

**HB**

**392**

# FISCAL NOTE

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO. HB 392

Revision Date: \_\_\_\_\_  
 Title: Native Corp Director Classification  
 Sponsor: Representative Ivan  
 Requestor: \_\_\_\_\_

Department: Commerce and Economic Development  
 BRU: Banking, Securities and Corporations  
 Component: Banking, Securities and Corporations  
 COMPONENT SERIAL NO. 1233

Expenditures/Revenues	(Thousands of Dollars)					
OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	00	00	00	00	00	00
<b>CAPITAL EXPENDITURES</b>	00	00	00	00	00	00
<b>CHANGE IN REVENUES</b>	00	00	00	00	00	00

FUND SOURCE	(Thousands of Dollars)					
1002 Federal Receipts						
1003 GF Match						
1004 General Fund						
1005 GF Program Receipts						
1006 GF MHTIA						
Other						
<b>TOTAL</b>	00	00	00	00	00	00

Estimate of any current year (FY 96) cost: \$ 00

**POSITIONS**

FULL-TIME	
PART-TIME	
TEMPORARY	

**ANALYSIS:** (Attach a separate page if necessary)

Prepared by: Willis F. Kirkpatrick, Director *Willis F. Kirkpatrick* Phone: 465-2521  
 Division: Banking, Securities and Corporations Date: 1-10-96  
 Approved by Commissioner: William L. Hensley *William L. Hensley* Date: 1-10-96  
 Agency: Commerce and Economic Development

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# FISCAL NOTE

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO: H 092

Revision Date: 1/9/96 Dept. Affected: Community & Regional Affairs  
 Title: relating to the affirmative vote necessary BRU: \_\_\_\_\_  
to amend articles of inc. of Native village corp Component: \_\_\_\_\_  
 Sponsor: Rep. Ivan  
 Requestor: Rep. Ivan COMPONENT SERIAL NO. \_\_\_\_\_

**EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)**

	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
OPERATING						
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES ( )						
Revenue Code						

**FUNDING: (Thousands of Dollars)**

1002 Federal Receipts						
1003 GE Match						
1004 GE						
1005 GE/Program Receipts						
1006 GE/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of current year (FY 95) impact: \$ none

**POSITIONS:**

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

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Remond Henderson, Director *Remond Henderson* Phone: 465-4808  
 Division: Administrative Services Date: 1/9/96  
 Approved by Commissioner: Mike Irwin *Mike Irwin* Date: 1/9/96  
 Agency: Mike Irwin, Dept. of Community & Reg. Affairs

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**Representative Ivan M. Ivan**

**SPONSOR STATEMENT - HOUSE BILL 392 am**

I sponsored House Bill 392 to amend the Alaska Corporations Code to allow ANCSA village corporations to amend their articles of incorporation to authorize a classified or staggered term board of directors by a majority vote of the shares represented at a meeting of shareholders.

Under current law, for those villages which did not have classified boards in place by July 1, 1989, such an amendment requires a vote of two-thirds of all outstanding shares entitled to vote. This is often difficult for village corporations to achieve. This bill rectifies that situation.

An amendment to House Bill 392 was presented and accepted, to include a provision for ANCSA village corporations that have been involuntarily dissolved by the State an opportunity to reinstate. A similar provision was provided by the Eighteenth Alaska Legislature in 1994, under HB 71.

Amended House Bill 392 allows Native village corporations that have been involuntarily dissolved by the State, the ability to be reinstated under the law, one year after the effective date of this act. According to the Division of Banking, Securities and Corporations, there remain five Native village corporations that did not take advantage of the 1994 reinstatement. Those corporations are Oscarville Native Corporation (Oscarville - Senate District T), Tulkisarmute, Inc. (Tuluksak - Senate District R), Cully Corporation (Point Lay - Senate District S), Ohog Incorporated (Russian Mission - Senate District R), and The Grouse Creek Corporation (Seward - Senate District D).

**SPONSOR STATEMENT**

Aksuach • Akuk • Aleknagik • Almatuuk • Bethel • Chetana • Clark • Point • Dillingham • Eek • Ekuk • Ekvat • Gendreau Bay • Kasigluk • Kupuk • Koliganek • Kungiganek • Kwethluk • Kwiglingok • Manokotak • Napakiak • Napakiak • New Stuyahok • Nonapitchuk • Oscarville • Pitmeek • Portage Creek • Quinhagak • Toqak • Tuntutuliak • Twin Hills

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**Representative Ivan M. Ivan**

SPONSOR STATEMENT - HOUSE BILL 392

This bill amends the Alaska Corporations Code to allow ANCSA village corporations to amend their articles of incorporation to authorize a classified or staggered term board of directors by a majority vote of the shares represented at a meeting of shareholders.

Under current law, for those villages which did not have classified boards in place by July 1, 1989, such an amendment requires a vote of two-thirds of all outstanding shares entitled to vote. This is often difficult for village corporations to achieve. House Bill 392 rectifies that situation.

HOUSE BILL NO. 392  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
NINETEENTH LEGISLATURE - SECOND SESSION

BY REPRESENTATIVE IVAN

Introduced:  
Referred:

A BILL  
FOR AN ACT ENTITLED

1 "An Act relating to the affirmative vote necessary to amend the articles of  
2 incorporation of Native village corporations to authorize the classification of  
3 directors."

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

5 \* Section 1. Section 10, ch. 166, SLA 1988, as amended by sec. 57, ch. 50, SLA 1989,  
6 is amended by adding a new subsection to read:

7 (d) Notwithstanding (a) of this section and AS 10.06.455(b), an amendment to  
8 the articles of incorporation of a village corporation organized under 43 U.S.C. 1601 -  
9 1629e (Alaska Native Claims Settlement Act) and incorporated under former  
10 AS 10.05.005 to add a provision authorizing the classification of directors under  
11 AS 10.06.455 may be adopted by the affirmative vote of a majority of the shares  
12 represented at a regular or special meeting at which a quorum is present in person or by  
13 proxy.

## FOSTER PEPPER &amp; SHEFELMAN

A LAW PARTNERSHIP INCLUDING  
PROFESSIONAL SERVICE CORPORATIONS

January 12, 1996

VIA FACSIMILE

Mr. Tom Wright  
Administrative Assistant  
Office of Representative Ivan M. Ivan  
Alaska State Legislature  
Juneau, Alaska 99801

Re: HB 392: ANCSA Village Corporation Board Classification  
Our File Nos. 74270.1 and 74273.1

Dear Tom:

Per your request, this letter provides you with a summary of HB 392 ("An Act relating to the affirmative vote necessary to amend the articles of incorporation of Native village corporations to authorize the classification of directors"). In a nutshell, if enacted in its current form, HB 392 would allow ANCSA village corporations to amend their articles of incorporation to authorize a classified or staggered term board of directors by a majority vote of the shares represented at a meeting of shareholders.

Under the current law, such an amendment requires a vote of two-thirds of all the outstanding shares entitled to vote. This is a difficult voting percentage for ANCSA village corporations to achieve. Native village corporations generally have a difficult time obtaining even a majority attendance (in person or by proxy) at their shareholder meetings. Obtaining an affirmative vote of two-thirds of all the shareholders (which is not simply two-thirds of the shareholders present at a meeting) or even two-thirds attendance (in person or by proxy) at a shareholder meeting, is almost impossible.

There are various advantages to having a classified board of directors. A classified board provides continuity in the management of a corporation because the full board is not replaced every year. Instead, only directors in one of the classes are up for election in any given year. A classified board also provides for better long range planning and policy development because there are always directors from the previous year on the board. In addition, such a scheme always ensures that there are some board members with historical knowledge of prior year corporate activities.

It is also important to emphasize that this legislation does not apply to ANCSA Regional corporations. Furthermore, many of the ANCSA village corporations already have classified boards in place, so this legislation will also not impact them (unless they desire to change their current classification scheme). Under the prior corporations statute (which was replaced by the

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SUPPORTING DOCUMENTS

Mr. Tom Wright  
January 12, 1996  
Page 2

Alaska Corporations Code effective July 1, 1989), corporations were permitted to provide for a classified board in their bylaws. Savings language enacted in conjunction with the Alaska Corporations Code allowed these bylaw classification schemes to remain intact for ANCSA corporations despite language in the new code requiring corporations to provide for classified boards through their articles of incorporation. See Section 57, ch. 82, SLA 1989. Thus, HB 392 is primarily directed at village corporations who did not have classified boards in place on July 1, 1989, but now desire to implement such a scheme.

I should also emphasize that there is a precedent for allowing this lower voting percentage. Under the Alaska Corporations Code, corporations are authorized to eliminate or limit director personal liability (except in certain instances) to the corporation and/or shareholders for monetary damages by way of their articles of incorporation. See AS 10.06.210(1)(N). For corporations in effect prior to July 1, 1989, the necessary voting percentage for such an amendment to the articles is two-thirds of all the shares entitled to vote. However, the Legislature made an exception to this requirement for ANCSA corporations by providing that such an amendment to the articles of incorporation could be adopted by the affirmative vote of the majority of shares represented at a meeting. See Section 10, ch. 166, SLA 1988, as amended by Section 57, ch. 50, SLA 1989. The voting percentage for such an amendment is the same as that proposed in HB 392.

Lastly, as you are aware, this amendment was requested by Napaskiak Incorporated and Swan Lake Corporation, two ANCSA village corporations from the Calista Region. Both corporations have submitted classified board amendments to their shareholders at the last two annual shareholder meetings. Although the amendment was supported by a majority of shares represented at each meeting, neither corporation was able to obtain a two-thirds affirmative vote in favor of the amendment. If the proposed legislation is enacted, both corporations will most likely adopt a classified board amendment at their next annual shareholder meeting.

Please let me know if you need additional information. I appreciate all the time and effort you have provided in conjunction with this proposed legislation.

Very truly yours,

FOSTER PEPPER & SHEFFELMAN



Glen Price

cc: Steven Maxie, Jr., Napaskiak Incorporated  
Aurelia Brown, Swan Lake Corporation  
Matthew Nicolai, Calista Corporation  
Sue Gamache, Calista Corporation  
Julie Kitka, Alaska Federation of Natives  
Michael Monagle, Division of Banking, Securities and Corporations



# Calista Corporation

601 W. 5th Avenue, Suite 200 • Anchorage, AK 99501-2225 • (907) 279-5516 Facsimile (907) 272-5060

January 25, 1996

*Office of the President*

Representative Ivan M. Ivan  
Alaska State Legislature  
State Capitol  
Juneau, AK 99801-1182

Dear Representative Ivan:

Calista Corporation supports House Bill 392 which if passed would amend the Alaska Corporation's Code to assist village corporations to add provisions to their articles of incorporation to authorize classification of directors.

As it currently stands, in order for ANCSA village corporations to amend their articles of incorporation to add wording to allow for classification of directors, 2/3 of their voting stock must vote affirmative in order for this to pass. It is very difficult at the village level to obtain a 2/3 representation by proxy and in person let alone a 2/3 approval vote on an issue.

Village corporations are concerned about the lack of continuity on their board of directors and they feel that having a classified Board will provide the following advantages:

- Provide continuity in the Board of Directors and management of the corporation because the full board will not be replaced every year by a new board.
- Provide for better long range planning and policy development because there will always be at least three existing directors on the Board.
- Always ensure that there are some Board members with historical knowledge of prior year corporate activities.

Calista Corporation assists many of the Calista region village corporations in preparing their annual shareholders meeting documents and serving as inspector of elections at the village meetings. In meetings where the classification of directors issue has been put before the shareholders for their consideration, it is our experience that the shareholders support the classification of directors, however, the village corporations are unable to obtain the 2/3 proxy return currently required to implement this provision.

Sincerely,

CALISTA CORPORATION



Matthew Nicolai  
President



2-596

February 1, 1996

House Finance Committee  
Co-chair Rep. Mark Hanley  
Co-chair Rep. Richard Foster  
State Capitol  
Juneau, AK 99801-1182

via fax: 465-2418  
via fax: 465-3242

Dear Committee Members:

I understand that your committee is considering legislation relating to the Alaska corporations code, Chapter 10.06, that may be able to address a problem faced by one of the village corporations within our region. A proposed addition to HB 392 is attached.

The Village Corporation for Point Lay, Cully Corporation, had been involuntarily dissolved by the State and they sought to be reinstated under the provision added to AS 10.06.960(i) last year. Unfortunately, they were unable to meet the deadline in that provision. Arctic Slope Regional Corporation (ASRC) has been working with Cully Corporation representatives to solve this problem and establish a system to ensure they are kept current with biannual reporting requirements to the State. We are seeking to have the benefit provided by 960(i) extended again to permit Cully Corporation to gain its active status and good standing with the State. Language to allow this could be added to HB 392 presently before you.

Many small village corporations have difficulty with the corporate reporting requirements. Our region is not the only one with corporations that have been involuntarily dissolved. A random sampling of eight villages with corporations provided for under ANCSA found four with no record, one dissolved, and only three in good standing.

This provision would allow village corporations which have been dissolved due to their failure to meet corporate compliance requirements to be reinstated under the law. Your support for this amendment on behalf of our region and many others is appreciated.

Sincerely,

Conrad N. Bagne, House Counsel and  
Chief Administrative Officer

CNB/ngk

Attachment

cc: Sen. Al Adams  
Rep. Don Long

*Swan Lake Corporation*  
*Board of Directors*  
*Resolution 95-17*

A resolution to amend the Alaska Corporation Code (AS 10.26.455 (a)) ANCSA village corporations Articles of Incorporation and By Laws - Classified Boards

WHEREAS, under the Corporation's current form of Articles of Incorporation and By Laws, the Board of Directors is comprised of seven members who are elected annually; and

WHEREAS, the Board of Directors have determined that it is in the Corporation's best interests to classify the Board into three classes with three-year staggered terms; and

WHEREAS, under the Alaska Corporation's Code (AS 10.16.455 (a)), a classified board must be authorized in a corporation's Articles of Incorporation; and

WHEREAS, the Corporation's Articles presently contain no such authority; and

WHEREAS, in order to provide such authority in the Articles of Incorporation, an amendment to the Article must be approved by at least two-thirds of the shares entitled to vote on the amendment; and

WHEREAS, the Corporation has attempted such an amendment in the last two annual shareholder meetings, but has been unable to even have two-thirds of all shares represented at the meetings; and

WHEREAS, it is very common for ANCSA village Corporations to be unable to obtain a two thirds attendance in person or by proxy, at a shareholder's meeting; and

WHEREAS, the Board of Directors has determined that it should request that the Alaska Federation of Natives and Calista Corporation work towards an amendment to the Alaska Corporations Code to address this high voting percentage requirements;

NOW THEREFORE BE IT IS RESOLVED by the delegates to the 1995 Annual Convention of the Alaska Federation of Natives, Inc., that Aurelia Brown, as Chairperson and President of the Corporation, be and hereby is authorized and directed to contact and work in conjunction with Calista, the Alaska Federation of Natives, and the Corporation's attorney to attempt to amend the Alaska Corporations Code to provide for either (1) a lower voting percentage to amend

ANCSA village corporation's Articles with respect to authority for classified boards; (ii) the authority in a Board of Directors to amend a Corporation's By Laws to provide for a classified board; or (iii) some similar amendment that would assist ANCSA village Corporations in establishing classified boards.

PASSED AND APPROVED by a duly constituted quorum on the 13th day of September 1995, with 4 present and 3 absent, also by a vote of 4 in favor, 0 opposed and three absent of the Swan Lake Corporation Board of Directors

*Aurika Brown*  
Aurika Brown  
Chairperson

ATTEST: *Justin Ignatius Sr.*  
Justin Ignatius, Sr.  
Secretary

NAPASKIAK INCORPORATED

BOARD OF DIRECTORS

RESOLUTION NO. 95-05

WHEREAS, under the corporation's current form of Articles of Incorporation and Bylaws, the Board of Directors is comprised of five members who are elected annually; and

WHEREAS, the Board of Directors has determined that it is in the corporation's best interests to classify the Board into three classes with three-year staggered terms; and

WHEREAS, under the Alaska Corporations Code (AS 10.06.455(a)), a classified board must be authorized in a corporation's Articles of Incorporation; and

WHEREAS, the corporation's Articles presently contain no such authority; and

WHEREAS, in order to provide such authority in the corporation's Articles of Incorporation an amendment to the Articles must be approved by at least two-thirds of the shares entitled to vote on the amendment; and

WHEREAS, the corporation is not able to obtain even a two-thirds attendance, in person or by proxy, at shareholder meetings; and

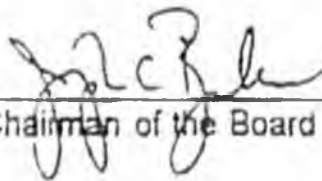
WHEREAS, it is very common for ANCSA village corporations to be unable to obtain a two-thirds attendance, in person or by proxy, at a shareholder's meeting; and

WHEREAS, the Board of Directors has determined that it should request that the Alaska Federation of Natives and Calista Corporation work towards an amendment to the Alaska Corporations Code to address this high voting percentage requirement; therefore

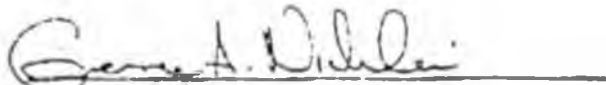
IT IS RESOLVED, that Joseph Bavilla, as Chairman and President, and Steven Maxie, Jr., as General Manager, be and hereby are authorized and directed to contact and work in conjunction with Calista Corporation, the Alaska Federation of Natives, and the corporation's attorney to attempt to amend the Alaska Corporations Code to provide

for either (i) a lower voting percentage to amend ANCSA village corporations' Articles with respect to authority for classified boards; (ii) the authority in a Board of Director's to amend a corporation's Bylaws to provide for a classified board; or (iii) some similar amendment that would assist ANCSA village corporations in establishing classified boards.

5 DATED this 2nd day of October, 1995, be a vote of 5 in favor, and 0 opposed.

  
\_\_\_\_\_  
Chairman of the Board

ATTESTED TO:

  
\_\_\_\_\_  
Secretary

Sec. 10.06.960. CORPORATIONS ORGANIZED UNDER ALASKA NATIVE CLAIMS SETTLEMENT ACT.

(a) A corporation organized under 43 U.S.C. 1601 - 1629e as amended (Alaska Native Claims Settlement Act) shall be incorporated under and is subject to this chapter except

(1) each corporation shall issue without further consideration the number of shares of common stock that may be necessary to comply with the requirements of the act and all stock so issued is considered fully paid and nonassessable when issued;

(2) unless otherwise provided in the articles of incorporation, the capital

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

(B) of a corporation organized under the act includes the

(i) land or interests in it conveyed to the corporation by the United States under the act, except that which is required to be conveyed under 43 U.S.C. 1613(c)(1), (3), and (4), entered at its fair value to the corporation upon receiving the conveyance of it, and

(ii) money, when received under 43 U.S.C. 1605 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).

(b) Notwithstanding the provision of AS 10.06.305 - 10.06.390, payment from the money of a corporation organized under the act that is required by the language of the act to be distributed to shareholders or to other corporations so organized is not a distribution to its shareholders as defined in AS 10.06.990.

(c) Notwithstanding the provisions of AS 10.06.546, a plan of merger, consolidation, or exchange in which each participating corporation either (1) was organized under the act, within the same one of the 12 regions of Alaska established under the act, or (2) resulted from the prior merger, consolidation, or exchange of other similarly organized corporations within the same region, is approved if it receives the affirmative vote of the holders of at least a majority of the outstanding shares of each corporation. If a class of shares of a corporation specified in this subsection is entitled to vote as a class, the plan of merger, consolidation, or exchange is approved if it receives the affirmative vote of the holders of at least a majority of the outstanding shares of each class of shares entitled to vote as a class and of the total outstanding shares. Notwithstanding AS 10.06.574 - 10.06.582, a plan of merger, consolidation, or exchange approved under this section before December 19, 1991, may not include a right of shareholders to dissent.

(d) *Repealed, sec. 21 ch 6 SLA 1993*

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

(f) Notwithstanding the other provisions of this chapter, a corporation organized under the act is governed by the act to the extent the act is inconsistent with this chapter, and the corporation may take any action, including amendment of its articles, authorized by the act, and the action is considered to be approved and adopted if approved under the act. An amendment approved under the act and delivered to the commissioner under AS 10.06.512 shall be filed by the commissioner under AS 10.06.9.0, and a certificate of amendment shall be issued.

(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.

(i) Notwithstanding AS 10.06.633(e), a corporation that is organized as a Native corporation under the act, that has been involuntarily dissolved by the commissioner under AS 10.06.633, and that has failed to apply for reinstatement during the period established under AS 10.06.633(e), may be reinstated under AS 10.06.633(e) within one year of June 29, 1994. The reinstated corporation and its shareholders have all of the rights, privileges, liabilities, and obligations that would have applied to them if the corporation had not been dissolved, and all corporate and shareholder actions taken during the period of dissolution are considered to be as valid as if dissolution had not occurred.

(j) If a corporation is formed before June 29, 1994 to replace a Native corporation that has been involuntarily dissolved under AS 10.06.633, and if the replacing corporation has the same name as the dissolved corporation, the replacing corporation and its shareholders succeed, upon payment of any amounts that would have been required for the reinstatement of the dissolved corporation under AS 10.06.633(e), to all of the rights, privileges, liabilities, and obligations that would have applied to the dissolved corporation and its shareholders if the dissolved corporation had been reinstated under AS 10.06.633(e).

(k) In this section,

(1) "act" means 43 U.S.C. 1601 - 1641 (Alaska Native Claims Settlement Act),

(2) "Native corporation" has the meaning given in 43 U.S.C. 1602(m)

#### History -

(sec. 1 ch 166 SLA 1988; am sec. 53, 54 ch 82 SLA 1989; am sec. 21 ch 6 SLA 1993; am sec. 1, 2 ch 120 SLA 1994)

#### Revisors Notes -

In 1989, the word "and" was inserted preceding "the corporation may take" in the first sentence of subsection (f)

Subsections (i) and (j) were enacted as (j) and (k) respectively. Relettered in 1994, at which time former (i) was relettered as (k)

#### Cross References -



For other provisions relating to corporations organized under the Alaska Native Claims Settlement Act, see the editor's note under AS 10.06.504.

Amendment Notes -

The 1989 amendment, effective July 1, 1989, substituted "43 U.S.C. 1601 - 1629e as amended" for "43 U.S.C. 1601 - 1629a" near the beginning of subsection (a); substituted "the act" for "43 U.S.C. 1601 - 1629a" throughout subsections (a) - (d); and added subsections (e) - (i).

The 1993 amendment, effective April 14, 1993, repealed subsection (d).

The 1994 amendment, effective June 29, 1994, added present subsections (i) and (j), added the paragraph (k)(1) designation and made a section reference substitution therein, and added paragraph (k)(2) and made a related stylistic change.

Sec. 10.06.455. CLASSIFICATION OF DIRECTORS.

(a) If the board consists of three or more members, the articles of incorporation may provide that instead of electing all the directors annually the directors be divided into either two or three classes, each class to be as nearly equal in number as possible, with the term of office of directors of the first class to expire at the first annual meeting of shareholders after their election, that of the second class to expire at the second annual meeting after their election, and that of the third class, if any, to expire at the third annual meeting after their election. At each annual meeting after the classification the number of directors equal to the number of the class whose term expires at the time of the meeting shall be elected to hold office until the second succeeding annual meeting if there are two classes, or until the third succeeding annual meeting if there are three classes. A classification of directors is not effective before the first annual meeting of shareholders.

(b) Unless cumulative voting rights under AS 10.06.420(d) have been eliminated by the articles of incorporation, an amendment of the articles that would establish or require classification of the board under (a) of this section may not be adopted if the votes cast against the amendment would be sufficient to elect a director if voted cumulatively at an election of the entire board.

History -

(sec. 1 ch 166 SLA 1988, am sec. 1 ch 131 SLA 1990)

Cross References -

For applicability of section to certain existing corporations, see sec. 57, ch. 82, SLA 1989 in the Temporary and Special Acts or the editor's note at AS 10.06.453.

Amendment Notes -

The 1990 amendment substituted "three or more members" for "nine or more members" in the first sentence of subsection (a)

Sec. 10.06.453. NUMBER AND ELECTION OF DIRECTORS.

(a) The board of directors shall consist of one or more members. The number of directors shall be fixed by, or in the manner provided in, the bylaws, unless the articles fix the number of directors, in which case a change in the number of directors shall be made only by amendment of the articles. If the number of directors is not otherwise set, the number of directors is three.

(b) Except as otherwise provided in AS 10.06.230 and this section, the number of directors may be increased or decreased by amendment of the articles or the bylaws or by action of the board or the shareholders under the specific provisions of an article or a bylaw adopted by approval of the outstanding shares. A change in the number of directors, including by amendment of the articles, is subject to the following limitations:

(1) if the board is authorized by the articles or the bylaws to change the number of directors, whether by amending the bylaws or by taking action under the specific provision of an article or a bylaw adopted by approval of the outstanding shares, the amendment or action shall require the vote of a majority of the entire board,

(2) a decrease in the number of directors may not shorten the term of an incumbent director.

(c) The articles may provide for the election of one or more directors by the holders of the shares of a class or series voting as a class or series.

(d) The names and addresses of the members of the first board may be stated in the articles. The members of the first board hold office until the first annual meeting of shareholders, and until their successors have been elected and qualified.

(e) At the first annual meeting of shareholders and at each subsequent annual meeting the shareholders shall elect directors to hold office until the next succeeding annual meeting, except in the case of the classification of directors as permitted by AS 10.06.455. A director, including a director elected to fill a vacancy, shall hold office until the expiration of the term for which elected and until a successor has been elected and qualified.

History -

(sec. 1 ch 166 SLA 1988; am sec. 35, 36 ch 82 SLA 1989)

Amendment Notes -

The 1989 amendment, effective July 1, 1989, rewrote subsection (a), and in subsection (b), added "Except as otherwise provided in AS 10.06.230 and this section" at the beginning of the subsection, divided the subsection into two sentences, adding "A change in the number of directors, including by amendment of the articles, is" to the beginning of the present second sentence, and made related grammatical changes.

Editors Notes -

Section 57, ch. 82, SLA 1989, provides "APPLICABILITY TO CERTAIN CORPORATIONS WITH CLASSIFIED DIRECTORS. (a) Notwithstanding AS 10.06.453(e) and 10.06.455, if a corporation is organized under 43 U.S.C. 1601 - 1629e 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 board of directors consisting of three or fewer classes of directors with terms of office extending not longer than the third annual meeting after the directors' election, the corporation may continue to elect directors in the classes and for the terms provided under the bylaws

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

"(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."

Collateral Refs -

18B Am. Jur. 2d, Corporations, sec. 1349, 1363.

19 C.J.S., Corporations, sec. 716 - 720.

Sec. 10.06.504. PROCEDURE TO AMEND ARTICLES OF INCORPORATION.

(a) A corporation shall amend its articles of incorporation in the following manner:

(1) if shares have not been issued, the board shall adopt a resolution setting out the proposed amendment or amendments;

(2) subject to AS 10.06.506, if shares have been issued, an amendment shall be approved by the board and the outstanding shares; approval may be initiated by the shareholders either before or after consideration by the board, if the board adopts a resolution setting out a proposed amendment, the board shall direct that the amendment be submitted to a vote at a meeting of shareholders that may be either the annual or a special meeting; if approval of the outstanding shares is obtained before action by the board, the board shall consider and either approve or reject the amendment at the next regular or special meeting;

(3) unless the articles of incorporation provide otherwise, a corporation's board of directors may adopt one or more of the following amendments to the articles of incorporation without shareholder action:

(A) to delete the names and addresses of the initial directors,

(B) to delete the name and address of the initial registered agent or registered office, if a statement of change is on file with the commissioner; or

(C) to change each issued and unissued authorized share of an outstanding class into a greater number of whole shares if the corporation has only shares of that class outstanding

(b) A proposed amendment may be contained in restated articles of incorporation that contain

(1) a statement that except for the designated amendment the restated articles correctly set out without change the provisions of the articles being amended; and

(2) a statement that the restated articles together with the designated amendment supersede the original articles and all amendments to the original articles

(c) Written notice setting out the proposed amendment or amendments or a summary of the changes to be made shall be given to each shareholder of record entitled to vote thereon within the time and in the manner provided in this chapter for the giving of notice of meetings of shareholders. If the amendment is to be considered at an annual meeting, the proposed amendment or summary may be included in the notice of the annual meeting.

History -

(sec. 1 ch 166 SLA 1988)

Editors Notes -

Section 10, ch. 166, SLA 1988, as amended by sec. 57, ch. 50, SLA 1989, provides:

"(a) The requirement of an affirmative vote of at least two-thirds of the shares entitled to vote for the adoption of an amendment to the articles of incorporation as provided in former AS 10.05.276 shall remain in force for corporations existing before July 1, 1989

"(b) Notwithstanding (a) of this section, an election to be governed by the voting provisions of AS 10.06.504 - 10.06.506, as enacted by sec. 1 of this Act, may be made in the same manner as an amendment to the articles of incorporation is made under those sections. An election under this subsection requires the affirmative vote of at least two-thirds of the shares entitled to vote under former AS 10.05.276(3).

"(c) Notwithstanding (a) of this section, an amendment to the articles of incorporation of a corporation organized under 43 U.S.C. 1601 - 1628 (Alaska Native Claims Settlement Act) and incorporated under former AS 10.05.005 to add a provision eliminating or limiting the personal

liability of a director to the corporation or its stockholders for monetary damages under AS 10 06 210(1)(N) may be adopted by the affirmative vote of a majority of the shares represented at the regular or special meeting at which a quorum is present in person or by proxy."

# LEGAL SERVICES

## DIVISION OF LEGAL AND RESEARCH SERVICES LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

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FAX (907) 465-2029  
Mail Stop 3101

130 Seward Street, Suite 409  
Juneau, Alaska 99801-2105

### MEMORANDUM

January 30, 1996

**SUBJECT:** Codification of sections amended in HB 392  
(Work Order No. 9-LS1448(C))

**TO:** Representative Ivan Ivan

**FROM:** *TB*  
Theresa Bannister  
Legislative Counsel

You have asked why sec. 10, ch. 166, SLA 1988 and sec. 57, ch. 50, SLA 1989 weren't codified (numbered as part of the permanent Alaska Statutes) and whether they should be. After a review of the sections it is not apparent why they were not codified initially.

The two sections are transition sections between the old corporations code (AS 10.05) and the new code (AS 10.06). Transition sections are usually temporary in nature and not codified. Section 10 requires existing corporations to continue with the former code's two-thirds vote requirement to amend their articles of incorporation, unless the corporation elects by the two-thirds vote to fall under the new code's lower majority vote approval. Section 57 amends sec. 10 to allow certain Native corporations incorporated under the former code to use a majority vote to amend their articles to add a provision about director liability.

As you can see, these two sections are not temporary in nature. They could continue to affect corporations indefinitely. Therefore, it would be appropriate to codify them in permanent law. This would not change their content or effect, but would merely place them with the other permanent statutes.

This codification can be accomplished by the revisor of statutes without further action by the legislature. Under AS 01.05.031, the revisor of statutes has the authority to revise for consolidation into the Alaska Statutes all laws of a general and permanent nature and all laws of a temporary or special nature enacted by the legislature. The revisor is authorized to accomplish this by, among other things, renumbering sections, parts of sections, articles, chapters, and titles.

The revisor is already aware that these two sections may need to be codified. If you would like her to do so, you can contact her and suggest that it be done.

Representative Ivan Ivan

January 30, 1996

Page 2

You do not need to change your bill, HB 392, at this time. If your bill becomes law and the revisor codifies the two sections, she can codify your new provision as well.

If I may be of further assistance, please advise.

TLB:klb

96-047.klb

telnet



# FISCAL NOTE

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO: HB 392 am

Revision Date: 2/23/96

Community & Regional Affairs

Title: An Act relating to the reinstatement of dis-  
solved Native village corporations...

BRU: none

Component: none

Sponsor: Rep. Ivan

Requestor: Senato C&RA

COMPONENT SERIAL NO. \_\_\_\_\_

**EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)**

OPERATING	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
<b>CAPITAL EXPENDITURES</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
CHANGE IN REVENUES ( ) Revenue Code						

**FUNDING: (Thousands of Dollars)**

1002 Federal Receipts						
1003 GE Match						
1004 GE						
1005 GE/Program Receipts						
1005 GE/MHTIA						
Other						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of current year (FY 95) impact: \$ none

**POSITIONS:**

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

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Remond Henderson *Remond Henderson*  
Division: Director, Administrative Services

Phone: 465-4808

Date: 2/23/96

Approved by Commissioner: Mike Irwin *Mike Irwin*  
Agency: Mike Irwin, Dept. of Community & Reg. Affairs

Date: 2/23/96

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# FISCAL NOTE

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO. HB 392 am

Revision Date: \_\_\_\_\_  
 Title: Native Corp Director Classification  
 Sponsor: Representative Ivan  
 Requestor: \_\_\_\_\_

Department: Commerce and Economic Development  
 BRU: Banking, Securities and Corporations  
 Component: Banking, Securities and Corporations  
 COMPONENT SERIAL NO. 1233

**Expenditures/Revenues**

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0.0	0.0	0.0	0.0	0.0	0.0
<b>CAPITAL EXPENDITURES</b>	0.0	0.0	0.0	0.0	0.0	0.0
<b>CHANGE IN REVENUES</b>	0.0	0.0	0.0	0.0	0.0	0.0

**FUND SOURCE**

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 General Fund						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 96) cost: \$ 0.0

**POSITIONS**

FULL-TIME	
PART-TIME	
TEMPORARY	

**ANALYSIS:** (Attach a separate page if necessary)

Prepared by: Wills F. Kirkpatrick, Director Phone: 465-2521  
 Division: Banking, Securities and Corporations Date: \_\_\_\_\_  
 Approved by Commissioner: William L. Hensley Date: 2-19-96  
 Agency: Commerce and Economic Development

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House District 39



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Akiak, Alaska 99552  
Phone: (907) 765-7526

**Representative Ivan M. Ivan**

MEMORANDUM

TO: Representative Porter, Chair  
and House Judiciary Committee Members

FROM: Representative Ivan *IM*

DATE: January 31, 1996

RE: HB 392

---

HB 392, relating to the affirmative vote necessary to amend the articles of incorporation of Native village corporations to authorize the classification of directors, was heard in the House Judiciary Committee on Monday, January 29, 1996.

At the hearing, a question was raised in regards to why sec. 10, ch 166, SLA 1988 and sec. 57, ch. 50, SLA 1989 were not codified (as part of the permanent Alaska Statutes).

Enclosed is a copy of a memorandum my office received from Theresa Bannister, Legislative Counsel, that addresses the above issue.

# LEGAL SERVICES

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STATE OF ALASKA

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FAX (907) 465-2029  
Mail Stop 3101


120 Seward Street, Suite 409  
Juneau, Alaska 99801-2105

## MEMORANDUM

January 30, 1996

**SUBJECT:** Codification of sections amended in HB 392  
(Work Order No. 9-LS1448 C)

**TO:** Representative Ivan Ivan

**FROM:**  Theresa Bannister  
Legislative Counsel

You have asked why sec. 10, ch. 166, SLA 1988 and sec. 57, ch. 50, SLA 1989 weren't codified (numbered as part of the permanent Alaska Statutes) and whether they should be. After a review of the sections it is not apparent why they were not codified initially.

The two sections are transition sections between the old corporations code (AS 10.05) and the new code (AS 10.06). Transition sections are usually temporary in nature and not codified. Section 10 requires existing corporations to continue with the former code's two-thirds vote requirement to amend their articles of incorporation, unless the corporation elects by the two-thirds vote to fall under the new code's lower majority vote approval. Section 57 amends sec. 10 to allow certain Native corporations incorporated under the former code to use a majority vote to amend their articles to add a provision about director liability.

As you can see, these two sections are not temporary in nature. They could continue to affect corporations indefinitely. Therefore, it would be appropriate to codify them in permanent law. This would not change their content or effect, but would merely place them with the other permanent statutes.

This codification can be accomplished by the revisor of statutes without further action by the legislature. Under AS 01.05.031, the revisor of statutes has the authority to revise for consolidation into the Alaska Statutes all laws of a general and permanent nature and all laws of a temporary or special nature enacted by the legislature. The revisor is authorized to accomplish this by, among other things, renumbering sections, parts of sections, articles, chapters, and titles.

The revisor is already aware that these two sections may need to be codified. If you would like her do so, you can contact her and suggest that it be done.

Representative Ivan Ivan

January 30, 1996

Page 2

You do not need to change your bill, HB 392, at this time. If your bill becomes law and the revisor codifies the two sections, she can codify your new provision as well.

If I may be of further assistance, please advise.

TLB:klb

96-047.klb

Alaska State House of Representatives  
House District 39

Session  
Alaska State Capital  
Juneau, Alaska 99801-1182  
Phone: (907) 465-4942



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Phone: (907) 765-7526

**Representative Ivan M. Ivan**

MEMORANDUM

TO: Senator Robin Taylor, Chair  
Senate Judiciary Committee

FROM: Representative Ivan M. Ivan *IIM*

DATE: February 26, 1996

RE: Scheduling of House Bill 392 am

---

Please consider this request to hear House Bill 392 am: An Act relating to the reinstatement of dissolved Native village corporations, and to the affirmative vote necessary to amend the articles of incorporation of Native village corporations to authorize the classification of directors.

Section 1 of the bill allows Native village corporations that have been involuntarily dissolved by the State to be reinstated under the law, one year after the effective date of this act. In 1994, HB 71 added a provision under AS 10.06.960 (i) offering a one year opportunity for involuntarily dissolved village corporations to reinstate. According to the Division of Banking, Securities and Corporations, there remain five Native village corporations that did not take advantage of the reinstatement. Those corporations are Oscarville Native Corporation, Tulkisarmute, Inc., Cully Corporation, Ohog Incorporated, and The Grouse Creek Corporation.

Section 2 amends the Alaska Corporations Code to authorize ANCSA village corporations to provide for Board of Director classification in their bylaws. If enacted, House Bill 392 would allow ANCSA village corporations to amend their articles of incorporation to authorize a classified or staggered term board of directors by a majority vote of the shares represented at a meeting of shareholders.

Under current law, for those villages which did not have classified boards in place by July 1, 1989, such an amendment requires a vote of two-thirds of all outstanding shares entitled to vote. This is often difficult for village corporations to achieve. House Bill 392 rectifies that situation. Alaska Federation of Natives (AFN) supports House Bill 392 am.

House Bill 392 am was heard and passed out of the Senate Community and Regional Affairs Committee on Monday, February 26, 1996. Attached is a copy of the S (CRA) committee report.

Thank you for your consideration of my request. Backup material for this bill will be provided to your aide. If you require further information or have any questions, please contact myself or my aide, Pat Walker.

# SENATE COMMITTEE REPORT

## First Committee of Referral

DATE: 2/13/96

FURTHER: Judiciary

DATE TURNED INTO OFFICE: \_\_\_\_\_

The Community & Regional Affairs Committee considered HOUSE BILL NO. 392 am

Relating to the reinstatement of dissolved Native village corporations, and to the affirmative vote necessary to amend the articles of incorporation of Native village corporations to authorize the classification of directors.

and recommends:

- be replaced with \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)
- adopt previous \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)
- attached amendment(s)
- adopt Letter of Intent by \_\_\_\_\_ Committee
- further referral to the \_\_\_\_\_ Committee

- Senate Bill:**
- same title
  - new title
- House Bill:**
- same title
  - technical title
  - new: SCR# \_\_\_\_\_

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>Tim Kelly</i>	—				
<i>Tom Hoff</i>	✓				
<i>Roll &amp; Kelly</i>	✓				
CHAIR: <i>John Brown</i>	✓	CHAIR:			

**NEW FISCAL NOTE(S):**

Department	Date	Zero	Fiscal
<i>Revenue &amp; Economic Dev</i>	<i>2/14/96</i>	✓	
<i>Community &amp; Regional Affairs</i>	<i>2/14/96</i>	✓	

**PREVIOUS FISCAL NOTE(S):\***

Department	Date	Zero	Fiscal

APPROPRIATION -- no fiscal note

\*include fiscal notes accompanying Governor's bill



# SENATE COMMITTEE REPORT

DATE: 2/28/96

DATE TURNED INTO OFFICE: 3-25-96

The Judiciary Committee considered HOUSE BILL NO. 392 am

Relating to the reinstatement of dissolved Native village corporations, and to the affirmative vote necessary to amend the articles of incorporation of Native village corporations to authorize the classification of directors.

and recommends:

- be replaced with \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)
- adopt previous \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)
- attached amendment(s)
- adopt Letter of Intent by \_\_\_\_\_ Committee
- further referral to the \_\_\_\_\_ Committee

Senate Bill:  
 same title  
 new title  
 House Bill:  
 same title  
 technical change  
 new: SCR# \_\_\_\_\_

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>[Signature]</i>	X	<i>[Signature]</i>	X		
		<i>[Signature]</i>	✓		
		<i>[Signature]</i>	✓		
<i>[Signature]</i> CHAIR:					

**NEW FISCAL NOTE(S):**

Department	Date	Zero	Fiscal

**PREVIOUS FISCAL NOTE(S):\***

Department	Date	Zero	Fiscal
C-RA	2/22/96	✓	
Comm + Finance Dev	2/15/96	✓	
Banking + Securities			

APPROPRIATION -- no fiscal note

\*include fiscal notes accompanying Governor's bill