if the officer

22 (1) is not interested in the subject of the business judg-
23 ment;

24 (2) is informed about the subject of the business judgment
25 to the extent the officer reasonably believes to be appropriate under
26 the circumstances; and

27 (3) rationally believes that the business judgment is in
28 the best interest of the corporation.

29 * Sec. 48. AS 10.06.576(f) is amended to read:

1 (f) At the time of filing the notice of election to dissent, or
2 within 30 days after the shareholder has filed the notice, the share-
3 holder shall submit to the corporation, or to its transfer agent, the
4 certificates representing the shares for which payment is claimed, if
5 certificates have been issued. The corporation or its transfer agent
6 shall note conspicuously on the certificates, or on a separate docu-
7 ment if certificates have not been issued for the shares, that a
8 notice of election has been filed, and shall return the certificates
9 or the separate document to the shareholder or to the person who
10 submitted them on the shareholder's behalf. Unless a court, for good
11 cause shown, otherwise directs, a shareholder who fails to comply with
12 this subsection loses the right to dissent granted by this chapter, if
13 the corporation gives written notice that the right to dissent will be
14 lost to the shareholder within 45 days from the date that the share-
15 holder filed the notice of election to dissent. If the corporation
16 fails to exercise this notice option in a timely manner, the share-
17 holder retains the right to dissent granted by this chapter.

18 * Sec. 49. AS 10.06.576(g) is repealed and reenacted to read:

19 (g) When a share of a dissenting shareholder under (f) of this
20 section is transferred, the new certificate must bear a notation
21 similar to that made under (f) of this section and state the name of
22 the original dissenting holder of the shares, or, if the share is a
23 certificateless share, the corporation must give the transferee a
24 written notice stating that a notice of election to dissent has been
25 filed and giving the name of the original dissenting holder. A trans-
26 feree acquires only the rights in the corporation that the original
27 dissenting shareholder had at the time of transfer.

28 * Sec. 50. AS 10.06.578(c) is amended to read:

29 (c) If the corporate action has been completed the offer

1 required by (a) of this section shall also be accompanied by

2 (1) advance payment to each shareholder who submitted the
3 share certificates to the corporation, or to whom notice was sent if
4 the shares were certificateless, as provided in AS 10.06.576(f), of
5 the amount offered under (a) of this section; or

6 (2) a statement to a shareholder who has not submitted the
7 share certificates, if certificates were issued for the shares, that
8 advance payment of the amount offered under (a) of this section will
9 be made by the corporation promptly upon submission of the certifi-
10 cates.

11 * Sec. 51. AS 10.06.580(f) is amended to read:

12 (f) Unless prohibited by AS 10.06.578(g), within 60 days after
13 the final determination of the proceeding, the corporation shall pay
14 to each dissenting shareholder who is a party the amount determined
15 under (e) of this section in exchange for the surrender of the certifi-
16 cate representing the dissenter's shares or the dissenter's shares if
17 the shares are certificateless. Upon payment of the judgment, the
18 dissenting shareholder ceases to have an interest in the shares.

19 * Sec. 52. AS 10.06.605(b) is amended to read:

20 (b) A corporation [THE FOLLOWING CORPORATIONS] may elect by
21 approval of the board to wind up and dissolve if the [A] corporation
22 [THAT] has:

23 (1) been adjudicated bankrupt;

24 (2) disposed of all of its assets and has not conducted any
25 business for a period of five years immediately preceding the adoption
26 of the resolution to dissolve the corporation; or [AND]

27 (3) issued no shares.

28 * Sec. 53. AS 10.06.628(d) is amended to read:

29 (d) For purposes of this section, "shareholder" includes a

beneficial owner of shares who has entered into an agreement under AS 10.06.425(a) [AS 10.06.425].

* Sec. 54. AS 10.06.630(e) is amended to read:

(e) For the purposes of this section, "shareholder" includes a beneficial owner of shares who has entered into an agreement under AS 10.06.425(a) [AS 10.06.425].

* Sec. 55. AS 10.06.633(a) is amended to read:

(a) A corporation may be dissolved involuntarily by the commissioner if

(1) the corporation is delinquent six months in filing its biennial report or in paying its biennial corporation tax [A LICENSE FILING FEE] or a penalty;

(2) the corporation has failed for 30 days to appoint and maintain a registered agent in the state;

(3) the corporation has failed for 30 days after change of its registered office or registered agent to file in the office of the commissioner a statement of the change;

(4) the corporation has failed for two years to complete dissolution under a certificate of election under AS 10.06.608 to dissolve;

(5) a vacancy on the board of the corporation is not filled within six months or the next annual meeting, whichever occurs first;

(6) a misrepresentation of material facts has been made in the application, report, affidavit, or other document submitted under this chapter; or

(7) the corporation is 90 days delinquent in filing notice of change of an officer, director, alien affiliate, or five percent shareholder, as required by this chapter [; OR

(8) THE CORPORATION IS CONTROLLED BY A PERSON WHO WILFULLY

1 FAILS TO COMPLY WITH AS 10.06.155 WITHIN 30 DAYS AFTER RECEIPT BY THE
2 CORPORATION OR ITS REGISTERED AGENT OF NOTICE OF NONCOMPLIANCE SENT BY
3 THE DEPARTMENT BY CERTIFIED MAIL].

4 * Sec. 56. AS 10.06.828 is amended to read:

5 Sec. 10.06.828. INCORPORATION OR FILING FEES. A domestic or
6 foreign corporation that is required to file articles of incorpo-
7 ration, an application for a certificate of authority, [OR] amendatory
8 articles, or other application with the department, except corporate
9 entities organized under AS 10.20 and corporate entities organized
10 under the laws of the United States or the laws of a state or terri-
11 tory of the United States or the laws of a foreign country for the
12 same purposes as those allowed under AS 10.20, shall pay to the com-
13 missioner a filing fee established by the department by regulation.
14 The filing fee shall be uniform and fixed without reference to the
15 amount of authorized shares.

16 * Sec. 57. AS 10.06.855 is amended to read:

17 Sec. 10.06.855. PAYMENTS TO BE MADE IN ADVANCE. Fees and
18 charges provided for in this chapter, including the biennial corpo-
19 ration tax, shall [MAY] be paid in advance.

20 * Sec. 58. AS 10.06.960 is amended to read.

21 Sec. 10.06.960. CORPORATIONS ORGANIZED UNDER ALASKA NATIVE
22 CLAIMS SETTLEMENT ACT [P.L. 92-203]. (a) A corporation organized
23 under 43 U.S.C. 1601 - 1629e as amended [43 U.S.C. 1601 - 1629a]
24 (Alaska Native Claims Settlement Act) shall be incorporated under and
25 is subject to this chapter except

26 (1) each corporation shall issue without further considera-
27 tion the number of shares of common stock that may be necessary to
28 comply with the requirements of the act [43 U.S.C. 1601 - 1629a] and
29 all stock so issued is considered fully paid and nonassessable when

1 issued;

2 (2) unless otherwise provided in the articles of incorpo-
3 ration, the capital

4 (A) is considered the consideration for the initial
5 issuance of shares; and

6 (B) of a corporation organized under the act [43
7 U.S.C. 1601 - 1629a] includes the

8 (i) land or interests in it conveyed to the
9 corporation by the United States under the act [43 U.S.C.
10 1601 - 1629a], except that which is required to be conveyed
11 under 43 U.S.C. 1613(c)(1), (3), and (4), entered at its
12 fair value to the corporation upon receiving the conveyance
13 of it; and

14 (ii) money, when received under 43 U.S.C. 1605 and
15 43 U.S.C. 1608, that is retained by the corporation and that
16 is not immediately distributed or required to be distributed
17 under 43 U.S.C. 1606(j).

18 (b) Notwithstanding the provisions of AS 10.06.305 - 10.06.390,
19 payment from the money of a corporation organized under the act [43
20 U.S.C. 1601 - 1629a] that is required by the language of the act [43
21 U.S.C. 1601 - 1629a] to be distributed to shareholders or to other
22 corporations so organized is not a distribution to its shareholders as
23 defined in AS 10.06.990.

24 (c) Notwithstanding the provisions of AS 10.06.546, a plan of
25 merger, consolidation or exchange in which each participating corpo-
26 ration either (1) was organized under the act [43 U.S.C. 1601 - 1629a
27 (ALASKA NATIVE CLAIMS SETTLEMENT ACT)], within the same one of the 12
28 regions of Alaska established under the act [43 U.S.C. 1601 - 1629a],
29 or (2) resulted from the prior merger, consolidation, or exchange of

1 other similarly organized corporations within the same region, is
2 approved if it receives the affirmative vote of the holders of at
3 least a majority of the outstanding shares of each corporation. If a
4 class of shares of a corporation specified in this subsection is
5 entitled to vote as a class, the plan of merger, consolidation, or
6 exchange is approved if it receives the affirmative vote of the hold-
7 ers of at least a majority of the outstanding shares of each class of
8 shares entitled to vote as a class and of the total outstanding
9 shares. Notwithstanding AS 10.06.574 - 10.06.582, a plan of merger,
10 consolidation, or exchange approved under this section before Decem-
11 ber 19, 1991, may not include a right of shareholders to dissent.

12 (d) A director or officer of a corporation organized under the
13 act [43 U.S.C. 1601 - 1629a] is not personally liable to the contract
14 creditors specified in AS 10.06.490 except as otherwise provided by
15 law.

16 * Sec. 59. AS 10.06.960 is amended by adding new subsections to read:

17 (e) Notwithstanding the provisions of AS 10.06.502 - 10.06.510,
18 a corporation organized under the act may amend its articles by a vote
19 of the board of directors in order for the corporation to comply with
20 the mandatory requirements of the act.

21 (f) Notwithstanding the other provisions of this chapter, a
22 corporation organized under the act is governed by the act to the
23 extent the act is inconsistent with this chapter, the corporation may
24 take any action, including amendment of its articles, authorized by
25 the act, and the action is considered to be approved and adopted if
26 approved under the act. An amendment approved under the act and
27 delivered to the commissioner under AS 10.06.512 shall be filed by the
28 commissioner under AS 10.06.910, and a certificate of amendment shall
29 be issued.

1 (g) Notwithstanding AS 10.06.358, if there are no retained
2 earnings, the directors of a corporation organized under the act may
3 declare and pay distributions in cash or property out of its net
4 profits for the fiscal year in which the distribution is declared and
5 for the preceding fiscal year, except when the corporation is insol-
6 vent under AS 10.06.360. For the purposes of this subsection, a
7 corporation's debts include the amounts it is required to distribute
8 under 43 U.S.C. 1606(i) and 43 U.S.C. 1606(j). The directors may
9 determine the net profits derived from the exploitation or liquidation
10 of wasting assets without consideration of the depletion of those
11 assets resulting from lapse of time, consumption, liquidation, or
12 exploitation of the assets, and a distribution declared from those net
13 profits shall be described, concurrently with distribution of the net
14 profits to shareholders, as a distribution from wasting assets without
15 consideration of the depletion of the assets. In this subsection,
16 "wasting assets" means timber resources and subsurface estates.

17 (h) Notwithstanding AS 10.06.358, the directors of a corporation
18 organized under the act may, from time to time, distribute to its
19 shareholders in partial liquidation a portion of the corporation's
20 assets out of capital, in cash or property, except that a distribution

21 (1) may not be made at a time when the corporation is
22 insolvent under AS 10.06.360;

23 (2) may not be made unless the articles of incorporation
24 authorize the board to make the distribution or the distribution is
25 authorized by the affirmative vote of the holders of at least two-
26 thirds of the outstanding shares;

27 (3) when made, shall be identified as a distribution in
28 partial liquidation and the amount per share shall be disclosed to the
29 shareholders concurrently with the distribution.

1 (i) In this section, "act" means 43 U.S.C. 1601 - 1629e (Alaska
2 Native Claims Settlement Act).

3 * Sec. 60. AS 10.06.990(12) is amended to read:

4 (12) "control" [OR "CONTROLLING INTEREST"] means

5 (A) owning directly or indirectly, or having the power
6 to vote, 25 percent or more of a class of voting securities of a
7 corporation subject to this chapter; or

8 (B) influencing or affecting in any substantive manner
9 the election of a majority of the directors or trustees of a
10 corporation subject to this chapter;

11 * Sec. 61. AS 10.06.990 is amended by adding a new paragraph to read:

12 (47) "entire board" means the total number of directors that
13 the corporation has if there are no vacancies.

14 * Sec. 62. APPLICABILITY TO CERTAIN CORPORATIONS WITH CLASSIFIED DIREC-
15 TORS. (a) Notwithstanding AS 10.06.453(e) and 10.06.455, if a corporation
16 is organized under 43 U.S.C. 1601 - 1629e and if the corporation's bylaws,
17 as the bylaws exist immediately before July 1, 1989, contain a provision
18 that complies with former AS 10.05 and provides for a board of directors
19 consisting of three or fewer classes of directors with terms of office
20 extending not longer than the third annual meeting after the directors'
21 election, the corporation may continue to elect directors in the classes
22 and for the terms provided under the bylaws.

23 (b) The application of (a) of this section terminates if on or after
24 July 1, 1989, the corporation modifies or eliminates the provisions of the
25 corporation's bylaws on the classification and terms of office of the
26 corporation's directors.

27 (c) Notwithstanding AS 10.06.453(e) and 10.06.455, if a corporation
28 is not covered by (a) of this section, if the corporation is organized
29 under former AS 10.05, and if the corporation's bylaws, as the bylaws exist

1 immediately before July 1, 1989, contain a provision that complies with
2 former AS 10.05 and provides for a classified board of directors, the
3 corporation may continue to elect directors in the classes and for the
4 terms provided under the bylaws until July 1, 1994.

5 * Sec. 63. APPLICABILITY OF CUMULATIVE VOTING PROVISIONS TO CERTAIN
6 CORPORATIONS. Notwithstanding AS 10.06.420(d) and 10.06.460(a)(2), if a
7 corporation is organized under former AS 10.05 and if the corporation's
8 bylaws, as the bylaws exist immediately before July 1, 1989, contain a
9 provision that complies with former AS 10.05 and prohibits cumulative
10 voting, the corporation may continue to operate without cumulative voting
11 until July 1, 1994.

12 * Sec. 64. AS 10.06.210(1)(L), 10.06.155, and 10.06.230(b) are re-
13 pealed.

14 * Sec. 65. This Act takes effect July 1, 1989.
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Hand Delivered

May 2, 1989

The Honorable Peter Goll
The Honorable Max F. Gruenberg, Jr.
Cochairs, House Judiciary Committee
P.O. Box V
Juneau, Alaska 99811

Re: SB 204(Jud) - Suggested Amendments

Dear Representatives Goll and Gruenberg:

In my letter to you dated May 1, 1989, I expressed Sealaska Corporation's support for two amendments to Senate Bill 204(Jud), which amends the new Corporations Code.

Since the transmittal of that letter, Sealaska has reconsidered its endorsement of the first proposed amendment, the suggested addition of 43 U.S.C. 1606(i) to AS 10.06.960(a)(2)(ii). To remain in accord with the Alaska Federation of Natives, which does not support that change, Sealaska withdraws its support of this proposed amendment. However, Sealaska continues strongly to endorse the change to AS 10.06.358 that is the second amendment proposed in the corporation's May 1 letter.

We appreciate your attention to this matter. If you have questions about Sealaska's position, please contact Sam Kito, General Counsel Chris E. McNeil, or our outside corporate counsel, E. Budd Simpson.

Sincerely,

SEALASKA CORPORATION

Marlene Johnson
Chairman of the Board

cc: Byron I. Mallott
Chris E. McNeil, Jr.
E. Budd Simpson
Sam Kito
David P. Wolf



May 1, 1989

Hand Delivered

Representative Peter Goll
Representative Max F. Gruenberg, Jr.
Cochairs, House Judiciary Committee
Alaska House of Representatives
P. O. Box V
Juneau, Alaska 99811

Re: SB 204(Jud) - Suggested Amendments

Dear Representatives Goll and Gruenberg:

Senate Bill 204(Jud), which amends the new Corporations Code, passed to the House this morning, and will likely be assigned to House Judiciary for consideration. As you know, Sealaska Corporation's reservations about the new Code and the lack of opportunity to amend it have led the corporation to support HB 204, which simply extends the effective date of the new Code by one year to give Native corporations and all other Alaska businesses a chance to identify and lobby for necessary amendments.

Both SB 204(Jud) and the new Code overlook a few areas of concern not only to Sealaska Corporation but to Native corporations generally. Sealaska proposes two amendments to the bill; for the sake of simplicity, our suggested amendments are written as amendments to the new Code rather than to any version of the bill, and use the legislative bill format for showing deletions and insertions.

First, we propose to amend AS 10.06.960(a)(2)(B)(ii) (in the bill at page 28) to include as capital those funds obtained by Native corporations under 43 U.S.C. 1606(i):

(ii) money, when received under 43 U.S.C. 1605, 43 U.S.C. 1606(i), and 43 U.S.C. 1608, that is retained by the corporation and that is not immediately distributed or required to be distributed under 43 U.S.C. 1606(j).

Representative Peter Goll
Representative Max F. Gruenberg, Jr.
May 1, 1989
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43 U.S.C. 1606(i) funds are those received under the ANCSA provision that requires division of 70% of certain natural resource revenues among all of the Native corporations.

Finally, Sealaska strongly endorse the apparent intent behind the suggested amendment of AS 10.06.358 (page 8 of SB 204(Jud)), a provision that requires corporations to use generally accepted accounting principles ("GAAP") in determining whether distributions are permissible. However, Sealaska suggests that the provision be revised further to obviate a problem in the new Code for Native corporations. The Commission amendment would allow corporations to use "fair and reasonable" accounting principles other than GAAP when the corporations can prove the fairness and reasonableness of the principles used.

The problem the Commission has addressed with its amendment is that Native corporations often have a nominal value on their books for their land and resource assets, because at the time these assets were conveyed to the corporations they were not easily valued. GAAP does not allow a corporation to rebook an asset based on later information about its value. The former Corporations Code addressed this dilemma (in AS 10.05.005(d)) by permitting Native Corporations to make distributions out of net income, computed without allowance for depletion. If they are required to use only GAAP to determine distributions, the corporations' capacity to make distributions will be unduly restricted.

The amendment in the current bill does not adequately address the Native corporations' distribution problems as created by the new Code. No acceptable alternative method of accounting would allow the change on the corporate books; instead, Sealaska asks that Native corporations be permitted to base their dividend determinations on fair valuation of their assets. A requirement that the corporations prove the fairness of the fair valuation would negate the intent of the legislation. Sealaska asks that this valuation be judged according to the standard used for any other decision of the corporate board of directors.

Sealaska's suggested amendment would add a new AS 10.06.358(c) and (d):

(c) For the purpose of this chapter, the amount of a distribution payable in property shall be determined on the basis of the value at which the property is carried on the corporation's financial statements prepared on the

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Representative Max F. Gruenberg, Jr.
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basis of accounting practices and principles that are reasonable in the circumstances, or on a fair valuation or other method that is reasonable in the circumstances [IN ACCORDANCE WITH GENERALLY ACCEPTED ACCOUNTING PRINCIPLES].

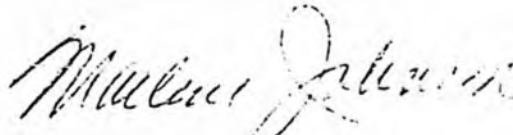
(d) Only a corporation that classifies its assets as current assets and fixed assets under accounting practices and principles that are reasonable in the circumstances, or on a fair valuation or other method that is reasonable in the circumstances [GENERALLY ACCEPTED ACCOUNTING PRINCIPLES] is governed by (a)(2)(B) of this section.

The apparent purpose of the Commission's proposed amendment to AS 10.06.358 is to alleviate the undue restriction on Native corporations' distributions; the above amendment to SB 204(Jud) would carry out this purpose.

If you have questions about Sealaska's proposed amendments to SB 204(Jud), please contact Sam Kito, General Counsel Chris E. McNeil, or our outside corporate counsel, E. Budd Simpson. We will be pleased to discuss these changes with you.

Sincerely,

SEALASKA CORPORATION



Marlene Johnson
Chairman of the Board

cc: Byron I. Mallott
Chris E. McNeil, Jr.
E. Budd Simpson
Sam Kito
David P. Wolf

A M E N D M E N T

OFFERED IN THE HOUSE

TO: CSSB 204 (Judiciary)

Page 30, before line 1:

Insert new subsections to read:

"(g) Notwithstanding AS 10.06.358, if there are no retained earnings, the directors of a corporation organized under the act may declare and pay distributions in cash or property out of its net profits for the fiscal year in which the distribution is declared and for the preceding fiscal year except when the corporation is insolvent under AS 10.06.360. For the purposes of this subsection, a corporation's debts include the amounts it is required to distribute under 43 U.S.C. 1606(i) and 43 U.S.C. 1606(j). The directors may determine the net profits derived from the exploitation or liquidation of wasting assets without consideration of the depletion of those assets resulting from lapse of time, consumption, liquidation, or exploitation of the assets, and a distribution declared from those net profits shall be described, concurrently with distribution of the net profits to shareholders, as a distribution from wasting assets without consideration of the depletion of the assets. In this subsection, "wasting assets" means timber resources and subsurface estates.

(h) Notwithstanding AS 10.06.358, the directors of a corporation organized under the act may, from time to time, distribute to its shareholders in partial liquidation a portion of the corporation's

assets out of capital, in cash or property, except that a distribution

(1) may not be made at a time when the corporation is insolvent under AS 10.06.360;

(2) may not be made unless the articles of incorporation authorize the board to make the distribution or the distribution is authorized by the affirmative vote of the holders of at least two-thirds of the outstanding shares;

(3) when made, shall be identified as a distribution in partial liquidation and the amount per share shall be disclosed to the shareholders concurrently with the distribution."

Reletter the following subsection accordingly.

Page 30, following line 26:

Insert new material to read:

"(c) Notwithstanding AS 10.06.453(e) and 10.06.455, if a corporation is not covered by (a) of this section, if the corporation is organized under former AS 10.05, and if the corporation's bylaws, as the bylaws exist immediately before July 1, 1989, contain a provision that complies with former AS 10.05 and provides for a classified board of directors, the corporation may continue to elect directors in the classes and for the terms provided under the bylaws until July 1, 1994.

* Sec. 63. APPLICABILITY OF CUMULATIVE VOTING PROVISIONS TO CERTAIN CORPORATIONS. Notwithstanding AS 10.06.420(d) and 10.06.460(a)(2), if a corporation is organized under former AS 10.05 and if the corporation's bylaws, as the bylaws exist immediately before July 1, 1989, contain a

provision that complies with former AS 10.05 and prohibits cumulative voting, the corporation may continue to operate without cumulative voting until July 1, 1994."

Renumber the following bill sections accordingly.

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Commerce & Economic Dev.
Title: An Act relating to corporations BRU: Banking, Securities and
Corporations
Sponsor: Rules Committee Components: _____
Requester: Legislative Council

EXPENDITURES / REVENUES : (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
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
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REVENUE	0	0	0	0	0	0
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FUNDING: (Thousands of dollars)

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

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: Willis F. Kirkpatrick, Director
Division: Banking, Securities and Corporations

Phone: 465-2521
Date: 4-25-89

Approved by Commissioner: Larry Mercurieff
Agency: Department of Commerce & Economic Development

Phone: 465-2500
Date: 4/25/89

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

page _____ of _____