

SB

2022

<TARGET><BILL>SB 202</BILL><SUBJECT>SB
202</SUBJECT><COMM>HJUD30</COMM></TARGET>

ALASKA STATE LEGISLATURE

Senator Lyman Hoffman, Co-Chair
State Capitol, Room 518
Juneau, Alaska 99801-1182
Phone: (907) 465-4453
Sen.Lyman.Hoffman@akleg.gov



Interim Address
Senator Lyman Hoffman, Co-Chair
PO Box 886
Bethel, Alaska 99559
Phone: (907) 543-3541

Senator Lyman Hoffman Co-Chair Senate Finance

Sponsor Statement SB 202

“An Act relating to the liability of a Native corporation for the release or threatened release of hazardous substances present on certain lands.”

Through the Alaska Native Claims Settlement Act (ANSCA) the federal government conveyed land to Alaska Native Corporations. During the 1990s concerns were raised that contaminated land was conveyed during this process. In 1998 a Department of Interior (DOI) report to Congress on Hazardous Substance Contamination of ANSCA Lands confirmed the concerns and identified more than 650 contaminated sites requiring remediation. These sites were contaminated under ownership and/or responsibility of the federal government and then transferred to Native ownership.

A 2016 Bureau of Land Management update to the DOI report to Congress acknowledged that the agency had not acted on much of its 1998 report recommendations. The update identified the Department of Defense as the single largest pre-transfer owner of contaminated sites still requiring cleanup. The Alaska Native Village Corporation Association testified on the problem as recently as last summer before a congressional committee, pushing for the federal government to deal with the problem sites. The Alaska Native Village Corporation Association’s federal legislative priority list includes protecting Alaska Native corporations from liability claims over land that was contaminated before it was transferred to a Native corporation.

SB 202 amends Alaska state statute so that an Alaska Native corporation is not liable for containment, removal or remediation actions if the contamination occurred on the land before it was transferred under the Alaska Native Claims Settlement Act. Though this change in state law would not solve the federal issues of this problem, it is an important step toward protecting Alaska Native corporations from liability for actions by prior owners of the land.

ALASKA STATE LEGISLATURE

Senator Lyman Hoffman, Co-Chair
State Capitol, Room 518
Juneau, Alaska 99801-1182
Phone: (907) 465-4453
Sen.Lyman.Hoffman@akleg.gov



Interim Address
Senator Lyman Hoffman, Co-Chair
PO Box 886
Bethel, Alaska 99559
Phone: (907) 543-3541

Senator Lyman Hoffman Co-Chair Senate Finance

Sectional Analysis SB 202

“An Act relating to the liability of a Native corporation for the release or threatened release of hazardous substances present on certain lands.”

Section 1

Amends AS 46.03.822(a) to add subsection (n) which relieves Native corporations from liability if the Native corporation can prove the hazardous materials were already present on the land before the land was transferred to the Native corporation under the Alaska Native Claims Settlement Act (43 U.S.C 1601 et seq.)

Section 2

Amends AS 46.03.822(m) to add a new paragraph that defines Native Corporation to have the same meaning as in federal law under U.S.C 1602(m)

Section 3

Amends AS 46.03.822 to add a new subsection (n) that relieves Native corporations from liability if the Native corporation can prove the hazardous materials were already present on the land before the land was transferred to the Native corporation under the Alaska Native Claims Settlement Act (43 U.S.C 1601 et seq.)

Section 4

Repeals AS 46.03.822 (c)(3) which is a narrower exemption for Native corporations currently in statute and replaces it with the exemption in AS 46.06.822

**Alaska Legislature
Representative Charisse Millett**

Session:

State Capitol Building
Juneau, AK 99801
Phone (907) 465-3879
Fax (907) 465-2069
Toll free (888) 269-3879



Interim:

Anchorage LIO
1500 West Benson Blvd.
Anchorage, AK 99501
Phone (907) 269-0222
Fax (907) 269-0223

Re: House Bill 367/Senate Bill 202 Alaska Native Corporation Contaminated Lands

Representative Claman:

I support the proposed language (and forthcoming amendment) dealing with the burden of proof of contamination, being promoted by Alaska Native corporations concerning Senate Bill 202.

If you have any questions, please contact my staff Hans Rodvik at 907-465-4937.

Sincerely,

Representative Charisse Millett

House District 25

Fiscal Note

State of Alaska
2018 Legislative Session

Bill Version:	SB 202
Fiscal Note Number:	1
(S) Publish Date:	2/28/2018

Identifier: SB202-DEC-SPAR-02-23-2018
 Title: NATIVE CORP. LIABILITY FOR CONTAMINATION
 Sponsor: HOFFMAN
 Requester: Senate Resources Committee

Department: Department of Environmental Conservation
 Appropriation: Spill Prevention and Response
 Allocation: Spill Prevention and Response
 OMB Component Number: 3094

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2019	Included in	Out-Year Cost Estimates				
	Appropriation Requested	Governor's FY2019 Request	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
OPERATING EXPENDITURES	FY 2019	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
Total Operating	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Fund Source (Operating Only)

None							
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time							
Part-time							
Temporary							

Change in Revenues

None							
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimated SUPPLEMENTAL (FY2018) cost: 0.0 *(separate supplemental appropriation required)*
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY2019) cost: 0.0 *(separate capital appropriation required)*
(discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
 If yes, by what date are the regulations to be adopted, amended or repealed?

Why this fiscal note differs from previous version/comments:

Not applicable, initial version.

Prepared By:	Kristin Ryan, Director	Phone:	(907)269-7604
Division:	Spill Prevention and Response	Date:	02/23/2018
Approved By:	Alice Edwards, Deputy Commissioner	Date:	02/23/18
Agency:	Department of Environmental Conservation		

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2018 LEGISLATIVE SESSION

Analysis

The bill provides limited liability relief from damages and costs for Alaska Native Corporations that received contaminated lands from the federal government under the Alaska Native Claims Settlement Act (ANCSA). In order for a Corporation to have relief, it must demonstrate that the release or threatened release of contamination was already present on the land at the time it was granted by the federal government.

There are no additional required regulatory or monitoring efforts by the Department of Environmental Conservation to support this liability limitation. There is no fiscal impact to the Department.



April 9, 2018

Representative Matt Claman
Alaska House of Representatives
State Capitol, Room 118
Juneau, AK 99801
Attn.: Lizzie Kubitz (lizzie.kubitz@akleg.gov)

RE: HB 367, ANCSA Land Liability Act and Proposed Amendments

Dear Representative Claman:

I am writing on behalf of Sealaska Corporation, the Alaska Native Regional Corporation formed pursuant to the Alaska Native Claims Settlement Act of 1971 (ANCSA) for the Southeast Alaska Region. We represent more than 22,000 shareholders, predominantly of Tlingit, Haida and Tsimshian descent. I am writing to you in support of your amendment to HB 367, the ANCSA Land Liability Act. Please share this letter with the House Judiciary Committee members and include it into the Record for today's hearing.

As an ANCSA Corporation, we did receive conveyance of lands "as is." In some cases, there were lands that had preexisting landfills and other potentially contaminated lands. Your amendment would make it clear that ANCSA corporations are not liable for contamination on ANCSA lands unless the state, municipality or village can prove that the ANCSA corporation was the cause of such contamination. This is similar to language recently adopted by the U.S. Congress related to the Comprehensive Environment Response Contamination and Liability Act (CERCLA). We strongly support your amendment to HB 367.

Please also note that we do not support the two other proposed amendments by Representative LeDoux or by Representative Eastman. Representative LeDoux's amendment would essentially make no one liable for contamination without proof of responsibility and would be contrary to existing state law. Representative Eastman's amendment would be moot if your amendment is adopted by the Committee and the legislature.

Thank you for the opportunity to comment on this important matter. If you have any questions, please do not hesitate to contact me at jaeleen.kookesh@sealaska.com or 907-586-9130.

Respectfully,
SEALASKA CORPORATION

Jaeleen J. Kookesh
VP, General Counsel & Corporate Secretary



April 9, 2018

Representative Matt Claman
House Judiciary Committee, Chairman
State Capitol Room 118
Juneau, AK 99801

Dear Chairman Claman,

Please accept this correspondence as Bering Straits Native Corporation's statement of record concerning HB 367 and its associated amendments.

The issues surrounding legacy contamination on ANCSA lands have a deep history and have not yet been adequately addressed at the State level. The Alaska Congressional delegation has been considering this for years and allocation of responsibility for historic, pre-ANCSA contamination is a critical step needed to finalize land conveyances mandated by the passage of ANCSA in 1971.

The lands in the Bering Straits region have numerous legacy sites directly attributable to the military efforts beginning with WWII and extending through the Cold War years. Lands selected through ANCSA by the area's twenty village corporations and the regional corporation (BSNC) have various levels of contamination, ranging from DRO (diesel range organics) to PCPs (Polychlorinated Biphenyls), and pose various risks to humans, wildlife, and waterways.

BSNC appreciates the efforts of the State of Alaska to fairly address responsibility and to properly protect village and regional corporations from a serious liability not of their own making.

Bering Straits Native Corporation, on behalf of our over 7,000 shareholders and 17 village corporations, request the following actions:

- 1) **Approval of Amendment #1 (Chairman Claman):** This amendment would address AS 46.03.822, and would thereby relieve Alaska Native Corporations of liability, when proof that the contamination existed prior to the conveyance of the property.
- 2) **Deny the passage of Amendment #2 (Rep. LaDoux):** This amendment does not address ultimate responsibility for legacy contamination and would legislatively create a scenario where liability exceptions for contamination could be expanded to all parties, thereby making the assignment of clean-up responsibility and the financial burden for this work nearly unenforceable.





- 3) **Deny the passage of Amendment #3 (Rep. Eastman):** Like Amendment #2, this amendment does not remove the burden of proof from the Corporations, for contamination existing on lands prior to conveyance, and does not address the underlying problem with State law.

Thank you for the opportunity to comment on HB 367 and the pending amendments. If we can be of further assistance or if you have questions concerning this correspondence please contact: Matt Ganley, V.P. Media and External Affairs (mganley@beringstraits.com), (907)632-7197.

Sincerely,

A handwritten signature in blue ink, appearing to read "G.R. Schubert".

Gail R. Schubert





CALISTA CORPORATION
www.calistaacorp.com

April 9, 2018

Honorable Members of House Judiciary Committee
Submitted via email

Dear Chair Claman and members of the House Judiciary Committee:

Calista Corporation, an Alaska Native Regional Corporation, is writing to share comments with regard to Committee House Bill 367 "An Act relating to the liability of a Native corporation for the release or threatened release of hazardous substances present on certain lands."

We appreciate your efforts to alleviate the concerns long expressed by ANCSA Corporations for management of our lands which were contaminated by other parties. The amendment offered by Chair Claman is a very helpful amendment and essentially mirrors the change in CERCLA that Congress recently enacted in the appropriations act. Calista Corporation supports this amendment as it would make Alaska Native Corporations (ANC) not liable unless the state, a municipality or village can prove the ANC was the legal cause of the contamination. Like you and all Alaskans, ANC's value environmental stewardship. Eliminating liability for contamination that Calista Corporation did not create is critical for effectively managing its ANCSA lands.

We are deeply concerned that Representative LeDoux's amendment would effectively gut the intent of HB 367, which is to absolve ANCSA Corporations of liability for lands contaminated by other parties. We urge this committee to reject this amendment and instead support the amendment provided by Chair Claman.

Thank you for your attention to this critical matter.

Andrew Guy
President
Calista Corporation



April 9, 2018

Representative Matt Claman
House Judiciary Committee, Chairman
State Capitol Room 118
Juneau, AK 99801

Dear Chairman Claman,

Bristol Bay Native Corporation (BBNC) supports passage of HB 367 as amended by Amendment #1 offered by Chairman Claman. The bill, as changed by proposed Amendment #1, would fix AS 46.03.822 so that Alaska Native corporations are relieved of liability for releases of hazardous substances on lands conveyed to the Native corporations pursuant to the Alaska Native Claims Settlement Act (ANCSA) unless there is proof that the Native corporations caused or contributed to the releases. This legislation is an overdue measure that will explicitly make Alaska law clear that Alaska Native corporations were not conveyed liability for environmental contamination or their cleanup costs as part of their ANCSA land settlements.

BBNC's support for HB 367 does not extend to the additional amendments Representative LeDoux and Representative Eastman (Amendments #2 and #3 respectively) are proposing. These amendments fail to remove the presumption of liability for releases of hazardous substances on lands our corporations received through ANCSA.

Under Representative LeDoux's proposed Amendment #2, Native corporations would still bear the burden of proof to demonstrate that they were unaware of the hazardous releases and that the contamination existed on the land when transferred to the corporation. Representative LeDoux's proposed amendment would also expand the exception to liability to any party, *i.e.*, not just to Native corporations. Such an expansive exception would unnecessarily turn the process for collecting remediation and clean-up costs on its head, and is inappropriate for legislation introduced solely to address Native corporation liability on lands conveyed pursuant to ANCSA.

The amendment proposed by Representative Eastman is unacceptable because it does not remove the presumption of liability against Native corporations. In order to be relieved of liability under proposed Amendment #3, a Native corporation would still need to prove the contamination existed on the land when the land was transferred to the corporation and the corporation did not have control of the land when the hazardous substance was released or disposed of. This does not address the underlying problem with existing state law.

For the foregoing reasons, we urge the Committee to pass HB 367 as amended by Chairman Claman's Amendment #1.

Sincerely,

A handwritten signature in blue ink that reads "Daniel L. Cheyette". The signature is written in a cursive style.

Daniel L. Cheyette
Vice-President for Lands and Natural Resources

Cc: Speaker of the House Bryce Edgmon

April 9, 2018



Representative Matt Claman
Chair, House Judiciary Committee
Alaska House of Representatives
State Capitol 118
Juneau, AK 99801-1182

via electronic mail to: lizzie.kubitz@akleg.gov

RE: SB 202, HB 367

Dear Representative Claman:

Thank you for hearing SB 202 and HB 367. These bills would amend AS 46.03.822 to clarify that Alaska Native Corporations that received contaminated sites as part of their ANCSA settlement lands are not legally liable for prior contamination that existed at the time of transfer. Koniag, Inc. supports both SB 202 and HB 367.

Koniag, Inc. is one of the twelve regional Alaska Native Corporations formed under the terms of the Alaska Native Claims Settlement Act of 1971. Koniag, Inc. has approximately 3,900 Alutiiq Shareholders. Our region encompasses the Kodiak Archipelago in the Gulf of Alaska and a portion of the Alaska Peninsula. In addition to the hub community of Kodiak, there are six rural communities within our region. Given its strategic location in the Gulf of Alaska, the Kodiak Archipelago experienced a tremendous military build-up in the World War II era that has left many contaminated sites, some that have been conveyed to the region's Native Corporations.

Removing the legal liability of our Alaska Native Corporations for containment, removal or remediation actions on lands that were contaminated prior to conveyance by the federal government is morally correct and assists corporations in the pursuit of potential development of these sites. In addition, the corporations should not have to incur significant costs to "prove" that the land was contaminated prior to conveyance. Amendment One clarifies this addresses this and Koniag urges its adoption.

Amendment Two would be a significant change to current law and we are concerned that it complicates these bills unnecessarily. In addition, the proposed changes in

194 Alimaq Drive
Kodiak, AK 99615
(907) 486-2530
Fax (907) 486-3325

Rep. Claman
April 9, 2018
Page Two

Amendment Number Three would be rendered moot by the adoption of Amendment One.

Again, thank you for hearing SB 202 and HB 367. Koniag, Inc. urges the Alaska State Legislature to pass one of these pieces of legislation as amended by Amendment One during its 2018 session.

Sincerely,

A handwritten signature in blue ink, appearing to read "Tom Panamaroff".

Tom Panamaroff
Regional & Legislative Affairs Executive

194 Alimaq Drive
Kodiak, AK 99615
(907) 486-2530
Fax (907) 486-3325

The Eyak Corporation
615 E 82nd Avenue, Suite 300
Anchorage, AK 99518
Phone: (907) 334-6971
Fax: (907) 334-6973



April 9, 2018

Honorable Members of the Alaska Legislature
Alaska State Capital Building
P.O. Box 110001
Juneau, AK 99801

Via Electronic Mail To: Lizzie.Kubitz@akleg.gov

Re: HB 367 (ANCSA Land Liability Act)

Dear Alaska Legislature:

The Eyak Corporation (Eyak), is the Alaska Native Village Corporation for the Eastern Prince William Sound, Cordova, and Copper River area established pursuant to the Alaska Native Claims Settlement Act of 1971 ("ANCSA"). Like many Alaska Native Corporations, Eyak received contaminated lands as part of its ANCSA settlement and faces potential legal exposure associated with that prior-existing contamination. We write this letter in support of Amendment Number One submitted by Representative Claman to HB 367, the ANCSA Land Liability Act.


Alaska Native Corporations should not face legal exposure for lands that were contaminated at the time of conveyance. Nor should the corporations have to incur significant costs to "prove" that the land was contaminated prior to conveyance. Amendment Number One addresses this shortcoming and we urge its adoption. We have also reviewed Amendments Number Two and Three. We are concerned that Amendment Number Two would be a significant change to current law and is unlikely to pass. We believe the proposed changes in Amendment Number Three are adequately covered by Amendment Number One.

We are grateful to the Alaska Legislature for taking on the issue of ANCSA contaminated lands.

Sincerely,
The Eyak Corporation


Rod Worl
Chief Executive Officer


Nancy C. Barnes
President


Martin Parsons
Board Chairman

AMENDMENT

#1 Adopted

OFFERED IN THE HOUSE
TO: SB 202

BY REPRESENTATIVE CLAMAN

1 Page 1, line 6:

2 Delete "and (n)"

3 Delete "exception set out in (i)"

4 Insert "exceptions [EXCEPTION] set out in (i) and (n)"

5

6 Page 2, line 27, through page 3, line 1:

7 Delete all material and insert:

8 "(n) A Native corporation that acquired land under 43 U.S.C. 1601 et seq.
9 (Alaska Native Claims Settlement Act) is not liable under this section for a release or
10 threatened release of a hazardous substance on the land unless the Native corporation,
11 by an act or omission, caused or contributed to the release or threatened release of the
12 hazardous substance."

AMENDMENT #2 Withdrawn

OFFERED IN THE HOUSE
TO: SB 202

BY REPRESENTATIVE LEDOUX

1 Page 1, line 1:

2 Delete "Native corporation"

3 Insert "person"

4

5 Page 2, line 24, through page 3, line 2:

6 Delete all material and insert:

7 **** Sec. 2.** AS 46.03.822(d) is amended to read:

8 (d) To establish that a person had no reason to know that the hazardous
9 substance was disposed of on, in, or at the facility, as provided in (c)(1) and (l) of this
10 section, or to establish that a person had no reason to know that the hazardous
11 substance was present on the land at the time the ownership of the land was
12 transferred to the person, as provided in (n) of this section, the person must have
13 undertaken, at the time of voluntary acquisition, all reasonable inquiries into the
14 previous ownership and uses of the property consistent with good commercial or
15 customary practice in an effort to minimize liability. For purposes of this subsection a
16 court shall take into account all relevant facts, including

17 (1) any specialized knowledge or experience the person has;

18 (2) the relationship of the purchase price to the value of the property if
19 it were uncontaminated;

20 (3) commonly known or reasonably ascertainable information about
21 the property;

22 (4) the obviousness of the presence or likely presence of contamination
23 at the property; and

1 (5) the ability to detect contamination by appropriate inspection.

2 * **Sec. 3.** AS 46.03.822 is amended by adding a new subsection to read:

3 (n) In an action to recover damages or costs, a person otherwise liable under
4 this section for a release or threatened release of a hazardous substance on the person's
5 land is relieved from liability under this section if the person proves that the

6 (1) person did not know and had no reason to know that the hazardous
7 substance was present on the land at the time the ownership of the land was transferred
8 to the person; and

9 (2) hazardous substance was present on the land at the time the
10 ownership of the land was transferred to the person."

AMENDMENT

#3

Ruled Out of
Order

OFFERED IN THE HOUSE

BY REPRESENTATIVE EASTMAN

TO: SB 202

1 Page 2, line 29, following the first occurrence of "the":

2 Insert "(1)"

3

4 Page 2, line 31:

5 Delete "and the"

6 Insert ";

7 (2)"

8

9 Page 3, line 1, following "granted":

10 Insert "; and

11 (3) Native corporation did not have control of the land at the time the
12 hazardous substance was disposed of or placed on the land"