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1977-1978

SENATE COMMERCE COMMITTEE

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STATE  
of ALASKA

# MEMORANDUM

THE DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

OPR: Lawrence P. Carroll  
Securities Examiner

TO: Honorable Joseph H. McKinnon, Chairman  
House Commerce Committee

DATE : January 26, 1977

FROM: <sup>AB</sup> Julius J. Brecht  
Division of Banking & Securities

SUBJECT: House Bill 55  
Native Corporations  
Background Information

As promised please find copies of correspondence between this office and the various Native corporations together with their responses concerning the proposed legislation contained in House Bill 55. In addition I have included two interoffice memorandums discussing the legislation and our meetings with Native representatives.

We feel this legislation provides needed protection while imposing minimum burden on the subject corporations.

Please do not hesitate to call on this office if we may offer any further assistance.

JJB/it/3/7

Attachments

cc: Representative Alfred C. Nakak

WILKINSON, CRAGUN & BARKER

LAW OFFICES

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PAUL S. QUINN  
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HERBERT E. MARKS  
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ROSEL H. HYDE  
DONALD C. GORMLEY

*Counsel*

Mr. Julius J. Brecht  
Director  
Division of Banking, Securities,  
Small Loans and Corporations  
Department of Commerce and Economic  
Development, State of Alaska  
Pouch D  
Juneau, Alaska 99801

Re: Proposed Legislation - AS 45.55.139

Dear Mr. Brecht:

John Schaeffer, president of NANA Regional Corporation, Inc., has asked us, as NANA's general counsel, to respond to your August 24, 1976, letter requesting NANA's comments on the proposed legislation, AS 45.55.139, relating to reports of corporations formed under the Alaska Native Claims Settlement Act.

First, we should state that we are in full agreement with the general scheme of the proposed bill. Consistent with the spirit of the federal exemptions granted by Congress, the bill does not impose on the corporations any new affirmative or substantive burdens, but in effect merely makes it easier for the State of Alaska to enforce its statutory provisions prohibiting false or misleading statements to stockholders and other forms of fraud. We believe that the corporations already are covered by the State's substantive standards regulating corporate activity, and the requirement that the materials be filed with the State's administrator seems a reasonable method of facilitating the State's enforcement of these standards.

The following, however, are some specific comments or suggestions which we have on the proposed legislation. First, we wish to clarify what may be a misunderstanding as

R. ANTHONY ROGERS  
WILLIAM R. LOFTUS  
THOMAS J. BACAS  
FOSTER D. REITZES  
ALAN I. RUBINSTEIN  
JOHN M. FACCIOLA  
PHILIP A. NACKE  
THOMAS E. WILSON  
JERRY R. GOLDSTEIN  
EDWARD M. FOGARTY  
S. STEVEN KARALEKAS  
ROBIN A. FRIEDMAN  
JAMES E. MAGEE  
ROBERT B. MCKENNA, JR.  
JOSEPH P. MARKOSKI  
MICHAEL P. GREEN  
STEVEN C. LAMBERT  
STEPHEN A. HILDEBRANDT  
CHARLES I. APPLER

\* ADMITTED IN VIRGINIA ONLY

Mr. Julius J. Brecht  
September 14, 1976  
Page two

to what is required by the January 2, 1976, amendments to the Alaska Native Claims Settlement Act, Public Law 94-204. The "Justification" accompanying the proposed legislation states that Settlement Act corporations, although exempt from the federal securities laws, are required to "send their stockholders yearly a report containing substantially the same information required in an annual report of a corporation which is subject to the federal acts." This is not quite accurate. Section 3 of Public Law 94-204, which exempts the corporations from the federal securities laws, requires such reports only of corporations which, but for the exemption, would be subject to the Securities Exchange Act of 1934. The 1934 Act applies only to corporations with more than 500 stockholders and \$1,000,000 in assets, and therefore it is only the twenty or so largest Settlement Act corporations, meeting these criteria, which must mail such annual reports. The only stockholder reporting requirements imposed by federal law on the smaller corporations are those contained in sections 7(o) and 8(c) of the Settlement Act, requiring the distribution to the stockholders of the corporation's annual audit. Thus we would suggest that the statement of "Justification" be corrected. The correction, however, should not to our mind generate any changes in the substance of the proposed legislation.

Dealing with the specific language of the proposed bill, we would suggest that the bill be made more specific in describing precisely which materials must be filed with the State. For example, we are not sure of what is included in "other materials," and believe that this term may require the filing of materials which the State is not really interested in seeing. For example, NANA periodically sends its stockholders a newsletter, in newspaper format, reporting on various corporate activities as well as giving other news of general interest in the region but not related to NANA's activities. Similarly, dividend checks are mailed out annually, with an appropriate written explanation of the nature of the dividend. Finally, at various informal meetings held from time to time in various of the villages, for the purpose of explaining to groups of stockholders various corporate matters of concern to them, written outlines or explanations sometimes are prepared and distributed to persons attending the meetings. These tie in with oral presentations made at the meeting, and, standing alone, they would most likely make little sense to a State official who did not also attend the meeting. Such materials are not traditionally of the type which state or federal securities administrators tend to regulate, particularly since

Mr. Julius J. Brecht  
September 14, 1976  
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they tend not to relate to the financial condition of the corporation or to any stockholders' vote being taken. We therefore would suggest that the filing requirement apply only to "annual reports to stockholders and proxy statements and other proxy materials relating to a vote of stockholders."

Secondly, we would suggest that the description of the corporations covered by the proposed legislation be changed simply to refer to "a corporation organized pursuant to the Alaska Native Claims Settlement Act, as amended (43 U.S.C. §§ 1601 et seq.).". Presently, the reference is to corporations exempted from the filing provisions of the three federal securities laws. We believe this is intended to cover all Settlement Act corporations, and a reference to the Settlement Act would seem to be a more precise way of expressing this. Moreover, identifying the corporations by reference to the federal exemptions would leave room for a corporation which even without the exemptions would not have been subject to the federal acts to argue that it therefore also is not subject to the proposed state law. This would be contrary to what we believe to be the intent of your bill.

Finally, we believe that the last sentence of the proposed bill may be deleted entirely, since to us it appears superfluous. We always have believed that any materials distributed by any of the Settlement Act corporations to its stockholders were subject to any existing State laws normally applicable thereto, such as the laws prohibiting false and misleading statements. This in fact is one of the reasons why Congress determined that the federal securities laws need not also apply.

To summarize, we would propose that AS 45.55.139 read as follows:

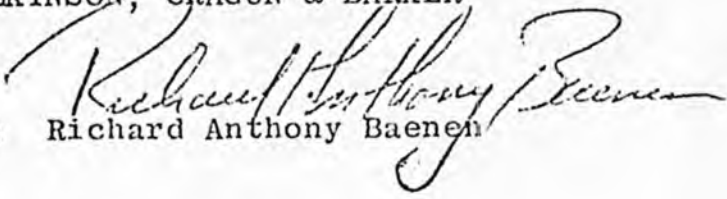
"A copy of all annual reports to stockholders and proxy statements and other proxy materials relating to a vote of stockholders distributed to Alaskan stockholders of a corporation organized pursuant to the Alaska Native Claims Settlement Act, as amended (43 U.S.C. §§ 1601 et seq.), shall be filed with the administrator concurrently with their distribution to shareholders."

Mr. Julius J. Brecht  
September 14, 1976  
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On behalf of NANA, we thank you for the opportunity provided us to review and comment on the proposed bill. We would be pleased to provide you with any further assistance or suggestions which you might find helpful.

Sincerely yours,

WILKINSON, CRAGUN & BARKER

By:  Richard Anthony Baenen

Attendants of meeting of October 13, 1976  
at the offices of the AFN in Anchorage re-  
garding the Native Securities Bill

Julius J. Brecht	Department of Commerce	Pouch D, Juneau, Alaska 99811
Jim Thompson	Department of Commerce	Pouch D, Juneau, Alaska 99811
H. Nobel Dick	Bristol Bay Native Corp.	445 E. 5th Ave, Anchorage, AK.
George See	Sealaska Corporation	811 West 12th, Juneau, AK.
Everett Bunes	Arctic Slope Reg. Corp.	313 E. St, Suite 5, Anch, AK.
Brian Johnson	Calista Corporation	516 Denali St, Anchorage, AK.
Perry Eaton	Koniag, Inc.	3501 Hooper Way, Anch, AK.
Bill Timme	Doyon Limited	First & Hall, Fairbanks, AK.
Dave Cooke	Bering Straits	310 K. St, Suite 601, Anch. AK.
Janie Brower	AFN (secretary to Sam Kito)	8th & F. St., Anch, AK.

# MEMORANDUM

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

TO: Langhorne A. Motley  
Commissioner

DATE: October 19, 1976

FROM: Julius J. Brecht  
Director

SUBJECT: AS 45.55.139 - Status  
Corporations

On October 13, 1976, James L. Thompson, Securities Examiner with the Division of Banking, and I met with leaders of various Native corporations at the Alaska Federation of Natives' office in Anchorage. A list of names of those in attendance at the meeting is attached.

The purpose of this meeting was to discuss the bill proposed by the Department of Commerce and Economic Development which requires that corporations established pursuant to the Alaska Native Claims Settlement Act file copies of all annual reports, proxy statements, and other materials with the department. The filing would subject the person distributing the materials to the fraud provisions of the Alaska Securities Act, AS 45.55.

The general reaction of the participants to the bill at this meeting was favorable, but they did not show overwhelming support for it. The group was pleased that the proposed bill does not require any additional burden on the Native corporations.

The points of the proposed bill that were discussed are as follows:

1. PROXIES: It was felt that the term "proxies" should be added to those materials to be supplied to the division. The reason given for this suggestion was that "proxies" are different from "proxy statements" and both of these items should be included.

2. ADDED LANGUAGE: It was felt that in the proposed act we should add the term "related to proxy solicitations" between the words "materials" and "distributed." This addition was recommended because it was felt that there were many "materials" that would not be germane to stockholder voting and therefore, need not be sent to the department. It was also felt that some of these "materials" might be proprietary in nature and the divulging of this material would not be in the best interests of the stockholders of a "private" nonprofit corporation.

3. DISTRIBUTED: It was felt that the term "distributed" was not clear enough. The reason for this is that some of the materials and some of the reports are not distributed by mail but are posted in local newspapers or on television and radio. The group felt that this term should be expanded to be more specific.

4. DESCRIPTION OF STOCKHOLDERS: It was felt by the group that this bill should be expanded to include a number larger than two with respect to the reports. The recommendation was that we put in the term "at least ten" before

Alaskan shareholders. It was also recommended that we be more specific in our description of shareholders and put in "Alaskan resident shareholders."

5. DESCRIPTION OF CORPORATIONS: There was active discussion on the item in the proposed bill that was directed towards Alaska Native Claims Settlement Act Corporations. It was felt that this might be singling out those corporations and might also leave a loophole for other corporations that were granted an exemption. Two alternatives were discussed. One which would bring in large village corporations and would be based upon the federal law which requires a corporation with 500 shareholders or 1 million dollars in assets to register, or that it be basically for all corporations that are exempt under the Federal Securities Acts.

6. CONFIDENTIAL MATERIAL: There was also discussion as to whether materials filed under this act would be public record or not, and that the division should make certain that these materials were not part of public documents.

### Conclusion

It appears as if some of the recommendations made by the Native leaders at this meeting were well taken. The comment regarding the addition of the term proxies would make the act more viable.

The feeling that the act should include the terms "related to proxy solicitations" also appears to be well taken. Much of the materials that a corporation does distribute to its shareholders are proprietary materials. For example, prices of fish to be paid by a cannery owned by a corporation would not be necessary information for our department and might cause damage to the corporation if those items were made known. Inasmuch as the purpose of this act is to make certain that the stockholders receive fair and not misleading materials relating to their voting of their stock, it does not appear as if we need to include all other materials.

The comments relating to the changes of a part of the act that relates to distribution to Alaska shareholders, was also well taken. This area should be expanded and clarified before the proposed bill goes before the Legislature.

The discussion of how the description of the corporations should be changed has required certain additional examination. As a result of this examination, it is felt that we should use the terminology as followed in the Federal Acts.

There does not appear to be any need to add a clause that would make this information confidential as that is contained already under AS 45.55.180(b).

### Recommendation

As a result of the meeting with the Native leaders, it is recommended that AS 45.55.139 be amended as follows:

"Sec. 45.55.139. REPORTS OF CORPORATIONS. A copy of all annual reports proxies, consents or authorizations, proxy statements and other materials relating to proxy solicitations distributed, published or made available to at least ten Alaska resident shareholders of a corporation which

has total assets exceeding \$1,000,000 and a class of equity security held of record by 500 or more persons and exempted from the provisions of the Securities Act of 1933 (15 U.S.C. Secs. 77a-77aa), the Securities Exchange Act of 1934 (15 U.S.C. Secs. 78a-78jj) or the Investment Company Act of 1940 (15 U.S.C. Secs 80a1-80a52) shall be filed with the administrator concurrently with their distribution to shareholders."

LA Copies of this revised bill have been sent to those on the attached  
JJB/affair/ce list, to the presidents of each of the 12 regional corpora-  
tions and to Sam Kito of AFN, who was not in attendance at the October 13  
meeting.

Enclosures

LAW OFFICES  
JOE P. JOSEPHSON, INC.,  
A PROFESSIONAL CORPORATION  
1526 F STREET  
ANCHORAGE, ALASKA 99501

(907) 272-8531

OF COUNSEL  
ROBERT M. GOLDBERG, ESQ.

November 18, 1975

GEORGE KAUFMANN, ESQ.  
(D. C. BAR ONLY)

Mr. Miles S. Schlosberg  
Director  
Division of Banking, Securities, Small Loans and Corporations  
Pouch D  
Juneau, Alaska

Dear Miles:

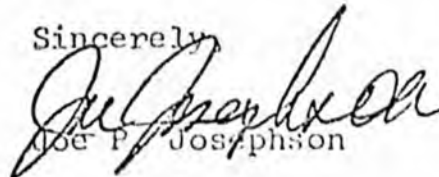
I have again reviewed the State's proposed amendment to Section 28 of HR 6644.

While I understand the concerns that prompted the amendment, it must remain my view that the interests of Chugach Natives, Inc. are best served by the original federal exemption proposed in the legislation, coupled with State regulation if needed. Chugach Natives, Inc. is a relatively small Native regional corporation, and much of its effort has been devoted to finding ways by which large overhead could be avoided. While your proposal in itself would not involve great costs to the corporations, the introduction of the State's proposal may threaten the passage of any exemption or partial exemption by Congress. This is a very serious matter to the Native corporations, and is not in the best interests of the shareholders, especially those enrolled in the relatively small corporations.

I deeply believe that the State should support the proposed exemption in HR 6644 and then that the Administration, after consultation with the Native regional corporations, should frame suitable legislation at the State level, if necessary, to protect shareholders without imposing undue burdens on the corporations.

I do appreciate your courtesy in meeting with those of us representing the corporations and your frankness in the discussions.

Sincerely,

  
Joe P. Josephson

cc: Mr. Cecil Barnes  
Honorable Ted Stevens  
Honorable Mike Gravel  
Honorable Don Young  
Mr. Sam Kito  
Senator John Sackett  
Barry Jackson, Esq.  
Joseph Ridd, Esq.  
Richard Baenen, Esq.  
John Fatters, Esq.  
Edward Weinberg, Esq.

Mr. John Shively  
Eric Treisman, Esq.  
William Timme, Esq.  
Nancy Williams, Esq.  
Jay R. Weill, Esq.  
Allan McGrath, Esq.  
Harold Horton, Esq.  
Michael Holmes, Esq.  
James Wickware, Esq.  
Ken Bass, Esq.  
Arthur Lazarus, Esq.



STATE  
of ALASKA

# MEMORANDUM

THE DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

OPR: Lawrence P. Carroll  
Securities Examiner

TO: [The Members of the Committee

DATE : January 17, 1977

FROM: Julius J. Brecht  
Director  
Division of Banking & Securities

SUBJECT: House Bill 55  
(Narrative Supplement)

House Bill 55 amends AS 45.55 (the Alaska Securities Act of 1959) by adding a new section requiring that certain Native corporations, who are exempt from registration by virtue of Section 138 of the Alaska Securities Act, file with the Administrator of Securities a copy of all annual reports, proxies, consents or authorizations, proxy statements, and other materials relating to proxy statements. Please note that these requirements are imposed only on those corporations whose total assets exceed one million dollars, whose stock is held by 500 or more persons, and who would be distributing such material to ten or more shareholders.

The amendments to the Alaska Native Land Claims Settlement Act (Act of January 2, 1976, P.L. 9-204, 89 Statute, 1145) exempted all settlement act corporations until 1991 from the three principal federal securities laws and thereby from any Securities Exchange Commission jurisdiction. However, the House Interior Committee report on the exemption contains the following:

"Native corporations have assured the committee that they... intend to pursue the passage of state legislation to the extent necessary to provide any appropriate additional protection." (House of Representatives. 94-729, 94th Congress, first session, December 15, 1975).

The proposed legislation before you will provide Native shareholders the same degree of protection from fraud and deception that any shareholder of a comparable nonexempt corporation enjoys.

The proposed legislation was developed with the cooperation of the twelve regional corporations and contains language which is acceptable to them. The amendment will create no additional burden on the corporations in question as the requirement for filing is concurrent with distribution to shareholders.

The staff of this division remains at your disposal should you have any further requirements.

JJB/it/1/8

REMARKS OF JULIUS J. BRECHT  
DIRECTOR OF BANKINGS AND SECURITIES  
THE DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT  
HOUSE COMMITTEE HEARING  
JANUARY 24, 1977

Good Morning Mr. Chairman and members of the committee. I want to thank you for allowing me to appear before you to discuss House Bill 55. My name is Julius J. Brecht, and I am the Director of the Division of Banking and Securities within the Department of Commerce and Economic Development. I am appearing before you to present the administration's viewpoint on this bill.

The bill before you proposed to amend the Alaska Securities Act by adding a new section requiring that certain Native corporations, who are exempt from registration by virtue of AS 45.55.138, file with the Administrator of Securities copies of annual reports and other materials relating to proxy statements in the narrow context of activities involving the initial assets of those corporations. These requirements are imposed only on corporations whose total assets exceed \$1 million, and whose stock is held by 500 or more persons, and who would be distributing such materials to 10 or more shareholders.

While other non-Native corporations of this State must file these materials with the Securities and Exchange Commission, the 1976 amendment to the Alaska Native Settlement Act (ANCSA), explicitly prohibits the SEC until 1991 from regulating the Native corporation activities involving the initial issue of stock of those corporations. This moratorium on SEC regulation came about in part because the Native corporations may not "sell" their assets during this period. They may, however, invest or otherwise encumber those assets.

I would like to distribute to the committee a copy of my memo of January 17, 1977 at this time. As you can see from this memo, the Native corporations assured Congress that they intended to pursue the passage of State legislation to provide the necessary protection to Native corporation shareholders during the moratorium.

Perhaps an example will best illustrate the scope of the bill before you. Assume the board of directors of a given regional corporation decides to purchase an established business or perhaps a building as an investment using a portion of the assets which the corporation received as a result of ANCSA. At present, while a "non-Native" corporation having at least 500 shareholders and \$1 million in assets would have to comply with extensive SEC regulations to protect the shareholders in such a transaction, a Native corporation organized under ANCSA is completely free of regulation. Furthermore, the transaction would be exempt from State regulation because of AS 45.55.138. I have a copy of Section 138 for the information of the committee. If the Native corporations were later to issue shares in the new business or building corporation, then the offering would be a security and would be subject to SEC and State regulation as the case may be. But if the corporation just holds the new acquisition, then there is no protection extended to the shareholder. This bill would require that the regional corporation file a copy of its annual report in which the transaction would quite likely be explained to the shareholders. Similarly, if the context of a transaction or proposed course of action involving the initial assets require the directors to solicit proxies, then copies of those materials would have to be filed with the division.

The proposed legislation will then provide Native shareholders the same degree of protection from fraud and deception that any shareholder of a comparable non-exempt corporation now enjoys. The bill before you does not treat Native corporations any differently than other corporations in the context of overall regulation. The bill in fact strikes equity non-Native corporations and those other corporations.

5:  
The bill before you was developed with the cooperation of the 12 regional corporations and the Alaska Federation of Natives. Numerous helpful comments were received from representatives of the regional corporations at a meeting held in the AFN offices in Anchorage this past summer. The amendment will create no additional burden on the corporations since the requirement for filing is concurrent with distribution to the shareholders.

In summary then, I believe this bill will clear up the matter of "unfinished business" created by Congress in passing the 1976 amendment to ANCSA to which the Native corporations have assured Congress their support.

I urge the thoughtful consideration of this legislation by this committee.

March 1, 1977

Mr. Jake Gregory, Chairman  
Bristol Bay Native Association  
P. O. Box 99  
Egegik, Alaska - 99579

Dear Mr. Gregory:

Re: CSSB 15 and HB 55

This letter is to confirm our conversation in Juneau on two bills presently before the Alaska State Legislature.

One bill deals with the conducting of business of a corporation by its board of directors. That bill has been introduced by Senator Ziegler of Ketchikan. The present Alaska corporations law requires that a board of directors of a corporation may take action as a board only when the board meets in person or through a conference telephone call. (See AS 10.05.198-199)

Under CSSB 15, a board of directors may conduct the business of a corporation without holding a formal meeting or resorting to a telephone conference call, under limited conditions. Those conditions are: (1) subsequent written consent to the action is obtained, (2) the consent specifies the action authorized, (3) the consent is signed by all of the directors, and (4) the consent is filed with the minutes of the board.

In essence, the bill allows the polling of the members of a board of directors on a proposed course of action, and allows the board or a person designated by the board to take the action. The bill, therefore, provides more flexibility to corporate directors in carrying out their duties for a corporation.

The other bill about which you inquired, HB 55, has been submitted by the Governor and requires that certain corporations formed as a result of the Alaska Native Claims Settlement Act (ANCSA) submit copies of specified materials to the Department of Commerce & Economic Development. Only those Native corporations with 500 or more shareholders and total assets exceeding \$1-million are subject to the bill. The materials submitted include copies of annual reports and other specified written

March 1, 1977

materials used to solicit votes on proposed actions by a Native corporation involving the initial assets of the corporation. In this context, if more than 10 Alaskan resident shareholders of such a corporation are solicited, then copies of the written materials used in the solicitation must be filed with the department.

Perhaps an example will best illustrate the scope of HB 55. Assume the board of directors of a given regional or village corporation decides to purchase an established business, or perhaps a building as an investment, using a portion of the assets which the corporation received as a result of ANCSA. At present, while a "non-Native" corporation, having at least 500 shareholders and \$1-million in assets, would have to comply with extensive federal regulations to protect the shareholders in such a transaction, a Native corporation organized under ANCSA is completely free of regulation. Furthermore, the transaction would be exempt from State regulation because of AS 45.55.138. If the Native corporation were later to issue shares in the new business or building corporation, then the offering would be a security and would be subject to federal and State regulations, as the case may be. But if the corporation just holds the new acquisition, then there is no protection extended to the shareholder. The bill would require that the Native corporation involved file a copy of its annual report in which the transaction would, quite likely, be explained to the shareholders. Similarly, if the context of a transaction or proposed course of action, involving the initial assets, requires the directors to solicit proxies, then copies of those materials would have to be filed with the department.

For your information, there are presently only about 15, and possibly 18, village corporations out of a total of 226 that have a sufficient number of shareholders and total assets to come under the requirements of HB 55. That is, about 8% of the village corporations would be affected by the bill. Obviously, all 12 regional corporations would also be subject to the bill. The 18 village corporations involved are as follows, based on information obtained recently from the Bureau of Indian Affairs:

<u>Village Name</u>	<u>Total Enrollments</u>
St. Paul	2,540
Barrow	2,029
Dillingham	925
Ft. Yukon	734
Tanana	590
Sethel	1,725
Hooper Bay	623
Kotzebue	1,976
Nome	2,041
Unalakleet	327

<u>Village Name</u>	<u>Total Enrollments</u>
Angoon	629
Hoonah	867
Hydaburg	554
Kake	551
Klawak	510
Three villages took cash	
Kodiak	520
Juneau	2,658
Sitka	1,215

The proposed legislation will, then, provide Native shareholders the same degree of protection from fraud and deception that any shareholder of a comparable nonexempt corporation now enjoys. The bill does not treat Native corporations any differently than other corporations in the context of overall regulation. The bill, in fact, strikes equity between non-Native corporations and other corporations.

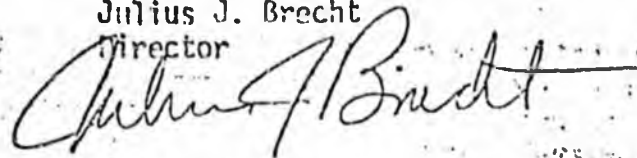
The bill was developed with the cooperation of the twelve regional corporations and the Alaska Federation of Natives. Numerous helpful comments were received from the representatives of the regional corporations at a meeting held in the AFN offices in Anchorage this past summer. The bill will create no additional burden on the corporations, since the requirement for filing is concurrent with distribution to the shareholders.

I believe this bill will clear up the matter of "unfinished business" created by Congress in passing the 1976 amendment to ANCSA to which the Native corporations have assured Congress their support. That is, while other non-Native corporations of this State must file the materials specified in HB 55 with federal authorities, the 1976 amendment to ANCSA explicitly prohibits the federal authorities, until 1991, from regulating Native corporation activities involving the initial issue of stock of those corporations. The moratorium on federal regulation came about in part because Native corporations may not "sell" their assets during this period. They may, however, invest or otherwise encumber those assets.

If you have any further questions concerning either of the bills that I have just discussed, please do not hesitate to contact me.

Sincerely,

Julius J. Brecht  
Director



JJB/va12/1

THE DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

Dave Gray, Legislative Assistant  
to Senator Ferguson  
Court Building, Room 650

February 17, 1977

Julius J. Brecht, Director  
Division of Banking and Securities

Native Enrollments

This memorandum is in response to a question that you raised in our meeting in your office on Wednesday, February 16, 1977. The meeting concerned the purpose and scope of HB 55, a bill relating to reports by Native corporations.

Your question was how many village corporations may be affected by the bill? That is, how many village corporations have more than 500 shareholders and more than \$1 million in assets?

My office has contacted Mr. Prentiss (Print) Gazaway in the Industrial Development Section of the Bureau of Indian Affairs in Juneau (586-7133). He gave the following information on enrollments as of November 17, 1976:

1. 15 villages each having total assets over \$1 million and each having over 500 members.
2. Three villages having over 500 members who took cash settlements (distributed to shareholders); however, the land settlement is still held and quite likely has a value in excess of \$1 million.
3. 13 villages with 400-500 members, who took a cash settlement similar to 2 above.
4. A total of 226 village corporations and 12 regional corporations in the State.
5. A total of five "place" village applications pending and an estimated 30 applications expected.

In addition, Mr. Gazaway gave the following information on total enrollments:

St. Paul	540
Barrow	2,029
Dillingham	925
Fort Yukon	734
Tanana	590
Bethel	1,725
Hooper Bay	623
Kotzebue	1,976
Nome	2,041
Unalakleet	827
Angoon	629
Hoonah	867
Hydaberg	564
Kake	551
Klawak	510
Three villages that took cash.	
Kodiak	520
Juneau	2,658
Sitka	1,815

In summary then, the bill would affect 18 village and 12 regional corporations out of a total of 239 corporations presently doing business in the State. That is, about 2% of the village corporations and all of the 12 in-State regional corporations would be subject to the provisions of HB 55.

I suggest that these figures demonstrate the minimal impact on the corporations organized under the Alaska Native Claims Settlement Act. Most importantly, the shareholders from those corporations affected will enjoy a level of protection similar to that which is accorded by federal regulation to corporations of a comparable size both in the State and outside of the State.

I encourage you to discuss the benefits of HB 55 with the Bush Caucus, and I stand ready to discuss the matter with you or the caucus at your pleasure.

JJB/it/4/2

# MEMORANDUM

State of Alaska

DEPT. COMMERCE & ECONOMIC DEVELOPMENT  
DIV. BANKING & SECURITIES  
SEC. \_\_\_\_\_

TO: [1977 Securities Legislation Ideas  
File

DATE , March 26, 1976

FROM: Miles S. Schlosberg  
Director  
Division of Banking and Securities

SUBJECT:

Miles Schlosberg has discussed these matters at length with the drafters of this memorandum, and other affected Native Corporations during his and Commissioner Motley's 1975 efforts on behalf of modifying the Omnibus amendments to the Alaska Native Claims Settlement Act before Congress. He should be consulted before drafting legislation to reflect this memorandum. In essence, however, as the attached notes will reflect (at the back) he is in accord with the positions expressed here.

Attachment

NANA  
7

MEMORANDUM

Re: Alaska Native Claims Settlement  
Act Corporations - Proposed State  
Securities Law Protections

This memorandum outlines possible alternative proposals for additional state securities law provisions which may be deemed necessary or desirable to provide additional protections to stockholders of corporations formed under the Alaska Native Claims Settlement Act (the "Settlement Act"). The recent Settlement Act amendments (Act of January 2, 1976, P.L. 94-204, 89 Stat. 1145) exempted all Settlement Act corporations until 1991 from the three principal federal securities laws, and thereby also from any SEC jurisdiction. The House Interior Committee Report on the exemptions contained the amendments stated:

"Native corporations have assured the Committee that they . . . intend to pursue the passage of State legislation to the extent necessary to provide any appropriate additional protection." (H. Rep. 94-729, 94th Cong., 1st Sess. 20 (December 15, 1975))

The additional state protections deemed to be necessary by some regional corporations relate primarily to State regulation of the content of proxy materials mailed by the corporations to their stockholders, particularly materials soliciting votes in annual elections of directors. Concern has also been expressed over regulations of verbal statements and solicitations made in connection with such elections.

EXISTING ANNUAL REPORT REQUIREMENT

In considering alternatives for state regulation of proxy materials, it must be kept in mind that section 3 of the Settlement Act amendments, exempting the corporations from the federal securities laws, contains also the following requirement:

"Any [Settlement Act] corporation which, but for this section, would be subject to the provisions of the Securities Exchange Act of 1934 shall transmit to its stockholders each year a report containing substantially all the information required to be included in an annual report to stockholders by a corporation which is subject to the provisions of such Act."

The scope of this requirement for annual reports is as follows:

Applicability of Requirement. The requirement for mailing to stockholders an annual report complying with the SEC standards for such a report applies only to corporations which, but for the newly enacted exemptions, would be subject to the Securities Exchange Act of 1934 (the "1934 Act"). These are corporations with more than \$1,000,000 in assets and at least 500 stockholders. The requirement therefore presently covers all regional corporations, as well as perhaps the five or ten largest village corporations.<sup>1/</sup>

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<sup>1/</sup> A village corporation with only slightly over 500 stockholders might not yet be subject to this requirement. Such a corporation to date may not yet have received \$1,000,000 in  
[footnote continued on following page]

This annual report requirement was deliberately made applicable only to the largest of the corporations. Many small village corporations do not currently mail out annual reports to stockholders, and should not have to incur the cost of doing so. It would be consistent with this theory that any affirmative proxy requirements or standards imposed by state law similarly be applicable to only the large corporations, i.e., regional corporations and the largest village corporations.

*Smaller Tribes  
have personal  
access to  
knowledge*

Content of Annual Reports. The annual report must contain "substantially all the information" required to be included in an annual report to stockholders under the federal securities laws. <sup>2/</sup>

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1/ [footnote continued from preceding page]  
funds under the Settlement Act, and, since the value of the corporation's future interest in lands may presently be unknown and may have to be excluded in determining the total of the corporation's assets, the corporation may not yet come within the requirement. After the next distribution from the Alaska Native Fund, it probably would have \$1,000,000 in assets and thereafter have to comply with the annual report provisions.

2/ The reports of both the House and Senate Interior Committees on the recent amendments express the belief that "the Native leadership will comply fully with the intent of this provision and will submit annual reports to their stockholders which are as effective in disclosing corporate activities as those prepared by companies regulated under the 1934 Act by the SEC." (H.Rep. 94-729, 94th Cong., 1st Sess. 20 (December 15, 1975), and S. Rep. 94-361, 94th Cong., 1st Sess. 18 (August 1, 1975)).

4

Annual reports currently prepared by regional corporations already contain much of the information required by the SEC's rules.<sup>3/</sup> Additional information, however, will have to be added. Roughly outlined (and omitting items clearly inapplicable to Settlement Act corporations), the following information has to be included:

1. Certified financial statements for the last two fiscal years.

2. Brief description of the business done by the corporation and subsidiaries during the most recent fiscal year, indicating the general nature and scope of the company's business.

3. If the company is engaged in more than one line of business, the approximate amount or percentage, for each of the last five years, of (1) total sales and revenues, and (2) income (or loss) attributable to each line of business accounting for 15 percent or more of sales, revenues or income during either of the last two years.

4. Amount or percentage, for each of the last five years, of total sales and revenues contributed by each class of similar products or services contributing 15 percent or more of total sales and revenues during either of the last two years.

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<sup>3/</sup> Rule 14a-3 under the 1934 Act.

5. Tabular summary of operations of the company and subsidiaries for each of the last five years, set forth in any form deemed suitable by management.

6. Identification of each director and executive officer of the company, indicating principal occupation or employment and name and principal business of any organization by which employed.

The regulations further explain these requirements and specify the amount of detail required. Subject to the requirements, however, the report can be in any form which the management deems suitable. An annual report so prepared will contain much information useful to the stockholders in evaluating the performance of the board of directors in connection with their annual election.

#### POSSIBLE ADDITIONAL STATE LEGISLATION

The memorandum here will deal with possible alternatives for state legislation, imposing additional requirements, protection or standards to supplement the annual report requirement. The following are only various suggestions, from which one might select those most appropriate.

1. Timing of annual report. Since the annual report is to contain much information valuable to stockholders in electing directors, state law could require the annual report to be mailed out to the stockholder simultaneously

with the notice of annual meeting for election of directors. The Settlement Act amendments require only that the report be sent out "each year", without designating when.

*and = just 5/21/42 suit*

2. Enforcement of Annual Report Requirement. The Settlement Act amendments contain no provision for enforcing the annual report requirement. The SEC also has no jurisdiction to do so. State law therefore could make it illegal to (a) fail to prepare and mail out the required annual report, or (b) mail an annual report which does not contain "substantially all the information" required under the 1934 Act. <sup>(c) is false, misleading or ommissive § 010</sup> Officers and directors violating such a provision of State law could personally be subject to prosecution and fines, with a specific provision that the corporation may not indemnify the officers and directors for the fines.

*would save time on annual rpt & notice by § 010 law type in*

3. Proxy Materials - General. In spite of the annual report requirement, it may be deemed appropriate also to require separate proxy statements to be mailed to stockholders in connection with their vote at any meeting, and to regulate the content of such materials. (The SEC requires and regulates the content of the annual report and the proxy materials.)

4. Proxy Materials - Type of Legislation. The 1934 Act itself provides, as to proxy materials, only that proxies may not be solicited "in contravention of such rules and regulations as the Commission may prescribe as necessary or

appropriate in the public interest or for the protection of investors". All the remaining detailed requirements for proxy materials are contained not in the statute, but in the SEC's own regulations. A State statutory provision could be similarly vague, leaving all the details of the requirement to agency regulations. This, however, would leave the agency with considerable flexibility. For obvious reasons, the state requirements on proxy materials should not be as detailed and complex as the SEC's requirements. Having specific guidelines and rules written into the statute could help insure that the requirements will be of a type appropriate to Settlement Act corporations. *true*

5. Proxy Materials - Content. The SEC proxy rules contain a long list of items and subjects to be covered in a proxy statement. The proxy statement, however, generally must cover only those of the subjects which are relevant to the meetings or which are voted on by the stockholders. Consideration must be given to the types of stockholder votes to which the state proxy requirements should apply, e.g., only elections of directors, or all stockholders meetings and votes. A brief listing of the information which must be set forth in proxy materials under the federal laws, i.e., the different subject matters covered (again omitting items clearly inapplicable to Settlement Act corporations), is as follows:

- Revocability of proxy. Whether the stockholder may revoke the proxy, and any limitations on this right.

- Persons making the solicitation. Statement of who is making the solicitation (e.g., management), and description of any known opposition to the solicitation.

- Interest of certain persons in matters to be acted upon. Description of any interest of any officer or director in any matter to be acted upon.

- Voting securities and principal holders thereof. The number of shares of each class of stock outstanding and the number of votes to which each class is entitled, the record date, description of any available cumulative voting rights, and any past or expected change in control of the corporation.

- Nominees and directors. In tabular form, for each person nominated as a director and each other director, the name, term of office, other positions held, principal occupation, name and principal business of any organization by which employed, principal occupation during the last five years, previous terms as a director, approximate amount of stock owned, etc.

- Remuneration and other transaction with management and others. In tabular form, (a) direct remuneration, and (b) annuity, pension or retirement benefits,

paid to each director or officer earning more than \$40,000 and all directors and officers as a group. Description of any stock options granted to such officers and directors, any indebtedness which any of them have to the corporation, any transactions or proposed transactions with the corporation in which any director, officer or nominee (or relative thereof) has an interest.

- Relation with independent accountants. Description of company's relationship with its independent public accountants, naming accountants selected or to be ratified by stockholders, whether representatives of the accountants will be present at the meeting, the names of any audit committee of the board of directors, etc.

- Bonus, profit-sharing pension or retirement plans. If action is to be taken by the stockholders on any such plan, the plan must be described in detail.

- Options, warrants or rights. If action is to be taken by the stockholders on these, they must be described in detail.

- Authorization or issuance of securities other than for exchange. If additional securities are to be authorized, the title, amount, terms or rights of the securities must be described, as well as the transaction in connection with which they are issued.

- Modification or exchange of securities: If the stockholders are to vote on modification of any class of securities or issuance of new securities in exchange for outstanding securities, all relevant details must be described.

- Mergers, consolidations, acquisitions and similar matters. The entire transaction and its terms must be described in detail.
- Financial statements. In a proxy statement relating to any of the last three preceding items, financial statements must be included.
- Acquisition of property. If the stockholders are to vote on the acquisition of property, the property and the terms of the acquisition must be described.
- Amendment of charter, by-laws and other documents. If any such amendments are voted on, the reasons and general effect of the amendment must be given.
- Vote required for approval. On any matter submitted to a vote (other than election of directors or selection of auditors), the vote required for approval must be given.

All or some of these subject matters similarly could be required to be described and discussed in proxy materials required by state law.

6. Proxy materials - Procedure. Regulation of the content of proxy materials could be imposed without necessarily requiring that the materials <sup>be</sup> submitted to or approved by the State in advance of their mailing. Alternatively, a procedure similar to the SEC's proxy procedure

20 parts Better  
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could be required. The SEC's regulations require that proxy materials be mailed to the SEC at least 10 days before mailing to the stockholders. During the 10 day period the SEC recommends changes in the materials, further detail or elaboration, etc.

7. Proxy Materials - Enforcement. It could be made a specific crime, subject to appropriate punishment, to make any false or misleading statements in any written proxy materials to stockholders.

8. Oral Proxy Solicitations. It similarly could be made a crime to make any false or misleading oral statements or presentations in connection with any solicitation of proxies for a vote of stockholders. The prohibition could cover corporate directors and employees, as well as any "outside" candidates for directorships who are opposing management's nominees. Violations could be subject to appropriate punishment.

9. Coverage of Requirements. As noted, the annual report requirement currently applies only to corporations with over \$1,000,000 in assets and 500 stockholders. Any of the potential state requirements listed above similarly could be limited to only those corporations. Alternatively, they could be made to cover a larger group of Settlement Act corporations, or even all. It may, however, be inappropriate to impose any proposed affirmative

✓  
S.O.D.  
subject to your  
secretary's  
approval

agree except  
for  
unreasonable  
unnecessary  
for many  
small corps

False state.  
+ 500 shares

*Procedural*

requirements on the smaller corporations. However, there may be little reason why the non-affirmative provisions, such as in the two last preceding items (generally prohibiting false or misleading statements in connection with proxy solicitations), could not be made applicable to all proxy solicitations by all Settlement Act corporations.

#### CONCLUSION

As already noted, the foregoing is intended merely as a list of possible areas which could be covered by state securities laws amendments. The state legislature could enact amendments covering all these areas, or, alternatively, could be more selective and impose only some of the requirements. There is also considerable leeway as to how detailed any proxy materials required by the State must be.

make registration practicable for them under the Investment Company Act. On the other hand, the penalty for failure to register under that Act, even for a company which inadvertently becomes subject to its provisions, are severe. It is the purpose of Section 3 of H.R. 6644, amended, to provide the corporations formed under the Settlement Act with turnaround time in order to identify any problems which they may ultimately have under the Investment Company Act and to work out appropriate solutions for such problems internally and in consultation with the staff of the Securities and Exchange Commission.

The SEC has promulgated a temporary rule exempting Native corporations which register as investment companies from most of the provisions of the 1940 Act. Nonetheless, the exemption provided for in this section is necessary. The Committee is informed that some Regional Corporations have not registered under the SEC temporary rule and there exists some risk that their corporate acts and contracts might be vulnerable to challenge under the 1940 Act. The exemption will provide necessary breathing room to the SEC and the Native corporations in order to permit resolution of long-range solutions.

Another reason for temporarily exempting these entities from the Investment Company Act is to enable them to merge under provisions of Section 6 of H.R. 6644. In 1975 the NANA Corporation and the eleven Village Corporations in that region agreed on a plan of merger. The Natives spent about \$200,000 in preparation and filing of a prospectus under the Securities Act of 1933. They did so in reliance on a "no-action" letter from the SEC advising them that no application would be necessary under section 17 of the Investment Company Act, a section which prohibits transactions between "affiliated persons" without a prior order from the SEC that the terms of the transaction are fair and equitable. At the last moment, however, the SEC withdrew their no-action letter, insisted on a section 17 application, and advised that no action would be taken on the application until extensive public hearings had been held. This administrative procedure imposes such substantial costs that merger may be impracticable. Since the very purpose of the merger authority in section 6 is to reduce administrative expense and overhead, it is appropriate at the same time to eliminate unnecessary expenses and delays imposed by federal securities laws.

*B. The Securities Act of 1933 and the Securities Exchange Act of 1934*

During the 20 year period when Native stock cannot be sold or transferred it is not necessary to subject these corporations to the expense and administrative burdens of compliance with the 1933 Securities Act and the 1934 Securities Exchange Act. Until December 1991, there will be no "market" in the stock of Native corporations since the stock is inalienable. Therefore it does not seem necessary to subject these corporations to the requirements of registering stock under the 1933 Act. The SEC has itself recognized that the 1933 Act need not be applied to those corporations in certain cases when it issued a "no-action" letter regarding the issuance of the initial shares of stock to Natives enrolled in Regional and Village Corporations.

The exemption from the 1933 Act is also needed to effectuate the merger authority in section 6. The 1933 Act requires that the stock be registered with the SEC, and a prospectus prepared and mailed

to all stockholders to whom the stock is offered, prior to the time at which they make the decision on the merger. Stock registration under the 1933 Act is an extremely elaborate and technical proceeding. The resulting prospectus, to be mailed to the stockholders, is intended to disclose every last detail bearing on the question of whether the person should acquire the stock. In the merger which NANA and the Village Corporations attempted to undertake in the spring of 1975, the prospectus, which had not yet been cleared by the SEC but which resulted from the SEC's initial round of comments on an earlier version submitted, consisted of a total of 80 printed pages, including 50 pages of financial statements, and accompanying footnotes, on all the corporations involved. In view of the lack of sophistication of most of the stockholders, particularly on matters such as complex mergers, such a document clearly is not an appropriate method of informing the stockholders. Yet, such a document would be required. It is extremely costly to prepare, and, as noted in the case of the NANA merger, costs well over \$100,000. Clearly such costs for practical purposes would preclude the possibility of merger between two small Village Corporations which might be most in need of it.

Conversely, the tight restrictions of the 1933 Act on the verbal communications which may be made in conjunction with the prospectus virtually preclude any meaningful or simplified discussion at village or community meetings in order to explain merger to the stockholders. Thus the 1933 Act requires for disclosure an extremely complex and expensive document which does not serve its intended purpose at least as to Native corporations, but also precludes the one effective means of communication.

Similarly, application of the 1934 Securities Exchange Act is not necessary during the period when Native stock is inalienable. The 1934 Act applies to corporations with over 500 stockholders and \$1,000,000 in assets. An exemption of Settlement Act corporations from only the 1940 Investment Company Act would result in all the Regional Corporations and approximately 19 of the Village Corporations being subject to the 1934 Act which requires expensive initial registration with the SEC, the filing of periodic reports with the SEC, and makes the detailed proxy rules applicable to any vote of stockholders. For the reasons discussed above under the 1940 Act, these requirements again have little proper application to Native corporations and do not fulfill their intended purpose in this context. In fact, in a recent letter to Congressman Lloyd Meeds in connection with the question of exempting the corporations from the 1940 Act, the SEC characterized the 1934 Act as "a statute which is designed basically to inform the Commission and the investing public as to securities of publicly traded companies." Since the stock of Native corporations may not be traded and the "public" may not invest in it until 1991, the 1934 Act has no proper application to these corporations.

Although the SEC has stated that the 1934 Act is designed to inform the "investing public" about securities, the federal securities laws do provide useful information to the stockholders as well as the investing public. Accordingly the new section 28 of the Settlement Act provides that any Native corporation which, but for the provisions of that section, would be subject to the 1934 Act, must transmit an annual

report to its stockholders containing substantially all the information contained in annual reports of corporations subject to the 1934 Act. Such reports by Native corporations would not be filed with or reviewed by the SEC, but the Committee believes that the Native leadership will comply fully with the intent of this provision and will submit annual reports to their stockholders which are as effective in disclosing corporate activities as those prepared by companies regulated under the 1934 Act by the SEC. Finally, the Committee understands that the general provisions of Alaska law provide protection for Native stockholders from any corporate mismanagement and misrepresentations or omissions to represent in connection with sales of securities, and that Alaska courts would look to precedents under federal securities laws for appropriate standards of conduct by management and other persons connected with securities transactions. Native corporations have assured the Committee that they do not intend to seek an exemption from state securities laws on the basis of this exemption from federal laws and intend to pursue the passage of State legislation to the extent necessary to provide any appropriate additional protection. Therefore, it is not necessary at this time to impose additional federal requirements.

It should be noted that these corporations are being exempted from the federal securities laws on the understanding that federal regulation of Settlement Act corporations is not necessary to protect Native stockholders or the public during the twenty-year period when Native-owned stock cannot be sold. However, if this assumption proves invalid in light of experience, the Committee is prepared to re-impose such provisions of the federal laws as may be necessary. In short, the twenty-year exemption should be viewed by the Natives as an experiment which will be stopped if it is abused.

SECTION 4

Subsection (a) merely makes clear the congressional intent that payments and grants under the Settlement Act are not to be deemed a substitute for any governmental program or benefit which is otherwise available to Alaska Natives as citizens of the United States and Alaska. Subsection (b) makes clear that benefits under the Settlement Act shall not be considered as income or other resources for purposes of the Food Stamp program. The background to subsection (b) is provided in an August 6, 1974, memorandum prepared by the Congressional Research Service of the Library of Congress:

THE LIBRARY OF CONGRESS, WASHINGTON, D.C. 20540

THE COUNTING OF INCOME FROM PAYMENTS UNDER THE ALASKA NATIVE CLAIMS SETTLEMENT ACT IN DETERMINING ELIGIBILITY FOR AND THE AMOUNT OF FOOD STAMP AND CASH WELFARE BENEFITS

Food Stamps

In March 1974, the State of Alaska notified the Federal offices of the Food Stamp Program (in the USDA's Food and Nutrition Service) that it was Alaska's interpretation that

<u>DATE</u>	<u>CORRESPONDENCE</u>	<u>SUBJECT</u>
8/10/76	Letter to Brecht from Doyon Corp.	Request that we keep Doyon informed
7/30/76	Letter to Brecht from Bristol Bay Native Corp.	Comments on proposed legis.
7/26/76	Letter to Brecht from Cook Inlet Region	Comments on proposed legislation
7/22/76	Letter from Brecht to Securities & Exchange Commission	Requesting SEC comments
7/19/76	Letter from Brecht to Native leaders (13 copies)	Initial request for comments to proposed legislation
6/17/76	Memo from James Thompson to Brecht	Recommendations as to content and procedures of proposed legislation
3/26/76	Memo from Miles Schlosberg to 1977 Legislative file	Proposed to have Native corporations legislation
1/5/76	Letter to Schlosberg from Sen. Stevens' office	Copy of H.R. 6644
12/15/75	U.S. House of Representatives Report 94-729 of Interior Committee on ANCA	Intent of Native corporations to pursue State legislation
11/20/75	Letter from Schlosberg to Sen. Stevens and Congressman Young	Discussion that Native leaders will not oppose State legislation
11/18/75	Letter to Schlosberg from Chugach Native Corp. counsel	Suggesting State legislation to protect native shareholders
8/22/75	Securities & Exchange Commission Release #8902	Proposals to protect Native shareholders
	Legislative Proposal Request Form	Justification of proposed legislation
	Names and addresses of Native Regional Corporations	

see page 20

## INDEX OF MATERIALS

<u>Exhibit</u>	<u>Date</u>	<u>Description</u>
A.	July 19, 1976	Copy of initial letter to Sam Kito, President AFN.
B.	August 24, 1976	Copy of original letter to all regional corporations (list of correspondents)
C.		Various - Copies of initial responses from the various regional corporations.
D.	October 18, 1976	Copy of letter sent to all regional corporations following Anchorage meeting (list of correspondents)
E.	October 19, 1976	Copy of letter sent to meeting attendees. (list of meeting attendees)
F.	September 30, 1976	Copy of memo to Commissioner reporting on status of legislation also copy of MANA'S Counsel letter.
G.	October 19, 1976	Copy of memo to Commissioner reporting on meeting with Native corporations on October 13, 1976 in Anchorage.



July 19, 1976

Mr. Sam Kito, Jr., President  
ALASKA FEDERATION OF NATIVES, INC.  
515 "D" Street  
Anchorage, AK 99501

Re: Proposed Securities legislation

Dear Mr. Kito:

This division is currently making a study on the feasibility and necessity of introducing legislation concerning annual reports and proxy materials of corporations subject to the Alaska Native Claims Settlement Act.

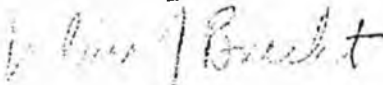
The recent Settlement Act amendments (Act of January 2, 1976, P. L. 94-204, 89 Stat. 1145) exempt all settlement act corporations from the three principal federal securities laws until 1991. This exemption from any U.S. Securities & Exchange Commission regulation has raised the question of whether or not investor protection needs to be afforded under the Alaska Securities Act of 1959, AS 45.55. The House Interior Committee Report on the exemptions from federal securities laws stated:

Native corporations have assured the committee that they . . . intend to pursue the passage of State legislation to the extent necessary to provide any appropriate additional protection . . . (H. Rep. 94-729, 94th Cong., 1st Sess, December 15, 1975).

We note the native corporations' willingness in the past to work towards insuring protection for their stockholders. I, therefore, personally invite your comments and suggestions on the approach that should be taken in reaching these goals.

If you feel that a joint meeting between the staff of the Division of Banking & Securities and native leaders would be beneficial, I shall be glad to make the necessary arrangements. I shall keep you informed of any proposals that this division formulates after we complete our study of the problems and solutions regarding native stockholder protection.

Sincerely,



Julius J. Brecht  
Director

JJB:mp



August 24, 1976

Mr. Joseph Upicksoun, President  
Arctic Slope Regional Corporation  
P.O. Box 129  
Barrow, Alaska 99723

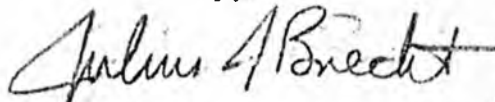
Dear Mr. Upicksoun:

Enclosed is a copy of legislation that this division is considering for submission in the next session of the legislature.

As was stated in my letter of July 19, 1976, the division is asking for input from the Native corporations prior to submission of any legislation pertaining to corporations organized pursuant to the Alaska Native Claims Settlement Act.

I would appreciate receiving any comments you have on this proposed legislation. As I stated in my prior letter, I would be happy to assist in making arrangements for a joint meeting between the staff of the Division of Banking & Securities, and Native leaders, if you think it would be beneficial.

Sincerely,



Julius J. Brecht  
Director

JJB/ec22

Mr. Sam Kito Jr., President  
Alaska Federation of Natives, Inc.  
515"D" Street  
Anchorage, Alaska 99501

Mr. Raymond C. Christiansen, President  
Calista Corporation  
516 Denali Street  
Anchorage, Alaska 99501

Mr. John Borbrige, Jr., Chairman  
Sealaska Corporation  
811 W. 12th Street  
Juneau, Alaska 99801

Mr. Harold Samuelson, President  
Bristol Bay Native Corporation  
P. O. Box 237  
Dillingham, Alaska 99576

Mr. John W. Schaeffer, Jr.  
Nana Regional Corporation, Inc.  
P. O. Box 49  
Kotzebue, Alaska 99754

Mr. Jerome Trigg, President  
Bering Straits Native Corporation  
P. O. Box 1008  
Nome, Alaska 99762

Mr. Jacob Wick, President  
Koniag, Inc.  
P. O. Box 746  
Kodiak, Alaska 99615

Mr. Joseph Upickson, President  
Arctic Slope Regional Corporation  
P. O. Box 129  
Barrow, Alaska 99723

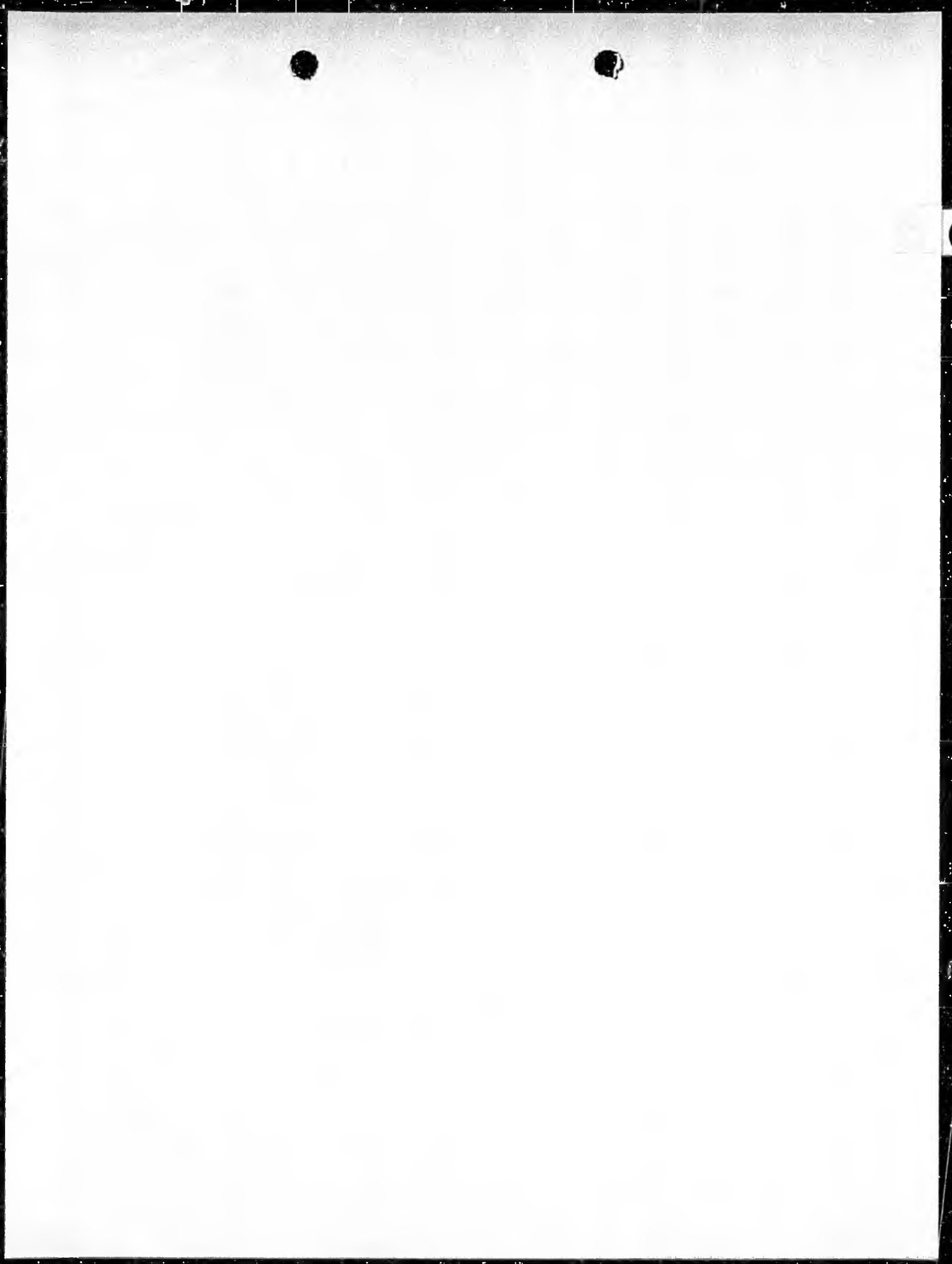
Mr. John C. Sackett, President  
Doyon, LTD  
First & Hall Street  
Doyon Bldg.  
Fairbanks, Alaska 99701

Mr. Carl E. Moses, President  
Aleut Corporation  
833 Gambell Street  
Anchorage, Alaska 99501

Mr. Roy M. Huhndorf, President  
Cook Inlet Region, Inc.  
1211 W. 27th Ave.  
Anchorage, Alaska 99509

Mr. Robert Marshall, President  
Ahtna, Inc.  
515 "D" Street  
Anchorage, Alaska 99501

Mr. Cecil Barnes  
Chugach Natives, inc,  
912 E. 15th Ave.  
Anchorage, Alaska 99501



REF  
SEC



**COOK INLET REGION, INC.**

1211 WEST 27th AVE. ANCHORAGE, ALASKA 99503

TELEPHONE 274-8638

July 26, 1976

Mr. Julius J. Brecht, Director  
State of Alaska  
Department of Commerce and  
Economic Development  
Pouch D  
Juneau, Alaska 99811

Dear Mr. Brecht:

Thank you for advising me of the study your department is making concerning the necessity of State legislation relative to the Native Corporations' annual reports and proxy materials.

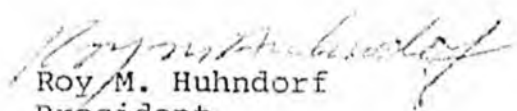
I can only speak for the Cook Inlet Region, Inc., but I believe that the Native Corporations desire maximum protection for their stockholders while keeping to a minimum the amount of regulations and red tape.

As you have suggested, a joint meeting between your staff and representatives from the Native Corporations would be an appropriate step in making further determinations in this matter.

In the interim, if I can be of assistance, please feel free to call on me.

Sincerely,

COOK INLET REGION, INC.

  
Roy M. Huhndorf  
President

RH/cmh

Bristol  
Bay  
Native  
Corporation

445 E. 5TH STREET / ANCHORAGE / ALASKA 99501 / PH. (907) 277-9511

RECEIVED

AUG 4 1976

DEPARTMENT OF COMMERCE  
DIVISION OF BANKING  
SECURITIES AND SMALL LOANS

July 30, 1976

Julius J. Brecht, Director  
Department of Commerce  
and Economic Development  
Pouch D  
Juneau, Alaska 99811

Re: Proposed Securities Legislation

Dear Mr. Brecht:

Thank you for your July 19, 1976 letter to Mr. Harvey Samuelson on the above subject.

We might be in favor of State legislation regulating the solicitation of proxies. We'd like to protect our shareholders against misleading statements in proxy materials, etc.

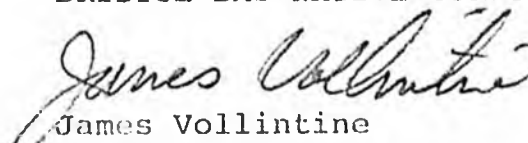
Section 28 of ANCSA, as amended, provides that the annual reports of the ANCSA Corporations shall contain substantially the same information as that required by the Securities Exchange Act of 1934. Thus, State legislation is probably unnecessary in this area.

As you are probably aware, the Native Corporations are immersed in red tape in securing the resources granted them under ANCSA. Indeed, that's one of the primary reasons why they were exempted from the Securities laws in the first instance.

If any State legislation is enacted regarding annual reports and proxy materials we'd like to see it be brief, clear and shaped to take into account the special features of the Native Corporations.

Sincerely,

BRISTOL BAY NATIVE CORPORATION

  
James Vollintine  
Acting General Counsel

# Calista Corporation

516 Denali Street, Anchorage, Alaska 99501 (907) 279-5516  
P. O. Box 574, Bethel, Alaska 99559 (907) 543-2191

*Native Sec  
offerings*

*727*

RECEIVED

AUG 16 1976

DEPARTMENT OF COMMERCE  
DIVISION OF BANKING  
SECURITIES AND SMALL LOANS

August 10, 1976

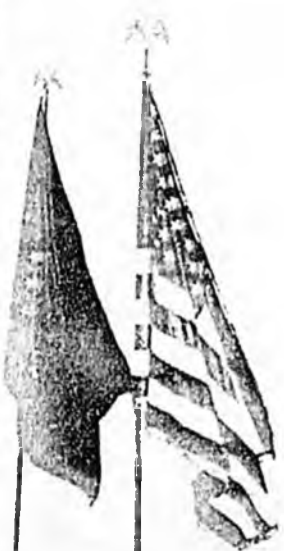
Mr. Julius J. Brecht  
Director  
State of Alaska  
Department of Commerce and  
Economic Development  
Pouch D  
Juneau, AK 99811

Reference: Proposed Securities Legislation

Dear Mr. Brecht:

We are in receipt of your letter of July 19, 1976 in which you inquire about securities regulations for native corporations. At the present time we are bogged down in multitudes of red tape and other bureaucratic entanglements surrounding the Alaska Native Claims Settlement Act. One of the last things we need at this point in time is further regulations by the government.

Despite our desires to have as little regulation as possible, we do realize that there may be some need for shareholder protection under State securities law now that ANCSA corporations have been exempted from federal securities law. Any such State regulations should be concise but inclusive of all corporations in Alaska. We will be more than happy to work with the Division of Banking and Securities, and with other native corporations in seeking to resolve the problems surrounding this matter.



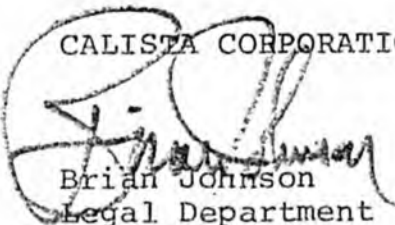
Mr. Julius J. Brecht  
August 10, 1976  
Page 2

If you could keep us informed as to any proposals or recommendations that are submitted to you on this matter, it would be greatly appreciated. Hopefully, we will be developing a position on securities regulations relating to annual reporting and proxy materials. At such time as this is completed we will forward this proposal to you.

Should you have any questions or comments, please feel free to contact me.

Sincerely,

CALISTA CORPORATION



Brian Johnson  
Legal Department

BJ:sah

Telephone (907) 452-4755

*Doyon, Limited*

*Doyon Building  
First and Hall  
Fairbanks, Alaska 99701*

August 10, 1976

RECEIVED  
AUG 18 1976  
DEPARTMENT OF COMMERCE  
DIVISION OF BANKING  
SECURITIES AND SMALL LOANS

Mr. Julius J. Brecht, Director  
Division of Banking, Securities,  
Small Loans and Corporations  
Pouch D  
Juneau, Alaska 99811

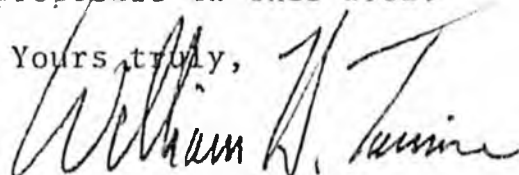
RE: Proposed Securities Legislation

Dear Mr. Brecht:

Mr. Sackett forwarded your letter of July 19, 1976, regarding proposed securities legislation for ANCSA corporations to me. Doyon is obviously interested and would be willing to work with the Division in whatever way possible.

I would appreciate it if you would please keep me advised as to the Division's proposals in this area.

Yours truly,



William H. Timme  
General Counsel

WHT/lr

cc: Mr. Tim Wallis

August 16, 1976

RECEIVED  
AUG 16 1976  
DEPARTMENT OF COMMERCE  
DIVISION OF BANKING  
SECURITIES AND SMALL LOANS

Mr. Julius J. Brecht, Director  
Department of Commerce &  
Economic Development  
Division of Banking, Securities,  
Small Loans & Corporations  
Pouch D  
Juneau, Alaska 99811

Dear Mr. Brecht:

Please excuse the delay in responding to your letter of July 19, 1976; however, I have been out of the office for an extended period of time.

As noted in your letter, the Regional Corporations have consistently worked towards insuring the protection of their stockholders. This aspect is what basically prompted the Regional Corporations to seek various exemptions from the Federal Securities laws in that their protective features were not designed for corporations such as the Native Corporations. Additionally, compliance with the Federal Securities laws have subjected the Regional and village corporations to expenses of some magnitude.

On behalf of Sealaska's stockholders, I would be reluctant to see the same situation develop through State regulation. If memory serves me correctly, the position of the State of Alaska at the time the Native Corporations were seeking exemption from the Federal Securities laws was to the effect that adequate protection existed within the current laws of the State of Alaska for protection of stockholders. Therefore, I am somewhat amazed that your division is now making a study directed towards the possibility of introducing legislation.

} No

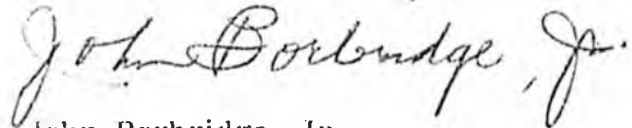
Mr. Julius J. Brecht  
Juneau, Alaska

August 16, 1976

- 2 -

Perhaps the best solution would be to involve the Native Corporations in any study which your Department proposes. This would insure the accuracy of facts and additionally would be of assistance in determining the necessity of any legislation. I have designated Donald J. Beighle, Sealaska's attorney, to work with you in reviewing any proposals. However, I must again state that we would like the opportunity to review proposals prior to the time your Department has completed its study, and arrived at what it considers an appropriate solution. If we are to cooperate on the necessity for any legislation, I feel it is important that the Native people have input initially, rather than when the facts and solutions have become finalized.

Sincerely,



John Borbridge, Jr.  
President



October 19, 1976

Mr. Jack Wick  
President  
Koniag, Inc.  
P.O. Box 746  
Kodiak, Alaska 99615

Dear Mr. Wick:

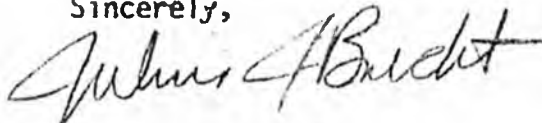
This letter is to inform you that a meeting was held between native corporation representatives, AFN representatives and members of my staff, in the offices of the AFN in Anchorage on October 13, 1976. A list of the attendants of the meeting is enclosed for your information.

As a result of the meeting, the Native Securities Bill that we are considering to propose at the next legislative session has been redrafted. A copy of the redrafted bill is enclosed for your information.

If you have any comments on this redraft, please do not hesitate to contact me.

Thank you again for taking the time to consider this proposal.

Sincerely,



Julius J. Brecht  
Director

JJB/it/28

Enclosures

PRESIDENTS  
REGIONAL CORPORATIONS

as of February 13, 1976

Mr. Robert Marshall  
AHTNA, INC.  
P. O. Box 323  
Copper Center, Alaska 99573  
TELEPHONE: 822-3476

Mr. Roy Muehdorf  
COOK INLET REGION, INC.  
1211 W. 27th  
Anchorage, Alaska 99503  
TELEPHONE: 274-8638

Mr. Carl Moses  
ALEUT CORPORATION  
833 Gambell Street  
Anchorage, Alaska 99501  
TELEPHONE: 274-1506

Mr. Tim Wallis  
DOYON LIMITED  
First & Hall Streets  
Fairbanks, Alaska 99701  
TELEPHONE: 452-4755

Mr. Joe Upicksoun  
ARCTIC SLOPE REGIONAL CORP.  
P. O. Box 129  
Barrow, Alaska 99723  
TELEPHONE: 852-6930/6970

Mr. Jack Wick  
KONIAG, INC.  
P. O. Box 746  
Kodiak, Alaska 99615  
TELEPHONE: 486-4147

Mr. Jerome Trigg  
BERING STRAITS NATIVE CORP.  
P. O. Box 1003  
Nome, Alaska 99762  
TELEPHONE: 443-5252

Mr. John Schaeffer  
NANA REGIONAL CORPORATION, INC.  
P. O. Box 49  
Kotzebue, Alaska 99752  
TELEPHONE: 442-3301/3302/3303

Mr. Harvey Samuelson  
BRISTOL BAY NATIVE CORP.  
P. O. Box 220  
Anchorage, Alaska 99510  
TELEPHONE: 277-9511

Mr. John Herbridge, Jr.  
SEALASKA CORPORATION  
811 W. 12th Street  
Juneau, Alaska 99801  
TELEPHONE: 586-1512

Mr. Robert Schenker  
CALISTA CORPORATION  
516 Denali Street  
Anchorage, Alaska 99501  
TELEPHONE: 279-5516

Mr. Cecil Barnes  
CHUGACH NATIVES, INC.  
912 E. 15th Street  
Anchorage, Alaska 99501  
TELEPHONE: 274-4558



296  
October 19, 1976

Mr. Brian Johnson  
Calista Corporation  
516 Denali Street  
Anchorage, Alaska 99501

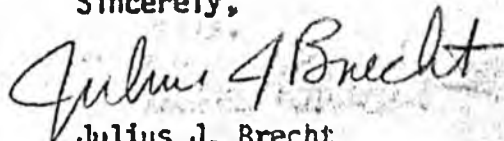
Dear Mr. Johnson:

Please find enclosed a copy of the redraft of the Native Securities Bill incorporating the constructive comments that were made at our meeting at the AFN office in Anchorage on October 13, 1976. Also enclosed is a list of the attendants of the meeting for your information.

If you have any further comments, please do not hesitate to contact me.

Again let me thank you for taking the time for meeting with my staff on this proposed legislation.

Sincerely,



Julius J. Brecht  
Director

Enclosures

JJB/mw 5/11

Attendants of meeting of October 13, 1976  
at the offices of the AFN in Anchorage re-  
garding the Native Securities Bill

Julius J. Brecht	Department of Commerce	Pouch D, Juneau, Alaska 99811
Jim Thompson	Department of Commerce	Pouch D, Juneau, Alaska 99811
H. Nobel Dick	Bristol Bay Native Corp.	445 E. 5th Ave, Anchorage, AK.
George See	Sealaska Corporation	811 West 12th, Juneau, AK.
Everett Bunes	Arctic Slope Reg. Corp.	313 E. St, Suite 5, Anch, AK.
Brian Johnson	Calista Corporation	516 Denali St, Anchorage, AK.
Perry Eaton	Koniag, Inc.	3501 Hooper Way, Anch, AK.
Bill Timme	Doyon Limited	First & Hall, Fairbanks, AK.
Dave Cooke	Bering Straits	310 K. St, Suite 601, Anch. AK
Janie Brower	AFN (secretary to Sam Kito)	8th & F. St., Anch, AK.



STATE  
of ALASKA

# MEMORANDUM

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

TO:  Langhorne A. Motley  
Commissioner

DATE : September 30, 1976

FROM: <sup>QB</sup> Julius J. Brecht  
Director

SUBJECT: Alaska Native Corporation  
Security Proposal - Status  
of 1977 Legislative Proposal

The Division of Banking and Securities has proposed an amendment to the Alaska Security Act (AS 45.55) relating to reports of corporations organized pursuant to the Alaska Native Claims Settlement Act.

The division has corresponded with all twelve regional corporations regarding this proposal. A number of the corporations that were contacted have responded with comments regarding this proposal. On the whole, the regional corporations appear to be receptive to this sort of legislation. However, some are concerned about additional red tape.

On September 20, 1976, the Division of Banking received correspondence from Richard Anthony Baenen, serving as general counsel of NANA Regional Corporation. This letter stated that NANA is in full agreement with the general scheme of our proposed bill. He stated that the bill does not impose on the corporations, any new affirmative or substantive requirements, but in effect merely makes it easier for the State of Alaska to enforce its statutory provisions prohibiting false or misleading statements to stockholders.

Mr. Baenen went on to comment about the specific language of our proposed bill, and suggested that we make several changes. His suggested changes are:

1. That we change the term "other materials" to more specific language. Basically, he proposed that we put in language that would change other materials to all materials relating to a vote by stockholders.
2. Mr. Baenen suggested that we change our description of the corporations from being a broad description to one that would be purely Alaska Native Claims Settlement Act Corporation.
3. Mr. Baenen suggested that we drop the last sentence of our proposal which is "These reports are subject to all provisions of this chapter." The reason for this suggestion was that the language was superfluous, and was covered by other portions of the Alaska Securities Act.

The staff of this division feel that we should not change the term "other material" to being limited to just materials relating to a vote of stockholders. The reason for this is that the other materials, while appearing non-necessary, may definitely influence the shareholders in a final vote.

The suggested change relating to limiting this statute to purely Native Claims Settlement Act Corporation is well taken. The original terminology as presented by the staff of the division may be too broad and encompassing and could possibly lead to an unenforceable statute, especially where it applies to small corporations that would otherwise be exempt.

The third suggestion of Mr. Baenen is that we drop the last sentence of our proposed bill is also well taken. It does appear as if this language is redundant, as all reports are subject to provisions of this chapter by AS 45.55.160.

#### CONCLUSION

It appears if some of the changes proposed by Mr. Baenen are well taken and thus the staff of the Division of Banking recommend that we change our proposed bill to read as follows:

A copy of all annual reports, proxy statements, and other materials distributed to Alaskan shareholders of a corporation organized pursuant to the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601 et seq.), shall be filed with the administrator concurrently with their distribution to shareholders.

JJB/jag4/1

WILKINSON, CRAGUN & BARKER

LAW OFFICES

THE OCTAGON BUILDING  
1735 NEW YORK AVENUE, N.W.  
WASHINGTON, D. C. 20006

(202) 833 9900

CABLE ADDRESS

"WILCBAR"

ERNEST L. WILKINSON  
JOHN W. CRAGUN (1929-1985)  
GLEN A. WILKINSON  
ROBERT W. BARKER  
CHARLES A. HOBBS  
ANGELO A. IADAROLA  
PAUL S. QUINN  
LEON T. KNAUER  
RICHARD A. BAENEN  
JERRY C. STRAUS  
HERBERT E. MARKS  
PIERRE J. LAFORCE  
FRANCES L. HORN  
GORDON C. COFFMAN  
PATRICIA L. BROWN  
STEPHEN R. BELL

R. ANTHONY ROGERS  
WILLIAM R. LOFTUS  
THOMAS J. BACAS  
FOSTER DEWEITZES  
ALAN I. RUBINSTEIN  
JOHN M. FACCIOLA  
PHILIP A. NACKE  
THOMAS E. WILSON  
JERRY R. GOLDSTEIN  
EDWARD M. FOGARTY  
S. STEVEN KARALEKAS  
ROBIN A. FRIEDMAN  
JAMES E. MAGEE  
ROBERT B. MCKENNA, JR.  
JOSEPH P. MARKOSKI  
MICHAEL B. GREEN  
STEVEN C. LAMBERT  
STEPHEN A. HILDEBRANDT  
CHARLES I. APPLER

ROSEL H. HYDE  
DONALD C. GORMLEY

September 14, 1976

*Counsel*

Mr. Julius J. Brecht  
Director  
Division of Banking, Securities,  
Small Loans and Corporations  
Department of Commerce and Economic  
Development, State of Alaska  
Pouch D  
Juneau, Alaska 99801

Re: Proposed Legislation - AS 45.55.139

Dear Mr. Brecht:

John Schaeffer, president of NANA Regional Corporation, Inc., has asked us, as NANA's general counsel, to respond to your August 24, 1976, letter requesting NANA's comments on the proposed legislation, AS 45.55.139, relating to reports of corporations formed under the Alaska Native Claims Settlement Act.

First, we should state that we are in full agreement with the general scheme of the proposed bill. Consistent with the spirit of the federal exemptions granted by Congress, the bill does not impose on the corporations any new affirmative or substantive burdens, but in effect merely makes it easier for the State of Alaska to enforce its statutory provisions prohibiting false or misleading statements to stockholders and other forms of fraud. We believe that the corporations already are covered by the State's substantive standards regulating corporate activity, and the requirement that the materials be filed with the State's administrator seems a reasonable method of facilitating the State's enforcement of these standards.

The following, however, are some specific comments or suggestions which we have on the proposed legislation. First, we wish to clarify what may be a misunderstanding as

\* ADMITTED IN VIRGINIA ONLY

Mr. Julius J. Brecht  
September 14, 1976  
Page two

to what is required by the January 2, 1976, amendments to the Alaska Native Claims Settlement Act, Public Law 94-204. The "Justification" accompanying the proposed legislation states that Settlement Act corporations, although exempt from the federal securities laws, are required to "send their stockholders yearly a report containing substantially the same information required in an annual report of a corporation which is subject to the federal acts." This is not quite accurate. Section 3 of Public Law 94-204, which exempts the corporations from the federal securities laws, requires such reports only of corporations which, but for the exemption, would be subject to the Securities Exchange Act of 1934. The 1934 Act applies only to corporations with more than 500 stockholders and \$1,000,000 in assets, and therefore it is only the twenty or so largest Settlement Act corporations, meeting these criteria, which must mail such annual reports. The only stockholder reporting requirements imposed by federal law on the smaller corporations are those contained in sections 7(o) and 8(c) of the Settlement Act, requiring the distribution to the stockholders of the corporation's annual audit. Thus we would suggest that the statement of "Justification" be corrected. The correction, however, should not to our mind generate any changes in the substance of the proposed legislation.

Dealing with the specific language of the proposed bill, we would suggest that the bill be made more specific in describing precisely which materials must be filed with the State. For example, we are not sure of what is included in "other materials," and believe that this term may require the filing of materials which the State is not really interested in seeing. For example, NANA periodically sends its stockholders a newsletter, in newspaper format, reporting on various corporate activities as well as giving other news of general interest in the region but not related to NANA's activities. Similarly, dividend checks are mailed out annually, with an appropriate written explanation of the nature of the dividend. Finally, at various informal meetings held from time to time in various of the villages, for the purpose of explaining to groups of stockholders various corporate matters of concern to them, written outlines or explanations sometimes are prepared and distributed to persons attending the meetings. These tie in with oral presentations made at the meeting, and, standing alone, they would most likely make little sense to a State official who did not also attend the meeting. Such materials are not traditionally of the type which state or federal securities administrators tend to regulate, particularly since

Mr. Julius J. Brecht  
September 14, 1976  
Page three

they tend not to relate to the financial condition of the corporation or to any stockholders' vote being taken. We therefore would suggest that the filing requirement apply only to "annual reports to stockholders and proxy statements and other proxy materials relating to a vote of stockholders."

Secondly, we would suggest that the description of the corporations covered by the proposed legislation be changed simply to refer to "a corporation organized pursuant to the Alaska Native Claims Settlement Act, as amended (43 U.S.C. §§ 1601 et seq.).". Presently, the reference is to corporations exempted from the filing provisions of the three federal securities laws. We believe this is intended to cover all Settlement Act corporations, and a reference to the Settlement Act would seem to be a more precise way of expressing this. Moreover, identifying the corporations by reference to the federal exemptions would leave room for a corporation which even without the exemptions would not have been subject to the federal acts to argue that it therefore also is not subject to the proposed state law. This would be contrary to what we believe to be the intent of your bill.

Finally, we believe that the last sentence of the proposed bill may be deleted entirely, since to us it appears superfluous. We always have believed that any materials distributed by any of the Settlement Act corporations to its stockholders were subject to any existing State laws normally applicable thereto, such as the laws prohibiting false and misleading statements. This in fact is one of the reasons why Congress determined that the federal securities laws need not also apply.

To summarize, we would propose that AS 45.55.139 read as follows:

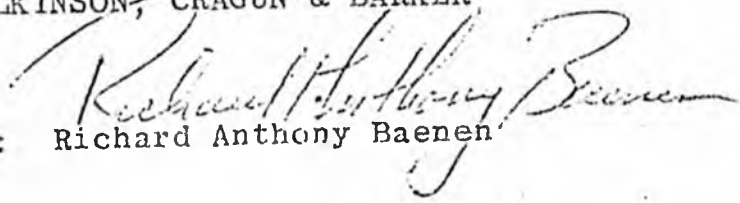
"A copy of all annual reports to stockholders and proxy statements and other proxy materials relating to a vote of stockholders distributed to Alaskan stockholders of a corporation organized pursuant to the Alaska Native Claims Settlement Act, as amended (43 U.S.C. §§ 1601 et seq.), shall be filed with the administrator concurrently with their distribution to shareholders."

Mr. Julius J. Brecht  
September 14, 1976  
Page four

On behalf of NANA, we thank you for the opportunity provided us to review and comment on the proposed bill. We would be pleased to provide you with any further assistance or suggestions which you might find helpful.

Sincerely yours,

WILKINSON, CRAGUN & BARKER

  
By: Richard Anthony Baenen



STATE  
of ALASKA

# MEMORANDUM

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

TO:  Langhorne A. Motley  
Commissioner

DATE : October 19, 1976

FROM: *JB*  
Julius J. Brecht  
Director

SUBJECT: AS 45.55.139 - Status  
Corporations

On October 13, 1976, James L. Thompson, Securities Examiner with the Division of Banking, and I met with leaders of various Native corporations at the Alaska Federation of Natives' office in Anchorage. A list of names of those in attendance at the meeting is attached.

The purpose of this meeting was to discuss the bill proposed by the Department of Commerce and Economic Development which requires that corporations established pursuant to the Alaska Native Claims Settlement Act file copies of all annual reports, proxy statements, and other materials with the department. The filing would subject the person distributing the materials to the fraud provisions of the Alaska Securities Act, AS 45.55.

The general reaction of the participants to the bill at this meeting was favorable, but they did not show overwhelming support for it. The group was pleased that the proposed bill does not require any additional burden on the Native corporations.

The points of the proposed bill that were discussed are as follows:

1. PROXIES: It was felt that the term "proxies" should be added to those materials to be supplied to the division. The reason given for this suggestion was that "proxies" are different from "proxy statements" and both of these items should be included.

2. ADDED LANGUAGE: It was felt that in the proposed act we should add the term "related to proxy solicitations" between the words "materials" and "distributed." This addition was recommended because it was felt that there were many "materials" that would not be germane to stockholder voting and therefore, need not be sent to the department. It was also felt that some of these "materials" might be proprietary in nature and the divulging of this material would not be in the best interests of the stockholders of a "private" nonprofit corporation.

3. DISTRIBUTED: It was felt that the term "distributed" was not clear enough. The reason for this is that some of the materials and some of the reports are not distributed by mail but are posted in local newspapers or on television and radio. The group felt that this term should be expanded to be more specific.

4. DESCRIPTION OF STOCKHOLDERS: It was felt by the group that this bill should be expanded to include a number larger than two with respect to the reports. The recommendation was that we put in the term "at least ten" before

Alaskan shareholders. It was also recommended that we be more specific in our description of shareholders and put in "Alaskan resident shareholders."

5. DESCRIPTION OF CORPORATIONS: There was active discussion on the item in the proposed bill that was directed towards Alaska Native Claims Settlement Act Corporations. It was felt that this might be singling out those corporations and might also leave a loophole for other corporations that were granted an exemption. Two alternatives were discussed. One which would bring in large village corporations and would be based upon the federal law which requires a corporation with 500 shareholders or 1 million dollars in assets to register, or that it be basically for all corporations that are exempt under the Federal Securities Acts.

6. CONFIDENTIAL MATERIAL: There was also discussion as to whether materials filed under this act would be public record or not, and that the division should make certain that these materials were not part of public documents.

#### Conclusion

It appears as if some of the recommendations made by the Native leaders at this meeting were well taken. The comment regarding the addition of the term proxies would make the act more viable.

The feeling that the act should include the terms "related to proxy solicitations" also appears to be well taken. Much of the materials that a corporation does distribute to its shareholders are proprietary materials. For example, prices of fish to be paid by a cannery owned by a corporation would not be necessary information for our department and might cause damage to the corporation if those items were made known. Inasmuch as the purpose of this act is to make certain that the stockholders receive fair and not misleading materials relating to their voting of their stock, it does not appear as if we need to include all other materials.

The comments relating to the changes of a part of the act that relates to distribution to Alaska shareholders, was also well taken. This area should be expanded and clarified before the proposed bill goes before the Legislature.

The discussion of how the description of the corporations should be changed has required certain additional examination. As a result of this examination, it is felt that we should use the terminology as followed in the Federal Acts.

There does not appear to be any need to add a clause that would make this information confidential as that is contained already under AS 45.55.130(b).

#### Recommendation

As a result of the meeting with the Native leaders, it is recommended that AS 45.55.130 be amended as follows:

"Sec. 45.55.139. REPORTS OF CORPORATIONS. A copy of all annual reports proxies, consents or authorizations, proxy statements and other materials relating to proxy solicitations distributed, published or made available to at least ten Alaska resident shareholders of a corporation which

October 19, 1976

has total assets exceeding \$1,000,000 and a class of equity security held of record by 500 or more persons and exempted from the provisions of the Securities Act of 1933 (15 U.S.C. Secs. 77a-77aa), the Securities Exchange Act of 1934 (15 U.S.C. Secs. 78a-78jj) or the Investment Company Act of 1940 (15 U.S.C. Secs 30a1-30a52) shall be filed with the administrator concurrently with their distribution to shareholders."

LA Copies of this revised bill have been sent to those on the attached  
JJJ/attendance list, to the presidents of each of the 12 regional corpora-  
tions and to Sam Kito of AFN, who was not in attendance at the October 13  
meeting.

Enclosures

HB

67

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

927

TO:  Members of the Committee

DATE: February 1, 1977

FILE NO:

TELEPHONE NO:

FROM: Julius J. Brecht, Director *AB*  
Division of Banking and Securities

SUBJECT: HB 67 Proposed Amendments

Subsequent to my testimony to the House Commerce Committee regarding HB 67, members of the real estate industry have expressed concern that two areas of the bill need clarification. Upon review of this, the Division of Banking and Securities in concert with the Alaska Realtors Association is proposing to your committee two housecleaning amendments that would not change the thrust or substance of HB 67 in any way but would more completely enunciate the 50 sale exemption and the term "common promotional plan." The result of these amendments would be to clarify the language of the proposed act.

The first amendment is to add the word "subdivider" and delete the word "a person" in two places in Section 7 of HB 67. This section would then read:

Section 7. AS 34.55.042(a)(2) is amended to read: If fewer than ten separate lots, parcels, or units or interests in subdivided land located outside this state are offered by a subdivider [a person] in a period of 12 months, or if fewer than 50 separate lots, parcels, units or interests in subdivided land located within this state are offered by a subdivider in a period of 12 months.

The second amendment is to add the following language to the end of Section 8:

Section 8. AS 34.55.044(6) is amended to read: (6)..... of advertising and sale. [;] If the land is contiguous or is known, designated, or advertised as a common unit or by a common name the land shall be presumed, without regard to the number of lots covered by each individual offering, as being offered for disposition as part of a common promotional plan.

JJB/ejc 2/2

TESTIMONY OF JULIUS J. BRECHT, DIRECTOR  
DIVISION OF BANKING AND SECURITIES  
DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT  
BEFORE  
HOUSE JUDICIARY COMMITTEE  
February 4, 1977

Good morning, Mr. Chairman and members of the committee. My name is Julius J. Brecht, and I am director of the Division of Banking and Securities within the Department of Commerce and Economic Development. I want to thank you for allowing me to appear before you on behalf of the administration to discuss HB 67.

The bill before you proposes to amend the Uniform Land Sales Practices Act, AS 34.55, to bring Alaskan subdividers under it. In addition, the bill strengthens the fraud provisions of the act. However, Alaskan subdividers are expressly exempted from registration with the Department of Commerce and Economic Development under AS 34.55.

I have had distributed to each of you a file containing (1) a copy of the bill, (2) a copy of those sections of the act effected by the bill, (3) a memorandum from me to the committee dated January 17, 1977, (4) a copy of my written testimony before the House Commerce Committee dated January 26, 1977 on this bill, (5) a copy of a fiscal note prepared by the division, and (6) a memorandum from me to the committee dated February 1, 1977.

A copy of the bill should be read in conjunction with the copy of item (2) which gives the corresponding present law. The memorandum of January 17 outlines provisions of HB 67. The copy of my written testimony before the House Commerce Committee places HB 67 in the proper context. That is, it briefly discusses the purpose of the Uniform Land Sales Practices Act and the need for the amendments to the act presented in the bill.

This bill passed the House Commerce Committee 6-1. The bill has the support of the Alaska Realtors Association. However, since the House Commerce Committee hearing on the bill, members of that association have expressed concern that two areas of the bill need clarification.

The Realtors are concerned that a real estate agent acting as a real estate agent under HB 67 not be subject to the Uniform Land Sales Practices Act. The intent of the bill is to apply the provisions of the act to in-state subdividers. It is not to apply to real estate agents, except where those agents are acting as subdividers.

In this context, upon review of the two areas of concern, I have drafted amendments to HB 67 that appear in my memorandum of February 1. These amendments make clear the intent of the bill is to apply to subdividers. Mr. Al Courtney, Chairman of the Legislative Committee for the Alaska Realtors Association, has polled the membership of the association. I am told by Mr. Courtney that with the two amendments provided in my February memorandum, the association is in full support of the bill.

I urge the members of the committee to consider thoughtfully the provisions of HB 67 plus the proposed amendments.

Thank you again for the opportunity to appear before you to discuss this proposed legislation.

JJB/s13/1

# STATE OF ALASKA

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

DIVISION OF BANKING, SECURITIES, SMALL LOANS & CORPORATIONS

90 113  
JAY HAMMOND  
GOVERNOR

LANGHORNE A. MOTLEY  
COMMISSIONER

JULIUS J. BRECHT  
DIRECTOR/ADMINISTRATOR

## MONTHLY BULLETIN

SEPTEMBER 1976

### PART I - NOTICES

1. On October 1, 1976, Superior Court Judge Eben H. Lewis of the Third Judicial District in Anchorage signed a Temporary Restraining Order in the case of State of Alaska v. Rustic Wilderness, Inc., et al. The complaint for the restraining order and injunctive relief charges that the defendants in the course of their selling subdivided lots in the Willow area violated provisions of the Consumer Protection Act, AS 45.50; the Occupational Licensing Act, AS 08.88; and the registration and fraud sections of the Alaska Securities Act, AS 45.55. The Order restrains the defendants from making misrepresentations, advertisements, offering unregistered securities, disposing of corporate assets and monies, and destroying corporate records.
2. Defendant's appeal of the Permanent Injunction previously granted in State of Alaska v. Roger Y. Ford was dismissed by the Supreme Court of the State of Alaska on September 10, 1976. Please refer to prior bulletins for additional information in this matter.

## MEMORANDUM

State of Alaska

TO: Langhorne A. Motley  
 Commissioner  
 Department of Commerce and  
 Economic Development

DATE: October 15, 1975

FILE NO:

TELEPHONE NO:

FROM: Jon Tillinghast  
 Asst. Attorney General

SUBJECT: Amendments to Uniform Land  
 Sales Practices Act

*get*  
*Am 422*  
*Capital*

A case study will best demonstrate the genesis of the attached proposed bill. In May of this year, I was requested by the Department of Environmental Conservation to investigate a situation which had developed in Robe River Subdivision in Valdez. The story:

In 1972, an Alaskan subdivider acquired property in the Valdez area. He divided the land into quarter-acre lots, and filed a "paper plat" (i.e. no improvements on the property other than tractor-blade streets and boundary markers). The land lies adjacent to a sensitive anadromous stream, and has a very high water table.

This developer held an auction for this subdivision. It was advertised in the Anchorage media as a sale for "high, dry lots," with "streets in," and "suitable for residential development!"

Of course, this was all inaccurate. Streets were not in. The tractor-trail streets were not of sufficient quality to be accepted by the City of Valdez for dedication. Thus, Valdez does not to this day provide 1) snow clearance (a must in Valdez); 2) school bus service (the kiddies must walk a mile in the snow to Richardson Highway); or police or fire service, except in dire emergencies when the roads in the subdivision are passable.

Nor are the lots high and dry, or suitable for residential housing. The lots are so small, and the water table so high, that on lot water and sewer systems cannot be approved by ADEC. The result-- people must buy 2 or 3 lots (selling, incidently, for \$12,000-\$17,000 each) for one house or trailer.

Of course, the buyers were not aware of these problems when they purchased. In a "boom" situation, where any property is at a premium and immigrants are blinded by the rush for the buck, it is all too common that lots are bought sight-unseen, or, at least, without careful soil and borings analysis, and title searches.

Now, of course, the developer has exited, and the buyers are left holding the swampy bag. And, just as surely, the developer did not go out of his way to be candid with these folk.

The Department of Law attempted to piece together a prosecution of the developer. The Consumer Protection Act was discussed. However, the misrepresentations of the developer occurred three years ago--hardly the type of "imminent future harm" necessary to obtain an injunction. And these presentations were made before the Act was passed.

Yet, even assuming the Act was available, its utility in shaping of relief was questioned. We could enjoin future harm, yet we could do little to rectify past injury. Land--unlike other

Langhorne A. Motley

-2-

October 15, 1975

consumer goods--is not fungible. Particularly in areas marked by a critical housing shortage, such as Valdez, replacement may not be available and, hence, compelled rescission is of dubious value.

With land, then, especially, the remedy for such situations should be preventive in nature, rather than corrective. Obviously, the Uniform Land Sales Practices Act provides precisely that type of preventive remedy. Of course, as you are aware, that act applies only to instate solicitations for out-of-state land. A rather silly limitation, since I would assume that the Alaska land consumer is injured more by Alaska developers than those from the outside. The argument that an Alaska consumer can better inspect land located inside the state is of some academic interest. Yet, realistically, it is unusual for the small-lot buyer, particularly in the Valdez-type situation, to perform all the necessary subsurface and documentary investigations necessary to become aware of the Robe River-type problems. In a seller's market, the developer's edge extends beyond pricing--it includes timing of the sale ("By the time you perform these inspections, I'll have 10 other buyers willing to close"), and buyer attitudes ("Look, buddy, you need this land. If you don't buy this lot, there is nothing else for you in Valdez.")

Especially in light of the series of "booms" which this state can expect in coming years, this type of legislation seems imperative. Obviously, as the administering agency, your approval and support is necessary. The motivation of Law and ADEC for this bill evolved from the Robe River experience, and similar problems in the Kenai Borough. Please give this matter some thought--I would appreciate the opportunity to talk this over with you at your convenience.

Finally, other amendments are being prepared by Commerce and Julius Brecht of our office on the Land Sales Act, relating to the exemption threshold. If you decide to go with the coverage amendments attached, consideration should be given to putting both bills together in one package. The Governor's office wants consolidation of legislation, but sometimes politics dictates otherwise, and the Governor's staff recognizes this.

w/encl.

cc: Julius Brecht, Legal Assistant  
Sandy Sagalkin, Asst. Attorney General  
Ernst Mueller, Commissioner, Department of Environmental Conservation  
Randy Bayliss, Environmental Field Officer, ADEC, Valdez

HB

308

# TELEGRAM

ALASKA COMMUNICATIONS, INC.

PHONE: 661-6440

FUNEAU, ALASKA 99801

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4/12

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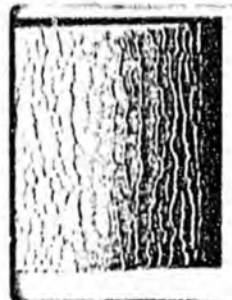
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PMS HON FRED BROWN

JUN

STRONGLY URGE YOUR SUPPORT AND ACTION ON HB308 TO GET IT  
OUT OF COMMITTEE AND TO THE FLOOR OF THE HOUSE PLEASE WORK  
FOR ITS PASSAGE THIS BILL 308 IS MOST IMPORTANT TO AND WILL  
HAVE A DIRECT IMPACT ON THE ELECTRICAL INDUSTRY IN ALASKA  
AM INFORMED IT HAS THE SUPPORT OF THE IBEW REGARDS

J A KORN Y CORNFEIND



Am 628

ALASKA DEPARTMENT OF LABOR

INTER-OFFICE ROUTE SLIP

MAIL STATION NO. \_\_\_\_\_

1. Joe McKinnon, Chairman

2. House Commerce Committee

3. \_\_\_\_\_

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| <input type="checkbox"/> Action                 | <input type="checkbox"/> Comment          |
| <input checked="" type="checkbox"/> Information | <input type="checkbox"/> Contact Me       |
| <input type="checkbox"/> Circulate              | <input type="checkbox"/> Initial & Return |
| <input type="checkbox"/> Signature              | <input type="checkbox"/> For Your File    |

Remarks

From A. J. Reed.  
Reed will be at  
the hearing tomorrow  
at 9 A.M.

FROM Bertrand Prescott, PHSack DATE 4/6/77  
Form 4004 R 5/75

STATE  
of ALASKA

## MEMORANDUM

Mar 14 8 05 AM '77

DEPT. OF LABOR

TO: R.D. Molt, Director  
Wage & Hour Division  
Juneau

DATE : March 11, 1977

FROM:

A.J. Reed *WJR*  
State Electrical Inspector

SUBJECT:

After reviewing the above subject, I would suggest the following changes, if in order:

Sec. 08.18.026 - Electrical Contractors sub. paragraph (c):

"If the relationship of the only electrical administrator with a registered electrical contractor is terminated, the registration is void 30 days after the next regularly scheduled examination unless the electrical contractor has hired a licensed electrical administrator in the interim."

I interpret this to mean that, hypothetically, a firm could lose their administrator shortly after the scheduled examination and have until the next to procure another. If they were to lose him in May for example, they would have the whole construction season until November to procure another administrator. Unless the board is going to meet more often than twice a year this would defeat the purpose of the requirements of having an administrator. I think this should be tightened up somewhat.

Also there is no provision for stopping a firm with an administrator from picking up contractors who do not have one (which we find from time to time) and putting them on their payroll. The only way I can make this clearer is to call it peddling their license of which we have several doing in the state at this time.

Also I have some input about their regulations. There are some items that will put an extra burden on the enforcement.

I am sending this to you, Russ, so that, in case something got by you, you could make your changes and also perhaps slow down the passage of this bill until we have time to add some input.

The Department of Commerce claims we were asked to be at the hearings, but the only thing I knew about the meetings was rumor until I received a copy of the bill.

I feel this is important and would appreciate your professional opinion.

73

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

April 11, 1977

Edmund Orbeck, Commissioner  
Department of Labor

H. Phillip Howard  
Commissioner

House Bill 308

As I mentioned to you, House Bill 308, relating to the licensing of electrical contractors, was introduced by the Rules Committee by request of the State Board of Electrical Examiners, an independent regulatory agency charged with developing standards for, and examining the qualifications, skill and ability of electrical contractors in this State. The board is jurisdictionally assigned to the Department of Commerce and Economic Development for all administrative and investigative services. Enforcement of the requirement for licensure is assigned to both the Department of Labor and this department. In no other manner is jurisdiction shared.

Four members of your staff, three identified as Russell Molt, Tony Reed and E. Lee Leland, all of Wage and Hour, and one unidentified woman were present for the House Commerce Committee hearing held April 7, 1977 at 11 a.m. Only one, Tony Reed, testified that day. His testimony was basically negative and in all probability damaged the bill's chances of passage.

In addition to negative comments concerning the bill, Mr. Reed testified that he had never been given an opportunity to review or discuss its provisions and had received no notice of any hearings, although he had heard the board held some. A point of fact, staff members of the Division of Wage and Hour had been personally contacted by members of the Division of Occupational Licensing's staff and advised of the date, time and place of a hearing in Juneau.

That hearing was attended by representatives from the National Electrical Contractors' Association, the International Brotherhood of Electrical Workers, local contractors and this department's staff. Representatives from your staff were conspicuously absent after Sharon Andrew had advised Messrs. Molt and Fenrow of the hearing. The provisions of the bill, as well as accompanying regulations, were thoroughly discussed and compromises reached in all areas of disagreement.

A substantial amount of time and work was devoted to finding reasonable solutions to some of the existing problems in regulating this industry and I am particularly concerned that a member of your staff should appear and testify before a major legislative committee without first advising the sponsoring agency of the substance of his testimony. Further, this legislation is outside the jurisdictional responsibility of the Department of Labor.

Edmund Orbeck

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April 11, 1977

Ed, let's discuss this matter to assure that such does not recur. Also, if your department has a continuing interest in this matter, I would appreciate having an appropriate person contact Sharon Andrew.

Regards.

cc: Honorable Joseph McKinnon  
Chairman, House Commerce Committee