

ALASKA LEGISLATURE COMMITTEE FILES 1991-1992 8672
6951 HOUSE JUDICIARY

185

HB

313

LEC waived 5/3/91

HOUSE COMMITTEE REPORT

(7)

Date Referred: May 3, 1991

FURTHER REFERRALS:

Date of Committee Action: 5-12-91

The JUDICIARY Committee considered:

HB 313

HOUSE BILL NO. 313

NO WORKERS CGMP FOR RECREATIONAL ACTIVITY

"An Act excluding certain recreational activities sponsored by an employer from coverage provided under workers' compensation."

RECOMMENDATIONS:

be replaced with CS HB 313 (Jud)

the same title
 a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept)

APPROVES PREVIOUS: (Dept/Date)

fiscal impact _____

fiscal note(s) _____

zero fiscal note Labor

zero fiscal note(s) _____

SIGNING <u>DO</u> PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Terry Martin</i>	<input checked="" type="checkbox"/>				
<i>Kevin Paul Parnell</i>	<input checked="" type="checkbox"/>				
<i>Bob Gandy</i>	<input checked="" type="checkbox"/>				
<i>Dave Douley</i>	<input checked="" type="checkbox"/>	<i>J. J. Ellis</i>			<input checked="" type="checkbox"/>

Dave Douley
CHAIRMAN'S SIGNATURE

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO : HB 313

Revision Date: _____
 Title: "An Act excluding certain recreational activities...from ... workers' compensation"
 Sponsor: Navarre, C. Davis
 Requestor: House Judiciary

Department Affected: Labor
 BRU: Workers' Compensation
 Component: Workers' Compensation
 COMPONENT SERIAL NO. 344

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL						
----------------	--	--	--	--	--	--

REVENUE						
----------------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Linda Rexwinkel *LR* Phone: 465-2790
 Division: Workers' Compensation Date: 5/6/91

Approved by Commissioner: Nancy Bear Userd *NBU* Date: 5/6/91
 Agency: Department of Labor

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

Notice: This is subject to formal correction before publication in the Pacific Reporter. Readers are requested to bring typographical or other formal errors to the attention of the Clerk of the Appellate Courts, 303 K Street, Anchorage, Alaska 99501, in order that corrections may be made prior to permanent publication.

THE SUPREME COURT OF THE STATE OF ALASKA

JUDI J. LESUER-JOHNSON,)	Supreme Court No. S-3493
Appellant,)	
v.)	Trial Court No.
)	JAN-88-9367 Civil
ROLLINS-BURDICK HUNTER)	<u>O P I N I O N</u>
OF ALASKA and NATIONAL)	
UNION FIRE INSURANCE CO.,)	
Appellees.)	[No. 3681 - April 12, 1991]

Appeal from the Superior Court of the State of Alaska, Third Judicial District, Anchorage, Ralph Stemp, Judge.

Appearances: Chancy Croft, Anchorage, for Appellant. Patricia L. Zobel, Deirdre D. Ford, Staley, DeLisio, Cook & Sherry, Anchorage, for Appellees.

Before: Matthews, Chief Justice, Rabinowitz, Burke, Compton, and Moore, Justices.

PER CURIAM

Appellant Judy LeSuer-Johnson (LeSuer) was injured on June 4, 1986, while playing softball at an Anchorage ballpark for the Rollins-Burdick Hunter (RBH) team against an "insurance league" opponent. The injury occurred after work hours, on a field rented by the insurance league. LeSuer, an employee of RBH, filed a claim for workers' compensation, alleging that the injury arose out of and in the course of her employment. An Alaska statute enacted

in 1982 defines "arising out of and in the course of employment" to include

employer-required or supplied travel to and from a remote job site; activities performed at the direction or under the control of the employer; and employer-sanctioned activities at the employer-provided facilities; but excludes activities of a personal nature away from employer-provided facilities.

AS 23.30.265(2).

LeSuer's argument that her injury arose out of and in the course of her employment is based on her employer's connection to the softball team. RBH provided balls, bats, T-shirts and caps for the team members. It paid \$250 to the league's organizers who rented the ballfield and purchased bases. RBH encouraged its employees to either play on the team or attend the game as spectators. In her job interview LeSuer was asked if she played softball and if she would like to play on the company team. She stated that joining the team was voluntary, but she personally felt pressured to play by co-employees who wanted to be sure that RBH had enough players to field the team each week.

The Workers' Compensation Board found for LeSuer. The board concluded that participation on the softball team was both employer-sanctioned and that it occurred at an employer-provided facility:

We find RBH gave support and encouragement for their employees to participate on the team. By paying the league fee, providing part of the uniform, providing bats and balls and permitting employees to perform activities such as picking up the T-shirts and hats as part of their work duties RBH sanctioned the activity. . . .

Next we consider whether the injury occurred at an employer-provided facility. Defendants argued that the injury was not on Employer's premises. However, the legislature chose to use the term "facility" and not premises. We find this terminology distinction is important. Thus the injury does not have to occur on an employer's property to be compensable.

The term "provide" is defined in Webster at 1144 as "to make available, supply, afford; furnish with" We find that paying the league fee RBH made available to its employees a field on which to play softball. We conclude that the softball game was at an employer-provided facility.

RBH appealed the board's decision to the superior court. The court held that where, as here, a remote job site was not involved, a four-part test rather than the two-part test set out in the statute was appropriate. The court stated:

The criteria analyzed in Carson, 1A The Law of Workman's Compensation § 22.24(a)-(f), for determining whether an injury on a company team is compensable are the appropriate factors to weigh in deciding this case. They are primarily the time and place of the recreation, the degree of the employer initiative and encouragement, the financial support and equipment furnished, and the benefit to the employer.

The court remanded this case to the board for an analysis using these factors. On remand, the board found in favor of RBH with one member dissenting.

LeSuer then appealed to the superior court, which affirmed the board's decision on remand. LeSuer now appeals this decision.

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In our view, the first decision of the board was correct. That portion of AS 23.30.265(2) which pertains to employer-sanctioned activities at employer-provided facilities is not limited to remote job sites as the statute is written. If the legislature had intended such a limitation it could have easily been expressed. The board's conclusions that playing for the RBH softball team was employer-sanctioned and that the injury occurred at an employer-provided facility are supported by substantial evidence.

For the above reasons, the decision of the superior court is REVERSED and this case is REMANDED to reinstate the first decision of the board.

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HB

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MIDDLETON, TIMME & MCKAY

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February 15, 1991

JOAN F. CONNORS
OLEN PRICE

Mr. Larry Kimball
Alaska Federation of Natives
1577 "C" Street, Suite 100
Anchorage, Alaska 99501

VIA FAX

Re: Amendments to Alaska Probate Code and Uniform Transfers to Minors Act.

Dear Larry:

Enclosed please find an interoffice memorandum from Alison Balen to Mark Kroloff discussing amendments which need to be made to the Alaska Probate Code and the Uniform Transfers to Minors Act ("UTMA"). UTMA, as you may or may not be aware, was passed in the last legislative session and went into effect on January 1, 1991. It replaces the former Uniform Gifts to Minors Act.

As I indicated to you on the telephone, while I do not necessarily agree with CIRI's interpretation of the current law in all respects, I do concur with their recommendations for change. One point, however, is worthy of note. In her memorandum, Alison discusses the potential problem arising from a hiatus in the transition provisions of UTMA which did not appear to cover transfers made during calendar year 1990. I'm not sure if Alison was working with an earlier version of the legislation or what, but my copy of the codified statute validates transfers which were made prior to December 31, 1990. Thus, the potential transition problems which she discusses in the latter part of her memorandum would appear not to exist.

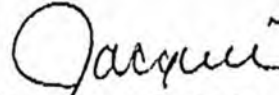
As you are aware, Mark Kroloff and Alison Balen, on behalf of CIRI, myself on behalf of Koniag, and Sealaska are working on this matter. We will try and have some draft language to you by the beginning of March, as you suggested.

Mr. Larry Kimball
February 15, 1991
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Please let us know if any members of the AFN legislative committee have any questions or comments on any proposed legislation.

Sincerely,

MIDDLETON, TIMME & MCKAY



Jacquelyn R. Luke

JRL:ef

Enclosure

cc: Uwe Gross, w/o Enclosure
Mark Kroloff, w/o Enclosure
Alison Balen, w/o Enclosure
Chris McNeil, w/o Enclosure

CIRI COOK INLET REGION, INC.

Inter - Office Memorandum

TO: Mark W. Kroloff, Vice President & General Counsel

FROM: Alison Balen, Attorney ~~AS~~

DATE: February 7, 1991 .

SUBJECT: Amendments to Title 13

I. Introduction.

Title 13 of the Alaska Statutes includes the Probate Code and rules governing guardianships, trust administration, and transfers to minors. Certain Probate Code provisions that address the transfer of ANCSA stock were set to expire on December 18, 1991, to coincide with the date that stock restrictions were originally to be lifted under ANCSA. Now that stock alienability is no longer tied to that date, amendment of those Probate Code provisions should be sought during the current legislative session, before the provisions expire.

If the Probate Code provisions are to go before the legislature, consideration should be given to whether amendment of any other sections of Title 13 should also be sought. The other section of Title 13 which poses particular problems for transfer of ANCSA stock is the new Alaska Uniform Transfers to Minors Act (AUTMA); we can foresee, and in some cases are already experiencing, problems arising from the application of AUTMA provisions to our procedure for establishing and administering custodianships of stock for minors.

An outline of proposed revisions follows.

II. The Probate Code.

A. Corporate administration of stock probate (AS 13.16.705). This is the fundamental provision for the corporations' administration of ANCSA stock transfers outside of probate. Under this section, ANCSA stock is not subject to probate, and its value is not considered in determining the value of an estate, until December 18, 1991. Likewise, Alaska is made the situs of ANCSA stock, but only until December 18, 1991. I believe the other corporations are generally aware of the expiration of these provisions and the prevailing feeling appears to be that they should be extended now that December 18, 1991 is no longer the triggering date for lifting of stock restrictions.

The biggest issue raised by AS 13.16.705 is, of course, whether ANCSA stock should continue to pass outside of probate under administration by the ANCSA corporation that issued it. We conclude that it should, for all of the following reasons: (1) to save

MEMO TO MARK W. KROLOFF
RE: AMENDMENTS TO TITLE 13
FEBRUARY 7, 1991
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shareholders the time and money required in probate court proceedings; (2) since many people will simply not use the probate process, to prevent issues that would otherwise arise when a corporation is called upon to transfer stock that has not been probated in the courts; (3) to protect the restricted ownership of the corporations by ensuring that the stock passes according to the testator's wishes or the applicable rules of intestacy; and (4) to ensure that sensitivity is given to such Native issues as cultural adoption.

In addition, since valuation problems remain so long as the stock is restricted, the Probate Code provision for omitting the value of ANCSA stock from the value of an estate should be extended beyond December 18, 1991. That provision should apply to an ANCSA corporation for so long as its stock remains restricted from sale.

The situs of ANCSA stock is important in that the Probate Code generally covers the property of nonresidents only if it is located in Alaska. AS 13.06.060(2). Thus, in most cases, the stock of a nonresident shareholder would not be subject to Alaska law without such a provision. Amendment to continue the effect of the situs provision (at least for so long as the stock remains restricted) is necessary.

Finally, while both village and regional corporations currently probate their own stock, there may be some ambiguity under AS 13.16.705 regarding the village corporations' authority to do so. The statute should be amended to remove any such ambiguity and to expressly allow any ANCSA corporation, village or regional, to determine the appropriate distribution of its own stock under the Probate Code.

RECOMMENDATION:

Seek an amendment to AS 13.16.705 that would extend the deadline of December 18, 1991, by providing that that section applies to a particular ANCSA corporation so long as its stock remains restricted from sale. (Once restrictions are lifted for a particular corporation's stock, AS 13.16.705 would no longer apply.) The probate, valuation, and situs issues are thereby resolved. In addition, amend the statute to provide that all ANCSA corporations will probate their own stock, so long as that stock remains restricted.

We know that some of the other corporations currently have attorneys working on amendments to sections of Title 13. In order to save time and money, and to present a united front to the legislature, we should suggest that those attorneys be instructed to coordinate their efforts and come up with draft legislation on which the corporations can generally agree.

B. Intestate share of surviving spouse (AS 13.11.012). This provision of the Probate Code governs the intestate share of a surviving spouse in ANCSA stock. A surviving spouse's share of any other type of property, if there are surviving parents or surviving issue, is the first \$50,000 of the estate plus one-half of the balance (or simply one-half of the estate if there are surviving issue that are not issue of the spouse). AS 13.11.010. For

Memo to Mark W. Kroloff
Re: Amendments to Title 13
February 7, 1991
Page 3

ANCSA stock, however, the surviving spouse's share until December 18, 1991 is all the stock if there are no surviving issue, or one-half of the stock if there are. AS 13.11.012.

Thus, ANCSA stock is treated uniquely in two ways: (1) the spouse's share is not diluted by the survival of parents; and (2) the spouse gets a straight one-half rather than a certain amount off the top and one-half of the balance. One reason for this unique treatment is no doubt the valuation difficulties inherent with ANCSA stock. We therefore recommend that the deadline of December 18 in this provision of the Probate Code also be extended, so that it remains in effect so long as the stock of the particular issuing corporation remains restricted.

RECOMMENDATION:

Seek an amendment to AS 13.11.012 that would provide that it applies to the stock of a particular corporation so long as the stock is restricted from sale.

III. The Alaska Uniform Transfers to Minors Act.

A. Generally. The AUTMA provides for the creation and transfer of custodial property both through gifts made during the donor's lifetime and through transfers made upon the donor's death. Application of the AUTMA to inter vivos gifts of ANCSA stock is fairly straightforward. However, application of the AUTMA to ANCSA stock transfers presents several difficulties simply because that statute was not drafted with the unique characteristics of ANCSA stock in mind.

The AUTMA contains a section on transfer of custodial property under a provision of a will or trust (AS 13.46.040), and a section on transfers in the event of intestacy (AS 13.46.050). Although it has been suggested that an ANCSA corporation would be operating under one of these two provisions when it probates stock, those provisions both apply only to transfers by a personal representative or trustee. There is an ambiguity as to whether an ANCSA corporation technically qualifies as either a personal representative or trustee when it transfers stock on the death of a shareholder.

Another section of the AUTMA applies to the issuance of stock in an ANCSA corporation; it provides that stock "that a minor is entitled to receive under [ANCSA] shall be issued by the corporation to a custodian," and then requires that the custodian be determined according to a strict order of priority. AS 13.46.085. That section is an almost verbatim version of the provision for ANCSA stock found in the old AUGMA (Alaska Uniform Gifts to Minors Act), and CIRI believes that it applies only to the original issuance of stock by the corporation and not to subsequent transfers by a shareholder.

Thus, there is only one section of the AUTMA that squarely applies to a corporation handling a subsequent transfer of stock to a minor: the section providing for transfers by third party obligors. AS 13.46.060. This section applies, for instance, to a bank holding a joint account of which the minor is the surviving payee, or an insurance company

holding policy proceeds payable to a minor. See Uniform Laws Annotated, Model Uniform Transfers to Minors Act, p. 256. It authorizes such a third party to deliver the property to any custodian already appointed for the minor or, in the absence of such an appointment, to an adult member of the minor's family or a trust company unless the property exceeds \$5,000 in value. Because it raises a valuation question, even application of this section to ANCSA stock is problematic.

Clearly, none of the AUTMA provisions was drafted expressly to deal with subsequent transfers of ANCSA stock. Rather than trying to make one of the general provisions fit the unique circumstances of an ANCSA corporation, we propose amending the "Native corporation" section already present in the AUTMA so that it expressly applies to subsequent transfers of stock rather than just to the original issuance of stock.

B. Proposed amendment of the AUTMA section on ANCSA stock. Any new section of the AUTMA for Native corporations should be drafted to resolve three potential problems that exist under the AUTMA as it stands now: (1) the time for termination of custodianships may differ depending on how and when those custodianships were established, creating a record-keeping nightmare for the corporations; (2) the AUTMA section that now applies to ANCSA stock transfers by a corporation does not establish an order of priority for the corporation to follow if no custodian has been appointed by will (it simply requires transfer to "any adult member of the minor's family"); and (3) the effect of the AUTMA on custodianships established during 1990 is unclear. Each of these issues is discussed below.

Under the AUTMA, custodianships created by gift or will terminate at age 21, while those created in the event of intestacy or upon transfers by third party obligors terminate at age 18. AS 13.46.190. So long as any ambiguity exists regarding which section of the AUTMA applies to transfers by ANCSA corporations upon the death of a shareholder, the possibility remains that a corporation could have some custodianships that terminate at age 18 and others that terminate at age 21. Two additional points further complicate the determination of when a custodianship terminates: Testators can (within limits imposed by the AUTMA) set their own time for termination of a custodianship (AS 13.46.195); and the AUTMA may apply to extend or cut short the duration of a custodianship already in existence.¹ In order to simplify procedure, therefore, we recommend that any amendment provide that all custodianships of ANCSA stock terminate at age 18, and that the provision allowing transferors to set a different time of termination does not apply to ANCSA stock custodianships. Since our existing custodianships are set up to terminate at age 18, the question whether the AUTMA can extend or shorten the period will then not arise. (If it should become an issue, however, the amendment could provide that the AUTMA will not apply to change the duration of

¹ The AUTMA provides that it cannot extend the duration of a custodianship in existence on January 1, 1990. The same rule, however, does not apply to custodianships created after January 1, 1990, but before the AUTMA's effective date of January 1, 1991. In addition, it could presumably apply to shorten the duration of a custodianship.

any ANCSA stock custodianship in existence on January 1, 1991, when the AUTMA became effective.)

Since the "Native corporation" section of the AUTMA (AS 13.46.085) currently sets out an order of priority that provides strict guidance to the corporations in appointing a custodian upon the original issuance of stock, that order should be made to apply to subsequent transfers of stock as well. Thus, if a shareholder did not appoint a custodian in his or her will the corporation will appoint (in the following order): the legal guardian of the minor, if any; (2) a parent of the minor, as selected by the parents; or (3) an adult member of the minor's family (as defined by statute). However, if a shareholder nominates the custodian by will, the corporation should be required to honor that nomination.

The AUTMA sets out the following rules for determining when it takes effect and how it applies to existing custodianships:

- (1) The AUTMA takes effect, by its own terms, on January 1, 1991.
- (2) The AUTMA "applies to" transfers "within [its] scope" made after December 31, 1989, so long as the transfer either purports to have been made under the old law (the AUGMA) or the similar law of another state. 13.46.200².
- (3) The AUTMA "validates" transfers of custodial property as defined in the AUTMA made before January 1, 1990, even if not specifically authorized by the old law. 13.46.210.
- (4) The AUTMA applies to all transfers made before January 1, 1990 that were authorized by the AUGMA unless its application impairs constitutionally vested rights or extends the duration of custodianships in existence on January 1, 1990. 13.46.210.

Sorting through the exact effect of the AUTMA on a particular custodianship may be difficult. It appears that under the rules set out above, the AUTMA (including its durational provisions) will apply to custodial transfers to an heir or devisee in 1990 as long as they are generally "within its scope"; however, those transfers are not expressly "validated." The AUTMA will also apply to pre-1990 transfers, and those transfers are validated, except that it will not apply to extend the duration of a custodianship.

² When Alaska adopted this provision of the Model Uniform Transfers to Minors Act, the date was changed either intentionally or accidentally. The Model Act's version of this section provides that the Act applies to transfers made pursuant to the AUGMA (the old law) after the Act's effective date, and was intended to cure the problem that might arise if after the AUTMA became law someone inadvertently cited the AUGMA rather than the AUTMA. Alaska's version, however, provides that the AUTMA applies to transfers purportedly made under the AUGMA within the year before the AUTMA became effective. Similarly, the Model Act validates all transfers made prior to its effective date if the transfer falls within the terms of the Act, while Alaska's version provides that all transfers made prior to January 1, 1990 (one year before the effective date) are validated. The result is to create a curious window for transfers made within 1990, since none of those transfers is validated.

It may be that the exact effect of the AUTMA on a particular pre-1991 custodianship will not often become an issue, particularly since the AUTMA itself provides that it will not apply to extend the duration of an existing custodianship.

However, if an AUTMA amendment were to (1) validate transfers of custodial property as defined in the AUTMA made during 1990, and (2) make all ANCSA stock custodianships terminate at age 18, any potential problems caused by the interplay between the effective date and the applicability / validation dates of the AUTMA will be greatly diminished.

C. Summary. The AUTMA contains several ambiguities with respect to the establishment by ANCSA corporations of stock custodianships. In particular, problems arise regarding how to determine when a custodianship has terminated and therefore when stock should be transferred from the custodian to the minor, and regarding who a corporation should appoint as custodian. The current AUTMA section on Native corporations should be expanded to resolve the ambiguities and provide specific rules for ANCSA stock custodianship.

RECOMMENDATION:

Seek an amendment to AS 13.46.085 (the section of the AUTMA governing Native corporations) so that it expressly applies to subsequent transfers of ANCSA stock. Add several rules of special application to Native corporations: (1) a corporation may transfer the stock to a custodian without regard to valuation of the stock; (2) the transfer must be to the custodian nominated by the shareholder, if any, and otherwise according to the statutory order of priority; (3) all custodianships of ANCSA stock terminate when the minor turns 18 (and a testator or other transferor cannot provide otherwise); and (4) all transfers of custodial property, as defined in the AUTMA, made during 1990, are validated by the AUTMA.



March 12, 1991

Larry Kimball
Alaska Federation of Natives
1577 C Street, Suite 100
Anchorage, Alaska 99501

Dear Mr. Kimball:

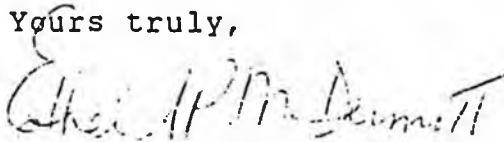
Thank you for taking the time to discuss with me necessary amendments to Alaska Statutes 13.11.012 (governing the intestate share of a surviving spouse in ANCSA stock), and 13.16.705 (excluding ANCSA stock from probate and exempting its value in the determination of a deceased shareholder's estate or allowance).

Arctic Slope Regional Corporation (ASRC) has not undertaken an exhaustive review of the Alaska Statutes to see which other sections require amendment by the Alaska legislature. We understand the Alaska Federation of Natives (AFN) has taken the lead in assessing which amendments are desirable, and enclose suggested language to deal with the two above-referenced statutes. The amendments are pretty straight forward, eliminating only the references to December 18, 1991.

I had requested, by telephone, that the amendments heretofore offered be sent by telefax so I could compare the language and hopefully not duplicate efforts. Since no information was received, I assume it is not extant.

Please call me if you have any questions.

Yours truly,


Ethel A.P. McDermott
Paralegal

Enclosures

Amendment to Alaska Statute 13.16.705.

SEC. 13.16.705. Inheritance of certain stock. (a) Until the date on which all of the outstanding shares of Settlement Common or other inalienable stock of a corporation organized under the laws of Alaska under 43 U.S.C. 1601 - 1628 (Alaska Native Claims Settlement Act), as amended, are cancelled and shares of alienable stock are issued in accordance with the Alaska Native Claims Settlement Act, as amended, no stock is subject to probate nor shall its value be considered in determining the value of an estate or allowance under this title.

(b) Upon the death of the holder, if the stock does not pass by the testamentary disposition clause on the stock certificate, properly executed, it passes by will or intestate succession. In such a case, the determination of the person entitled to the stock shall be made by the appropriate regional corporation on the basis of an affidavit, furnished to it and to the corporation which issued the stock, showing the right of the person entitled to the stock to receive it and to have a new certificate issued. The affidavit, accepted in good faith by a corporation, has the same effect as an affidavit under AS 13.16.685, and the person entitled to the stock, if the affidavit is not accepted, has the remedy set out in AS 13.16.685. In case of dispute as to the person entitled to receive the stock, a person claiming ownership may bring an independent action in the Superior Court.

(c) Unless a separate form is provided which substantially satisfies the requirements of this subsection and which is distributed to the same extent as the stock certificate, each certificate representing stock in a corporation organized under 43 U.S.C. 1601 - 1628, as amended, shall bear provisions, on its reverse side, containing blanks to be filled in by the owner, constituting a last will and testament for the purposes of this section and 43 U.S.C. 1606(h) insofar as the shares represented by that certificate are concerned during the period of its inalienability. A clause may be signed by the owner, dated and notarized. This testamentary disposition may be changed from time to time or revoked, and it governs unless there is a subsequently executed formal will making the specific disposition of the stock.

(d) when ownership of shares passes by devise or inheritance or as a result of court action, the shares shall be partitioned insofar as practicable, in whole shares among those entitled to them.

(e) If a deceased shareholder has failed to dispose of the stock by will and has no heirs under the applicable laws of intestacy, the shares escheat to the corporation.

(f) The situs of inalienable stock of all corporations organized under 43 U.S.C. 1601 - 1628 as amended, is Alaska.

(g) Where appropriate, terms in this section have the meanings given in AS 13.06.050. In this section "stock" includes membership in a corporation organized under AS 10.20 and inchoate rights to stock.

Alaska Statute 13.11.012, as amended:

SEC. 13.11.012 Share of the Spouse in certain stock. Until the date on which all of the outstanding shares of inalienable Settlement Common or any other inalienable stock of a corporation organized under the laws of Alaska under 43 U.S.C. 1601 - 1628 (Alaska Native Claims Settlement Act) are cancelled and shares of alienable stock are issued in accordance with the provisions under the Alaska Native Claims Settlement Act as amended, the intestate share of the surviving spouse in such corporation's stock is:

- (1) If there is no surviving issue all;
- (2) If the descendant is survived by issue, one-half of it.

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

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(907) 465-3867 or 465-2450
FAX (907) 465-2029

Deliveries to: 240 Main Street
Court Plaza, Room 500
Mail Stop 3101

MEMORANDUM

May 6, 1991

SUBJECT: Sectional summary of (Work Order No. 7-LS1267)

TO: Representative Eileen MacLean
Attn: Rena

FROM: Theresa L. Bannister *tlb*
Legislative Counsel

You have requested a sectional summary of the above described bill relating to the inheritance and transfer of Alaska Native Claims Settlement Act (ANCSA) stock.

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.

Section 1 identifies the ANCSA stock that is subject to the section. Updates the ANCSA citation.

Section 2 applies the subsection to ANCSA stock that is settlement common stock or other inalienable stock. Indicates that when the holder of the stock dies, the stock can pass by using the form authorized under (b) of the section, as well as by the testamentary disposition clause on the stock certificate. Identifies which corporation determines who is entitled to the stock. Authorizes the corporation to use an agent for this determination. Makes technical changes.

Section 3 makes technical changes to correspond to the changes made by other sections of the bill. Deletes "in a corporation organized under 43 U.S.C. 1601 - 1628" because the definition of "stock" in sec. 6 of the bill already covers this. Deletes "during the period of its inalienability" because this requirement is established by sec. 7 of the bill. Inserts "certificate, form, or" to reference the other documents that can be used to dispose of the stock.

Section 4 substitutes "stock" for "shares" in order to pull in the definition of "stock" in sec. 6 of the bill.

Representative Eileen MacLean

May 6, 1991

Page 2

Section 5 makes some technical changes. "Inalienable" and "of all corporations organized under 43 U.S.C. 1601 - 1628" are deleted because they are covered in the definition of "stock" in sec. 6 of the bill. Due to ANCSA amendments, the date is no longer applicable and is deleted.

Section 6 defines "stock" for the section.

Section 7 declares that AS 13.16.705 only applies to stock while it is inalienable.

Section 8 requires that a minor's ANCSA stock or membership in an ANCSA corporation be held by a custodian. Updates the ANCSA citation. Makes other technical changes.

Section 9 authorizes a person transferring ANCSA stock to a minor to nominate a custodian for the minor's stock. Indicates that if the transferor doesn't nominate a custodian, the order of priority set out in the subsection is to be used to select a custodian. Makes a technical change in the definition of "member of the minor's family" as it applies to the section.

Section 10 updates the citation for ANCSA. Defines a minor to be an individual under 18 years of age. Defines "stock" for the section.

Section 11 establishes that a minor's stock is transferred to the minor when the minor reaches 18, or to the minor's estate, or heirs, or their custodians, if the minor dies.

Section 12 repeals AS 13.46.085(d)(1).

Section 13 makes secs. 8 - 12 of the Act retroactive to January 1, 1991, to the extent retroactivity is not prohibited by a constitutional provision.

Section 14 makes the Act effective immediately.

If I may be of further assistance, please advise.

TLB:gc

91-251.glc

ALASKA STATE LEGISLATURE

Representative Eileen Panigeo MacLean
Co-Chair House Finance Committee
P.O. Box 830
Barrow, Alaska 99723



WHILE IN JUNEAU
Box V
Juneau, Alaska 99811
465-4525
465-4833

HOUSE OF REPRESENTATIVES

District 22

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Anaktuvuk Pass
Atkasuk
Barrow
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Point Hope
Point Lay
Wainwright

Northwest Arctic
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Ambler
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Deering
Kiana
Kivalina
Kobuk
Kotzebue
Noatak
Noorvik
Selawik
Shungnak

MEMORANDUM

Date: May 7, 1991

To: Representative Dave Donley, Chairman
House Judiciary Committee

From: Representative Eileen P. MacLean

Rep. MacLean

This is to request a hearing in House Judiciary Committee for HB 315, relating to the inheritance and transfer of stock in corporations organized under the Alaska Native Claims Settlement Act (ANSCA).

The bill has two primary goals: 1) to bring state statutes into compliance with federal law relating to the alienability of Native Corporation stock; and, 2) to clarify that the termination date for custodianships is 18 years of age.

Under ANSCA, as originally enacted, all Native Corporation stock was inalienable. It could not be bought, sold, pledged, given as a gift or otherwise transferred, except upon death and in certain other very limited circumstances. The restrictions on alienation were to expire on December 18, 1991. However, in 1987, Congress amended ANSCA to give Native Corporations the right to continue the restrictions on alienability of their stock indefinitely. Since the alienability restrictions will continue under federal law, state law must also be amended to provide for their continuation.

When originally enacted, ANSCA stock held by a minor was covered under the Uniform Gifts to Minors Act. In 1990, the Legislature replaced the Uniform Gift to Minors Act with the Uniform Transfers to Minors Act. However, certain changes made in the Uniform Transfers to Minor Act affected the

custodianship of ANSCA stock in ways which were not intended. One of the primary changes was the age at which the custodianship terminated. Under the old law, all custodianships terminated at age 18. Under the new law, the age at which a custodianship terminates depends on whether the stock was received by gift or inheritance and whether the age was specified for termination. This bill clarifies that custodianships terminate at age 18,.

If you have any questions, please contact Rena Bukovich of my staff at 465-4525.

attachment

SPONSOR STATEMENT

CSHB 315 (Judiciary)

The purpose of House Bill 315 is to bring state statutes into compliance with federal law relating to the alienability of Native Corporation stock; and, to correct unforeseen difficulties arising from the Uniform Transfers to Minors Act, enacted by the Legislature in 1990 to replace the Uniform Gifts to Minors Act.

Under the Alaska Native Claims Settlement Act (ANCSA), as originally enacted, all Native Corporation stock was inalienable. It could not be bought, sold, pledged, given as a gift or otherwise transferred, except upon death and in certain other very limited circumstances. The restrictions on alienation were to expire on December 18, 1991. However, in 1987, Congress amended ANCSA to give Native Corporations the right to continue the restrictions on alienability of their stock indefinitely. Since the alienability restrictions will continue under federal law, state law must also be amended to provide for their continuation.

When originally enacted, ANCSA stock held by a minor was covered under the Uniform Gifts to Minors Act. In 1990, the Legislature replaced the Uniform Gift to Minors Act with the Uniform Transfers to Minors Act. However, certain changes made in the Uniform Transfers to Minor Act affected the custodianship of ANCSA stock in ways which were not intended. One of the primary changes was the age at which the custodianship terminated. Under the old law, all custodianships terminated at age 18. Under the new law, the age at which a custodianship terminates depends on whether the stock was received by gift or inheritance and whether the age was specified for termination. The bill simplifies the procedure for transferring ANCSA stock and clarifies that custodianships terminate at age 18.

The Judiciary Committee Substitute reflects the changes enacted by SB 283 last year to extend the December 18, 1991, date to June 30, 1992; and, makes minor technical changes suggested by Judiciary committee staff.

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. HB 315

Revision Date: _____ Department Affected: Department of Law
 Title: "...inheritance and transfer of stock...Alaska Native Claims Settlement Act." BRU: Legal Services
 Sponsor: Representative Maclean Component: Operations
 Requestor: House Judiciary Committee COMPONENT SERIAL NO.

		9	3
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EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						

REVENUE						
FUND SOURCE:						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.) This bill amends Title 13 relating to the transfer and inheritance of stock in corporations organized under the Alaska Native Claims Settlement Act. It further recognizes certain stock as inalienable and eliminates the December 18, 1991, date in state law when stock may be freely transferred. These are private transactions that will not have a fiscal impact on the department.

Prepared By: Richard I. Regan, Director Phone: 465-3672
 Division: Administrative Services Bureau Date: January 21, 1992
 Approved by Commissioner: Charles E. Cole, Attorney General
 Agency: Department of Law Date: January 21, 1992

(7)

HOUSE COMMITTEE REPORT

Date Referred: May 6, 1991

FURTHER REFERRALS:

Date of Committee Action: 4/24/92

The JUDICIARY Committee considered:

HB 315

HOUSE BILL NO. 315

INHERITANCE & TRANSFER OF ANCSA STOCK

"An Act relating to the inheritance and transfer of stock in corporations organized under the Alaska Native Claims Settlement Act; and providing for an effective date."

RECOMMENDATIONS:

be replaced with CS HB 315 (JUD) [] the same title [] a new title

[] have attached amendments(s)

[] do pass

[] do not pass

[X] no recommendations

[] individual recommendations

[] additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept)

APPROVES PREVIOUS: (Dept/Date)

[] fiscal impact _____

[] fiscal note(s) _____

[] zero fiscal note _____

[] zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>[Signature]</i>	-	<i>Dave Douley</i>		✓	
<i>[Signature]</i>	✓	<i>Mark Hatley</i>		X	
		<i>Terry Martin</i>		✓	

[Signature]
CHAIRMAN'S SIGNATURE



LAWS OF ALASKA

1991

Source

CSSB 283(JUD)

Chapter No.

49

AN ACT

Relating to the inheritance and transfer of stock in corporations organized under the Alaska Native Claims Settlement Act.

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

THE ACT FOLLOWS ON PAGE 1

Approved by the Governor: June 15, 1991
Actual Effective Date: September 13, 1991

AN ACT

1 Relating to the inheritance and transfer of stock in corporations organized under the
2 Alaska Native Claims Settlement Act.

3
4
5
6 * Section 1. AS 13.11.012 is amended to read:

7 Sec. 13.11.012. SHARE OF THE SPOUSE IN CERTAIN STOCK. Until June 30, 1992
8 [DECEMBER 18, 1991], the intestate share of the surviving spouse in stock in a corporation
9 organized under the laws of Alaska under 43 U.S.C. 1601 - 1628 (Alaska Native Claims
10 Settlement Act) is:

- 11 (1) if there is no surviving issue, all of it;
- 12 (2) if the decedent is survived by issue, one-half of it.

13 * Sec. 2. AS 13.16.705(a) is amended to read:

14 (a) Until June 30, 1992 [DECEMBER 18, 1991], stock in a corporation organized under
15 the laws of Alaska under 43 U.S.C. 1601 - 1628 (Alaska Native Claims Settlement Act) ~~that~~
16 [WHICH] is inalienable under either that Act or its articles of incorporation is not subject to
17 probate nor shall its value be considered in determining the value of an estate or allowance under
18 this title. Upon death of the holder, if the stock does not pass by the testamentary disposition
19 clause on the stock certificate, properly executed, it passes by will or intestate succession. In
20 such a case, the determination of the person entitled to the stock shall be made by the appropriate
21 regional corporation on the basis of an affidavit, furnished to it and to the corporation which

1 issued the stock, showing the right of the person entitled to the stock to receive it and to have
2 a new certificate issued. The affidavit, accepted in good faith by a corporation, has the same
3 effect as an affidavit under AS 13.16.685, and the person entitled to the stock, if the affidavit is
4 not accepted, has the remedy set out in AS 13.16.685. In case of dispute as to the person entitled
5 to receive the stock, a person claiming ownership may bring an independent action in the superior
6 court.

7 * Sec. 3. AS 13.16.705(e) is amended to read:

8 (e) The situs of inalienable stock of all corporations organized under 43 U.S.C. 1601 -
9 1628 is Alaska, until June 30, 1992 [DECEMBER 18, 1991].

Explanation of Certain Amendments To Title 18

Affecting ANCSA Corporations

1. Amendment to A.S. 13.16.705. Inheritance of Certain Stock

This section was originally enacted by the Legislature to implement Section 7(h) (43 U.S.C. 1606(h)) of the Alaska Native Claims Settlement Act (ANCSA). Under ANCSA, as originally enacted, all Native corporation stock was inalienable. It could not be bought, sold, pledged, given as a gift, or otherwise transferred, except upon death and in certain other very limited circumstances.

The Legislature, in 1972, adopted A.S. 13.16.705 to address the inheritance of ANCSA stock. Because of the inherent difficulties in determining the value of the stock, which would be necessary if the stock were to pass through probate, the decision was made to exempt the stock from probate. Instead, the heirs to both village corporation stock and regional corporation stock would be determined by the appropriate regional corporation on the basis of either a will, a special form provided by the corporation as a separate document or on the back of the stock certificate, or the intestacy laws of the state. The determination was to be made on the basis of affidavits furnished to the corporation showing the right of the person entitled to the stock to receive it. A corporation which accepted the affidavit in good faith was protected from liability for transfer in the same manner as is a person who transfers property on the basis of an affidavit pursuant to A.S. 13.16.685 (Collection of Personal Property by Affidavit and Summary Administration Procedure). Any person who disputed the inheritance determination had the right to bring an independent action in Superior Court to determine ownership.

When ANCSA was originally enacted, the restrictions on alienation of Native corporation stock were to expire on December 18, 1991. In order to track with the federal legislation, therefore, A.S. 13.16.705 also expired on December 18, 1991.

In 1987, however, Congress amended ANCSA to, among other things, give Native corporations the right to continue the restrictions on the alienability of their stock indefinitely. A corporation could also eliminate the alienability restrictions if they desired, or issue new stock which would not be subject to restrictions on alienation. Most, if not all of the Native corporations, however, intend to continue the restraints on alienation.

Since the alienability restrictions will continue after December 18, 1991, A.S. 13.16.705 will still be needed. The proposed legislation therefore re-enacts A.S. 13.16.705, with the following changes:

1. Applies to non-alienable Native corporation stock as long as the stock remains inalienable. Any Native corporation stock not

subject to restraints on alienation would not be subject to this section, and would be treated as any other stock.

2. Provides that inheritance determinations will be made by the corporation which issued the stock, or its agent. Under current law, inheritance determinations are to be made by the regional corporation for all village corporations within its region as well as for its own stock. A number of village corporations, however, possess both the ability and the interest in making their own determinations. The proposed legislation allows those village corporations which choose to make their own inheritance determinations, and allows others to designate the regional corporation or other entity as their agent for purposes of making the determination.
3. Certain minor changes were made to make the provision internally consistent. Reference to stock certificates were eliminated, as Alaska law now allows uncertificated securities. Citations to ANCSA were updated to reflect amendments to that Act.

2. **Amendment to A.S. 13.11.012. Share of the Spouse in Certain Stock**

This section was also enacted to implement ANCSA, and expires on December 18, 1991. It modified the surviving spouse's intestate share of Native corporation stock to eliminate any dilution as a result of the survival of the parents (who typically would have received their own stock) and to allow the share to be determined without valuing the stock. It has also been redrafted to apply to inalienable ANCSA stock for as long as the stock remains inalienable.

3. **Amendment to A.S. 13.46.085. Native corporations; custodians**

The original version of this section was enacted in 1972 to implement ANCSA, and was codified at A.S. 45.60.016 as part of the Uniform Gift to Minors Act. It provided that Native corporation stock issued to a minor was to be held by a custodian, selected in accordance with the priority set out in the statute. It also provided that the provisions of the Uniform Gift to Minors Act would apply to the custodianship, with certain exceptions which were set out in the statute.

In 1990, the Legislature replaced the Uniform Gift to Minors Act with the Uniform Transfers to Minors Act, codified at A.S. 13.46.010 et. seq. The provision dealing with Native corporation stock, with only minor editorial modifications, was re-enacted as A.S. 13.46.085.

Unfortunately, certain changes made by the Uniform Transfers to Minors Act affected the custodianship of ANCSA stock in ways which were not intended by the Legislature. One of the primary changes was the age at which the custodianship terminated. Under the old law, all custodianships terminated at age 18. Under the new law, however, the age at which the custodianship

terminates depends upon whether the minor received the stock by gift, inheritance, or intestate succession, and whether or not the transferor specified a particular age for termination. There is no public policy reason for this difference, and it will make record keeping by the Native corporations needlessly complex. It is also likely to engender bad feelings among shareholders, who will not understand why one custodianship terminates at age 18, and another at age 25.

There is also some ambiguity in both the existing law and the prior law which the proposed legislation eliminates. Although most, if not all, of the Native corporations appoint custodians for all Native corporation stock owned by minors, the existing law refers to the appointment of a custodian for stock "issued" by a Native corporation. This language raises the question as to whether the term "issued" was intended to include stock which was not originally issued to a minor, but was transferred by gift or inheritance. The proposed legislation makes it clear that the section applies to all Native corporation stock held by a minor, whether by original issue or transfer.

The proposed legislation gives persons who transfer Native corporation stock to minors, whether through gift or inheritance, the right to nominate a custodian if they so desire. In the absence of such nomination, the custodian is determined by the corporation according to the priority set out in the statute, which remains unchanged from the existing law. All custodianships terminate at age 18. All other provisions of the section remain unchanged.

Any dispute over the boundaries of a region or regions shall be resolved by a board of arbitrators consisting of one person selected by each of the Native associations involved, and an additional one or two persons, whichever is needed to make an odd number of arbitrators, such additional person or persons to be selected by the arbitrators selected by the Native associations involved.

Secondary disputes, arbitration.

(b) The Secretary may, on request made within one year of the date of enactment of this Act, by representative and responsible leaders of the Native associations listed in subsection (a), merge two or more of the twelve regions: *Provided*, That the twelve regions may not be reduced to less than seven, and there may be no fewer than seven Regional Corporations.

Region merge.

Limitation.

(c) If a majority of all eligible Natives eighteen years of age or older who are not permanent residents of Alaska elect, pursuant to subsection 5(c), to be enrolled in a thirteenth region for Natives who are non-residents of Alaska, the Secretary shall establish such a region for the benefit of the Natives who elected to be enrolled therein, and they may establish a Regional Corporation pursuant to this Act.

Thirteenth region.

(d) Five incorporators within each region, named by the Native association in the region, shall incorporate under the laws of Alaska a Regional Corporation to conduct business for profit, which shall be eligible for the benefits of this Act so long as it is organized and functions in accordance with this Act. The articles of incorporation shall include provisions necessary to carry out the terms of this Act.

Incorporation.

(e) The original articles of incorporation and bylaws shall be approved by the Secretary before they are filed, and they shall be submitted for approval within eighteen months after the date of enactment of this Act. The articles of incorporation may not be amended during the Regional Corporation's first five years without the approval of the Secretary. The Secretary may withhold approval under this section if in his judgment inequities among Native individuals or groups of Native individuals would be created.

(f) The management of the Regional Corporation shall be vested in a board of directors, all of whom, with the exception of the initial board, shall be stockholders over the age of eighteen. The number, terms, and method of election of members of the board of directors shall be fixed in the articles of incorporation or bylaws of the Regional Corporation.

Management.

(g) The Regional Corporation shall be authorized to issue such number of shares of common stock, divided into such classes of shares as may be specified in the articles of incorporation to reflect the provisions of this Act, as may be needed to issue one hundred shares of stock to each Native enrolled in the region pursuant to section 5.

Stock, issuance.

(h) (1) Except as otherwise provided in paragraph (2) of this subsection, stock issued pursuant to subsection (g) shall carry a right to vote in elections for the board of directors and on such other questions as properly may be presented to stockholders, shall permit the holder to receive dividends or other distributions from the Regional Corporation, and shall vest in the holder all rights of a stockholder in a business corporation organized under the laws of the State of Alaska, except that for a period of twenty years after the date of enactment of this Act the stock, inchoate rights thereto, and any dividends paid or distributions made with respect thereto may not be sold, pledged, subjected to a lien or judgment execution, assigned in present or future, or otherwise alienated: *Provided*, That such limitation shall not apply to transfers of stock pursuant to a court decree of separation, divorce or child support.

Stockholders' rights.

95 STAT. 693

Stock
transfer.

(2) Upon the death of any stockholder, ownership of such stock shall be transferred in accordance with his last will and testament or under the applicable laws of intestacy, except that (A) during the twenty-year period after the date of enactment of this Act such stock shall carry voting rights only if the holder thereof through inheritance also is a Native, and (B), in the event the deceased stockholder fails to dispose of his stock by will and has no heirs under the applicable laws of intestacy, such stock shall escheat to the Regional Corporation.

Stock,
reissuance.

(3) On January 1 of the twenty-first year after the year in which this Act is enacted, all stock previously issued shall be deemed to be canceled, and shares of stock of the appropriate class shall be issued without restrictions required by this Act to each stockholder share for share.

Certain
natural re-
source rev-
enues, distri-
bution.

(i) Seventy per centum of all revenues received by each Regional Corporation from the timber resources and subsurface estate patented to it pursuant to this Act shall be divided annually by the Regional Corporation among all twelve Regional Corporations organized pursuant to this section according to the number of Natives enrolled in each region pursuant to section 5. The provisions of this subsection shall not apply to the thirteenth Regional Corporation if organized pursuant to subsection (c) hereof.

Corporate
funds,
distribution.

(j) During the five years following the enactment of this Act, not less than 10% of all corporate funds received by each of the twelve Regional Corporations under section 6 (Alaska Native Fund), and under subsection (i) (revenues from the timber resources and subsurface estate patented to it pursuant to this Act), and all other net income, shall be distributed among the stockholders of the twelve Regional Corporations. Not less than 45% of funds from such sources during the first five-year period, and 50% thereafter, shall be distributed among the Village Corporations in the region and the class of stockholders who are not residents of those villages, as provided in subsection to it. In the case of the thirteenth Regional Corporation, if organized, not less than 50% of all corporate funds received under section 6 shall be distributed to the stockholders.

(k) Funds distributed among the Village Corporations shall be divided among them according to the ratio that the number of shares of stock registered on the books of the Regional Corporation in the names of residents of each village bears to the number of shares of stock registered in the names of residents in all villages.

(l) Funds distributed to a Village Corporation may be withheld until the village has submitted a plan for the use of the money that is satisfactory to the Regional Corporation. The Regional Corporation may require a village plan to provide for joint ventures with other villages, and for joint financing of projects undertaken by the Regional Corporation that will benefit the region generally. In the event of disagreement over the provisions of the plan, the issues in disagreement shall be submitted to arbitration, as shall be provided for in the articles of incorporation of the Regional Corporation.

(m) When funds are distributed among Village Corporations in a region, an amount computed as follows shall be distributed as dividends to the class of stockholders who are not residents of those villages: The amount distributed as dividends shall bear the same ratio to the amount distributed among the Village Corporations that the number of shares of stock registered on the books of the Regional Corporation in the names of nonresidents of villages bears to the number of shares of stock registered in the names of village residents: *Provided*, That an equitable portion of the amount distributed as dividends may be withheld and combined with Village Corporation funds to finance projects that will benefit the region generally.

2

"(s) 'Alienability restrictions' means the restrictions imposed on Settlement Common Stock by section 7(h)(1)(B);

"(t) 'Settlement Trust' means a trust—

"(1) established and registered by a Native Corporation under the laws of the State of Alaska pursuant to a resolution of its shareholders, and

"(2) operated for the sole benefit of the holders of the corporation's Settlement Common Stock in accordance with section 39 and the laws of the State of Alaska."

ISSUANCE OF STOCK

SEC. 4. Subsection (g) of section 7 (43 U.S.C. 1606(g)) is amended to read as follows:

"(g)(1) SETTLEMENT COMMON STOCK.—(A) The Regional Corporation shall be authorized to issue such number of shares of Settlement Common Stock (divided into such classes as may be specified in the articles of incorporation to reflect the provisions of this Act) as may be needed to issue one hundred shares of stock to each Native enrolled in the region pursuant to section 5.

"(B)(i) A Regional Corporation may amend its articles of incorporation to authorize the issuance of additional shares of Settlement Common Stock to—

"(I) Natives born after December 18, 1971,

"(II) Natives who were eligible for enrollment pursuant to section 5 but were not so enrolled, or

"(III) Natives who have attained the age of 65, for no consideration or for such consideration and upon such terms and conditions as may be specified in such amendment or in a resolution approved by the board of directors pursuant to authority expressly vested in the board by the amendment. The amendment to the articles of incorporation may specify which class of Settlement Common Stock shall be issued to the various groups of Natives.

"(ii) Not more than one hundred shares of Settlement Common Stock shall be issued to any one individual pursuant to clause (i).

"(iii) The amendment authorized by clause (i) may provide that Settlement Common Stock issued to a Native pursuant to such amendment (or stock issued in exchange for such Settlement Common Stock pursuant to subsection (h)(3) or section 37(d)) shall be deemed canceled upon the death of such Native. No compensation for this cancellation shall be paid to the estate of the deceased Native or to any person holding the stock.

"(iv) Settlement Common Stock issued pursuant to clause (i) shall not carry rights to share in distributions made to shareholders pursuant to subsections (j) and (m) unless, prior to the issuance of such stock, a majority of the class of existing holders of Settlement Common Stock carrying such rights separately approve the granting of such rights. The articles of incorporation of the Regional Corporation shall be deemed to be amended to authorize such class vote.

"(C)(i) A Regional Corporation may amend its articles of incorporation to authorize the issuance of additional shares of Settlement Common Stock as a dividend or other distribution (without regard to surplus of the corporation under the laws of the State) upon each outstanding share of Settlement Common Stock issued pursuant to subparagraphs (A) and (B).

"(ii) The amendment authorized by clause (i) may provide that shares of Settlement Common Stock issued as a dividend or other

distribution shall constitute a separate class of stock with greater per share voting power than Settlement Common Stock issued pursuant to subparagraphs (A) and (B).

"(2) OTHER FORMS OF STOCK.—(A) A Regional Corporation may amend its articles of incorporation to authorize the issuance of shares of stock other than Settlement Common Stock in accordance with the provisions of this paragraph. Such amendment may provide that—

"(i) preemptive rights of shareholders under the laws of the State shall not apply to the issuance of such shares, or

"(ii) issuance of such shares shall permanently preclude the corporation from—

"(I) conveying assets to a Settlement Trust, or

"(II) issuing shares of stock without adequate consideration as required under the laws of the State.

"(B) The amendment authorized by subparagraph (A) may provide that the stock to be issued shall be one or more of the following—

"(i) divided into classes and series within classes, with preferences, limitations, and relative rights, including, without limitation—

"(I) dividend rights,

"(II) voting rights, and

"(III) liquidation preferences;

"(ii) made subject to one or more of—

"(I) the restrictions on alienation described in clauses (i), (ii), and (iv) of subsection (h)(1)(B), and

"(II) the restriction described in paragraph (1)(B)(iii); and

"(iii) restricted in issuance to—

"(I) Natives who have attained the age of sixty-five;

"(II) other identifiable groups of Natives or identifiable groups of descendants of Natives defined in terms of general applicability and not in any way by reference to place of residence or family;

"(III) Settlement Trusts; or

"(IV) entities established for the sole benefit of Natives or descendants of Natives, in which the classes of beneficiaries are defined in terms of general applicability and not in any way by reference to place of residence, family, or position as an officer, director, or employee of a Native Corporation.

"(C) The amendment authorized by subparagraph (A) shall provide that the additional shares of stock shall be issued—

"(i) as a dividend or other distribution (without regard to surplus of the corporation under the laws of the State) upon all outstanding shares of stock of any class or series, or

"(ii) for such consideration as may be permitted by law (except that this requirement may be waived with respect to issuance of stock to the individuals or entities described in subparagraph (B)(iii)).

"(D) During any period in which alienability restrictions are in effect, no stock whose issuance is authorized by subparagraph (A) shall be—

"(i) issued to, or for the benefit of, a group of individuals composed only or principally of employees, officers, and directors of the corporation; or

"(ii) issued more than thirteen months after the date on which the vote of the shareholders on the amendment authorizing the issuance of such stock occurred if, as a result of the

"(h)(1) RIGHTS AND RESTRICTIONS.—(A) Except as otherwise expressly provided in this Act, Settlement Common Stock of a Regional Corporation shall—

"(i) carry a right to vote in elections for the board of directors and on such other questions as properly may be presented to shareholders;

"(ii) permit the holder to receive dividends or other distributions from the corporation; and

"(iii) vest in the holder all rights of a shareholder in a business corporation organized under the laws of the State.

"(B) Except as otherwise provided in this subsection, Settlement Common Stock, inchoate rights thereto, and rights to dividends or distributions declared with respect thereto shall not be—

"(i) sold;

"(ii) pledged;

"(iii) subjected to a lien or judgment execution;

"(iv) assigned in present or future;

"(v) treated as an asset under—

"(I) title 11 of the United States Code or any successor statute,

"(II) any other insolvency or moratorium law, or

"(III) other laws generally affecting creditors' rights; or

"(vi) otherwise alienated.

"(C) Notwithstanding the restrictions set forth in subparagraph (B), Settlement Common Stock may be transferred to a Native or a descendant of a Native—

"(i) pursuant to a court decree of separation, divorce, or child support;

"(ii) by a holder who is a member of a professional organization, association, or board that limits his or her ability to practice his or her profession because he or she holds Settlement Common Stock; or

"(iii) as an inter vivos gift from a holder to his or her child, grandchild, great-grandchild, niece, or nephew.

"(2) INHERITANCE OF SETTLEMENT COMMON STOCK.—(A) Upon the death of a holder of Settlement Common Stock, ownership of such stock (unless canceled in accordance with subsection (g)(1)(B)(iii)) shall be transferred in accordance with the lawful will of such holder or pursuant to applicable laws of intestate succession. If the holder fails to dispose of his or her stock by will and has no heirs under applicable laws of intestate succession, the stock shall escheat to the issuing Regional Corporation and be canceled.

"(B) The issuing Regional Corporation shall have the right to purchase at fair value Settlement Common Stock transferred pursuant to applicable laws of intestate succession to a person not a Native or a descendant of a Native after the date of the enactment of the Alaska Native Claims Settlement Act Amendments of 1987 if—

"(i) the corporation—

"(I) amends its articles of incorporation to authorize such purchases, and

"(II) gives the person receiving such stock written notice of its intent to purchase within ninety days after the date that the corporation either determines the decedent's heirs in accordance with the laws of the State or receives notice that such heirs have been determined, whichever later occurs; and

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issuance, the outstanding shares of Settlement Common Stock will represent less than a majority of the total voting power of the corporation for the purpose of electing directors.

“(3) DISCLOSURE REQUIREMENTS.—(A) An amendment to the articles of incorporation of a Regional Corporation authorized by paragraph (2) shall specify—

“(i) the maximum number of shares of any class or series of stock that may be issued, and

“(ii) the maximum number of votes that may be held by such shares.

“(B)(i) If the board of directors of a Regional Corporation intends to propose an amendment pursuant to paragraph (2) which would authorize the issuance of classes or series of stock that, singly or in combination, could cause the outstanding shares of Settlement Common Stock to represent less than a majority of the total voting power of the corporation for the purposes of electing directors, the shareholders of such corporation shall be expressly so informed.

“(ii) Such information shall be transmitted to the shareholders in a separate disclosure statement or in another informational document in writing or in recorded sound form both in English and any Native language used by a shareholder of such corporation. Such statement or informational document shall be transmitted to the shareholders at least sixty days prior to the date on which such proposal is to be submitted for a vote.

“(iii) If not later than thirty days after issuance of such disclosure statement or informational document the board of directors receives a prepared concise statement setting forth arguments in opposition to the proposed amendment together with a request for distribution thereof signed by the holders of at least 10 per centum of the outstanding shares of Settlement Common Stock, the board shall either distribute such statement to the shareholders or provide to the requesting shareholders a list of all shareholder's names and addresses so that the requesting shareholders may distribute such statement.

“(4) SAVINGS.—(A)(i) No shares of stock issued pursuant to paragraphs (1)(C) and (2) shall carry rights to share in distributions made to shareholders pursuant to subsections (j) and (m). No shares of stock issued pursuant to paragraph (1)(B) shall carry such rights unless authorized pursuant to paragraph (1)(B)(iv).

“(ii) Notwithstanding the issuance of additional shares of stock pursuant to paragraphs (1)(B), (1)(C), or (2), a Regional Corporation shall apply the ratio last computed pursuant to subsection (m) prior to the date of the enactment of the Alaska Native Claims Settlement Act Amendments of 1987 for purposes of distributing funds pursuant to subsections (j) and (m).

“(B) The issuance of additional shares of stock pursuant to paragraphs (1)(B), (1)(C), or (2) shall not affect the division and distribution of revenues pursuant to subsection (i).

“(C) No provision of this Act shall limit the right of a Regional Corporation to take an action authorized by the laws of the State unless such action is inconsistent with the provisions of this Act.”

SETTLEMENT COMMON STOCK

SEC. 5. Subsection (h) of section 7 (43 U.S.C. 1606(h)) is amended to read as follows:

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diate family who are Natives or descendants of Natives, the first right to purchase, on reasonable terms, the Replacement Common Stock of the shareholder prior to the sale or transfer of such stock (other than a transfer by will or intestate succession) to any other party, including a transfer in satisfaction of a lien, writ of attachment, judgment execution, pledge, or other encumbrance; and

“(iii) any other term, restriction, limitation, or provision authorized by the laws of the State.

“(E) Replacement Common Stock shall not be subjected to a lien or judgment execution based upon any asserted or unasserted legal obligation of the original recipient arising prior to the issuance of such stock.”

VILLAGE, URBAN, AND GROUP CORPORATIONS

SEC. 6. Subsection (c) of section 8 (43 U.S.C. 1607(c)) is amended to read as follows:

“(c) **APPLICABILITY OF SECTION 7.**—The provisions of subsections (g), (h), and (o) of section 7 shall apply in all respects to Village Corporations, Urban Corporations, and Group Corporations.”

PROCEDURES FOR CONSIDERING AMENDMENTS AND RESOLUTIONS

SEC. 7. The Alaska Native Claims Settlement Act is further amended by adding the following new section:

“PROCEDURES FOR CONSIDERING AMENDMENTS AND RESOLUTIONS

“SEC. 36. (a) **COVERAGE.**—Notwithstanding any provision of the articles of incorporation and bylaws of a Native Corporation or of the laws of the State, except those related to proxy statements and solicitations that are not inconsistent with this section—

“(1) an amendment to the articles of incorporation of a Native Corporation authorized by subsections (g) and (h) of section 7, subsection (d)(1)(B) of this section, or section 37;

“(2) a resolution authorized by section 38(a)(2);

“(3) a resolution to establish a Settlement Trust; or

“(4) a resolution to convey all or substantially all of the assets of a Native Corporation to a Settlement Trust pursuant to section 39(a)(1);

shall be considered in accordance with the provisions of this section.

“(b) **BASIC PROCEDURE.**—(1) An amendment or resolution described in subsection (a) may be approved by the board of directors of a Native Corporation in accordance with its bylaws. If the board approves the amendment or resolution, it shall direct that the amendment or resolution be submitted to a vote of the shareholders at the next annual meeting or at a special meeting (if the board, at its discretion, schedules such special meeting). One or more such amendments or resolutions may be submitted to the shareholders and voted upon at one meeting.

“(2)(A) A written notice (including a proxy statement if required under applicable law), setting forth the amendment or resolution approved pursuant to paragraph (1) (and, at the discretion of the board, a summary of the changes to be effected) together with any amendment or resolution submitted pursuant to subsection (c) and the statements described therein shall be sent, not less than fifty days nor more than sixty days prior to the meeting of the

43 USC 1629b.

"(ii) the person receiving such stock fails to transfer the stock pursuant to paragraph (1)(C)(iii) within sixty days after receiving such written notice.

"(C) Settlement Common Stock of a Regional Corporation—

"(i) transferred by will or pursuant to applicable laws of intestate succession after the date of the enactment of the Alaska Native Claims Settlement Act Amendments of 1987, or

"(ii) transferred by any means prior to the date of the enactment of the Alaska Native Claims Settlement Act Amendments of 1987,

to a person not a Native or a descendant of a Native shall not carry voting rights. If at a later date such stock is lawfully transferred to a Native or a descendant of a Native, voting rights shall be automatically restored.

"(3) REPLACEMENT COMMON STOCK.—(A) On the date on which alienability restrictions terminate in accordance with the provisions of section 37, all Settlement Common Stock previously issued by a Regional Corporation shall be deemed canceled, and shares of Replacement Common Stock of the appropriate class shall be issued to each shareholder, share for share, subject only to subparagraph (B) and to such restrictions consistent with this Act as may be provided by the articles of incorporation of the corporation or in agreements between the corporation and individual shareholders.

"(B)(i) Replacement Common Stock issued in exchange for Settlement Common Stock issued subject to the restriction authorized by subsection (g)(1)(B)(iii) shall bear a legend indicating that the stock will eventually be canceled in accordance with the requirements of that subsection.

"(ii) Prior to the termination of alienability restrictions, the board of directors of the corporation shall approve a resolution to provide that each share of Settlement Common Stock carrying the right to share in distributions made to shareholders pursuant to subsections (j) and (m) shall be exchanged either for—

"(I) a share of Replacement Common Stock that carries such right, or

"(II) a share of Replacement Common Stock that does not carry such right together with a separate, non-voting security that represents only such right.

"(iii) Replacement Common Stock issued in exchange for a class of Settlement Common Stock carrying greater per share voting power than Settlement Common Stock issued pursuant to subsections (g)(1)(A) and (g)(1)(B) shall carry such voting power and be subject to such other terms as may be provided in the amendment to the articles of incorporation authorizing the issuance of such class of Settlement Common Stock.

"(C) The articles of incorporation of the Regional Corporation shall be deemed amended to authorize the issuance of Replacement Common Stock and the security described in subparagraph (B)(ii)(II).

"(D) Prior to the date on which alienability restrictions terminate, a Regional Corporation may amend its articles of incorporation to impose upon Replacement Common Stock one or more of the following—

"(i) a restriction denying voting rights to any holder of Replacement Common Stock who is not a Native or a descendant of a Native;

"(ii) a restriction granting the Regional Corporation, or the Regional Corporation and members of the shareholder's imme-

New Definitions

Adverse Possession: The right of a trespasser to take over land after using it for a period of time, if the legal owner has not objected or taken steps to keep the trespasser out.

Alienability Restrictions: Rules that limit or restrict how stock can change ownership.

Alienable Common Stock: Stock that can be sold, transferred, pledged and otherwise treated just like any other corporate stock.

Articles of incorporation: The laws that govern the corporation. Amendments or changes must be voted on by the shareholders.

Assets: Property, land, material goods and anything owned that has monetary value. A corporation's assets include buildings, office furniture, land and everything else of possible value that it owns.

Collateral: Something of value, such as land, that is promised to secure a loan. If you don't pay back the loan, the lender gets the collateral.

Descendant of Native: A person who is descended from a Native, or adopted by a Native, or adopted by a descendant of a Native. Example: You are a descendant of a Native even if only one of your great, great grandmothers was one-quarter Native.

Developed: Land that has been changed or improved to make it more profitable or productive. If land is developed for reasons other than exploration, automatic protections are lost.

Dissenters Rights: The right of a shareholder to demand payment for his stock if the majority of shareholders vote to keep stock restricted. In order to claim dissenters rights, the shareholder must have voted against continued stock restrictions.

Dividend/Distribution (general): A dividend or distribution is money or another asset (such as additional shares of stock) given to shareholders based on how many shares of stock they own.

Dividend/Distribution (7(j)(m)): Money given to stockholders as part of 7(i) revenue sharing. Under ANCSA, regional corporations must share the revenue they get from timber and subsurface resources. Each region gets a portion, based on its number of shareholders. Section 7(j) and 7(m) of ANCSA

require the regions, in turn, to pass half of that money on to the villages and at-large shareholders. The amount passed on to village corporations and at-large shareholders is based on population.

Leased: Land that is rented to another person or business for gainful use.

Non-Native: A person who is not Native, not a descendent of a Native, and not legally adopted by a Native.

Opt-In: An option regarding stock restrictions. Under the opt-in approach stock restrictions no longer continue automatically. Instead, the restrictions automatically expire unless the shareholders vote to keep them (i.e. opt in to the restrictions). Opt-in is available only to regional corporations and village corporations in the Aleut and Bristol Bay regions.

Opt-Out: An option for Native corporations that allows the shareholders to vote to remove stock restrictions on Dec. 18, 1991.

"Other Stock": Stock issued by a corporation which is not Settlement Common Stock. Other stock can be restricted in different ways, with different rights. It can be made available for sale to either the general public, or to specific groups of people. Other stock does not replace Settlement Common Stock, but it can be issued to existing stockholders.

Recapitalization/Recapitalize: An option that allows a Native corporation to raise money, or capital, by issuing and selling shares of stock. Under a recapitalization plan, the corporation may ask its shareholders to vote on several different stock issues as a single package.

Replacement Common Stock: Stock issued in place of restricted stock after the restrictions have been lifted. Replacement Common Stock is generally alienable, but the corporation may deny voting rights to non-Natives, or require that the corporation, or members of the shareholder's family, have the first right to purchase shares from someone who wants to sell.

Revenue Sharing/7(i): The distribution among regions of money earned from mineral, timber and other subsurface development, pursuant to Section 7(i) of the Alaska Native Claims Settlement Act. Seventy percent of the regional corporations' subsurface and timber revenues are distributed among all the regions, based on number of shareholders in each.

Right-of-first Purchase: Right to have the first chance to buy, at a reasonable price, stock from a shareholder who wants to sell.

Settlement Common Stock: New name for Native corporation stock; has same rights and restrictions.

Settlement Trust: A trust formed under state law, by approval of a Native corporation's shareholders, that is operated for the sole benefit of Native shareholders. A settlement trust would be formed as one way of protecting corporate land and assets.

Shareholder Petition: A process that allows shareholders to demand that the corporation vote on a "1991" issue. The petition must be signed by shareholders who together have at least 25 percent of the corporation's total voting power.

Subsurface Estate: Timber, mineral and other below-ground resources. Under ANCSA, regional corporations own the surface and subsurface estates of their own lands, plus the subsurface of lands owned by villages in their region.

Voting Standard: The percentage of "yes" votes needed to approve a question or resolution put to shareholders. A simple majority is 50 percent of the outstanding shares, plus one share.

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Alaska Public
Employees Association **APEA**

State Headquarters: 340 N. Franklin, Juneau, AK 99801 (907) 586-2334

FEDERATION OF STATE EMPLOYEES/AFT/AFL-CIO

May 7, 1991

The Honorable Fran Ulmer
Alaska State House of Representatives
P.O. Box V
Juneau, AK 99811

FRAN
Dear Representative Ulmer:

I have reviewed your proposed legislation, "An Act relating to protection of whistleblowers; and relating to the personnel board."

The Addition of the language of AS 39.90.160-240 to the existing AS 39.90.100-150, including an administrative remedy for the "Alaska Whistleblowers Act," provides a desirable alternative to the option of civil court action contained in AS 39.90.100-150.

Using the hearing officer investigative structure strikes the right note of relationship between the Personnel Board, the employee and the agency. If the qualifications of a hearing officer are not addressed in statute or administrative code, they should be clarified through definition or some other appropriate method. The investigative process appears well-outlined under the "Investigation by Hearing Officer," and the "Investigation Procedures" Sections. The "Subpoena Powers" could be extremely useful in collecting information, and the "Stay of Personnel Action" gives additional time to conduct fact-finding and to make a report, hoping to assure that some action is not taken in the name of the State that might later bring legal action.

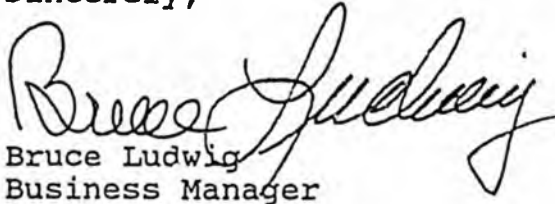
The "Decision by Personnel Board" Section allows the impacted parties to participate in the decision-making process and also provides for remedies to be implemented, including corrective action and penalties to be assessed against other public employees involved. Finally, the "Judicial Review" aspect allows for an appeal of Personnel Board action.

From my perspective as an Association Business Manager, I can see a benefit to some relationship between the proposed Act and the public employees' associations. I realize the Personnel Board functions autonomously, but its responsibilities relate to those

of the associations. For example, both the Board and APEA could be involved in a "Whistleblower's Act" situation--APEA, through the grievance process and, the Board through the existing and proposed legislation. All parties might realize mutual benefits if any new legislation addressed those processes already established to address potential violation of employee rights.

I have no clear idea how this coordination of effort could be accomplished, but I'm open to discussing the possibility further. Thank you for the opportunity to review and comment.

Sincerely,

A handwritten signature in cursive script that reads "Bruce Ludwig". The signature is written in dark ink and is positioned above the typed name and title.

Bruce Ludwig
Business Manager



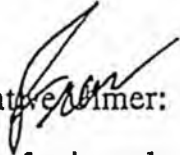
State of Alaska
ombudsman

Duncan C. Fowler

May 21, 1991

Representative Fran Ulmer
Alaska House of Representatives
Post Office Box V
Juneau, Alaska 99811-3100

RE: HB-322

Dear Representative  Ulmer:

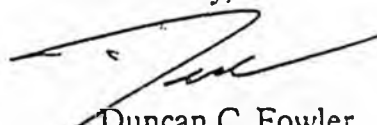
Thank you for introducing this amendment to the Alaska Whistleblower Act. *I believe it is a significant improvement to the act.* It offers assistance and protection to those who come forward to expose improprieties in government and have been personally harmed as a result.

You asked for comments regarding this bill:

- (1) I believe the Personnel Board is a good vehicle for resolving public employee allegations of harm. I was pleased to note that existing statutes make it clear that members of the Personnel Board do not serve at the will of the governor but may only be removed for cause.
- (2) Currently, the bill provides that non public employees who have been harmed by actions covered under the Alaska Whistleblowers Act may also pursue redress for harm by using the state personnel board. Consideration might be given to have the Office of Public Advocacy be able to represent that group of Alaskans.
- (3) I had some concerns that the subpoena provisions of the bill might authorize an executive branch agency to be able to access our confidential files. I have been assured by staff from Legislative Legal Affairs that this is not an issue. The provisions of AS 24.55.160 (b) would continue to allow the ombudsman to make determinations as to whether or not the disclosure would enable the office to carry out its duties and support recommendations.

Again, I do appreciate your interest in this area. As I had mentioned, there has been an increase in calls to my office asking for advice and information relating to whistleblowers issues these past few months. Please let me know if I can be of further assistance.

Sincerely,


Duncan C. Fowler
Ombudsman

Reply to:

P.O. Box 102636
Anchorage, AK 99510-2636
(907) 277-8848
(800) 478-2624

P.O. Box WO
Juneau, AK 99811-3000
(907) 465-4970
(800) 478-4970

P.O. Box 74358
Fairbanks, AK 99707-4358
(907) 452-4001
(800) 478-3257

DCF:pjc

**PUBLIC
EMPLOYEES**



DON VALESKO
BUSINESS MANAGER

VALERIE K. BAFFONE
SECRETARY/TREASURER

HEADQUARTERS

2510 Arctic Blvd.
Anchorage, Alaska 99503

208 Wendell, Room 205
Fairbanks, Alaska 99701

710 W. 9th Street
Juneau, Alaska 99801



May 13, 1991

Representative Fran Ulmer
Rm. 421, Capitol
P. O. Box V
Juneau, Alaska 99811

Dear Representative Ulmer:

Thank you for your April 30, 1991 letter requesting my opinion on your proposed "whistle blower" bill.

I have reviewed the legislation and reviewed it with staff and counsel for additional input.

It is our collective opinion that this looks like a good bill resulting in improved protection for State employees.

The option of a hearing before the personnel board, is a more practical option verses legal action considering the prohibitive cost of attorney and court fees.

Sincerely,

Don Valesko
Business Manager

DV/ni

SECTIONAL ANALYSIS
February 5, 1992

HB 322, "An Act relating to protection of whistleblowers; and relating to the personnel board."

Section 1.

- Page 2, line 1. Technical, updates word usage.
- Page 2, lines 3 and 4. Expands the specific powers of the State Personnel Board to administer oaths, subpoena witnesses, and compel the production of documents to include matters involving "whistleblowers."
- Page 2, lines 13 and 14. Adds a new section to expand the broad duties and powers of the personnel board to include "whistleblower" issues.

Section 2.

- Page 2, line 16. Technical, to include sections added by this bill in the Whistleblower Act.

Section 3.

- Page 2, line 27. Technical, to include sections added by this bill in the Whistleblower Act.

Section 4.

- Page 2, lines 29 and 30. Technical, same as above.

Section 5.

- Page 3, lines 4 and 5. Technical, same as above.

Section 6.

- Page 3, lines 11 and 13-14. Technical, same as above.

Section 7.

- Page 3, line 17. Technical to ensure that definitions apply to the new statute sections established by this bill.
- Page 4, line 2. Adds a definition of the term "prohibited practice." For purposes of this statute, a prohibited practice is any violation of AS 39.90.100, which sets out the persons protected by the whistleblower act.

Section 8.

- Page 4, line 14. Technical, to include sections added by this bill the Whistleblower Act.

Section 9.

- Page 4, lines 17-27. Adds a new provision, AS 39.90.160. This provision establishes an administrative remedy for the person who alleges a violation of the Alaska Whistleblower Act. It provides that within one year of the date the person

should have known of the violation, the person may file an allegation with the personnel board. If the issue is within the jurisdiction of the board, and a court has not issued a final

resolution, the board is to appoint a hearing officer to investigate and report on the allegation.

- Page 4, lines 28-31; page 5, lines 1-3. Adds new sections, AS 39.90.170 (a), (b), (c) and (d).

(a) This section establishes the authority of the hearing officer to investigate an allegation and to determine if there are reasonable grounds to believe that a prohibited practice has occurred, is occurring, or is about to occur. It provides for notice to the person making the allegation that an investigation will occur.

(b) Provision is made that the hearing officer, after an investigation, report findings and a determination to the personnel board, the agency and agency head involved. The report may include recommendations for corrective action.

(c) Provides that if a prohibited practice has not been corrected in a reasonable amount of time, the hearing officer may petition the personnel board for corrective action. It also provides that if corrective action, satisfactory to the complainant, is taken, the hearing officer is to notice the personnel board.

(d) Provides that if, after the investigation, the hearing officer believes that criminal action has occurred, the hearing officer is to report that to the attorney general, the head of the public employer involved and to the personnel board.

- Page 5, lines 17-30. Adds new sections, AS 39.90.180 (a), (b), and (c).

(a) This sub-section provides that the hearing officer can request the personnel board to order a 45 day stay of any personnel action against the person making the allegation (whistleblower), and states that the board will act on such a request within three days of receipt.

(b) Provides that the personnel board allow the public employer who is the subject of a stay, to comment and request amendment. It also provides that the board may terminate a stay.

- Page 5, line 31, page 6, lines 1-15. Adds new sections, AS 39.90.190 (a) and (b).

(a) This subsection sets out the power of the hearing

officer, in the course of an investigation, to make inquiries, enter the premises of a public employer without notice, hold hearings that are closed to the public and to access records. It provides that the personnel board may only compel the production of sealed court records by subpoena, and may not obtain records in an ongoing criminal investigation and records that could lead to the identity of confidential police informants.

(b) Requires the hearing officer and the personnel board to maintain confidentiality in all matters, except as necessary for the board to do its duties. It provides that a confidential record from an agency may not be disclosed.

- Page 6, lines 7 and 11. Adds a clause to exempt the confidential files of the Office of the Ombudsman from disclosure.

- Page 6, lines 16-21. Adds new sections, AS 39.90.200 (a) and (b).

(a) This sub-section provides that the personnel board, on its own or at the request of the hearing officer compel the appearance and testimony of a person or a record or an object if such relates to the matter under investigation.

(b) Establishes that a superior court may take the same type of action for non compliance with a subpoena issued under this statute, as the court make take when there is disobedience of a court issued subpoena.

- Page 6, lines 28-31 and page 7, lines 1-14. Adds new sections, AS 39,90.210 (a), (b) and (c).

(a) This sub-section sets out that upon receipt of a report from the hearing officer, the board may accept, amend, reject or return the report for further work.

(b) Provides that when the hearing officer recommends corrective action, the board shall provide for comments by the hearing officer, the involved agency and the individual complainant.

(c) This sub-section provides for the personnel board to take corrective action in the event that a complainant is subjected to negative action resulting from reporting a prohibited action.

* For a public employee who has been harmed, the board may order reinstatement, promotion, transfer, back pay and benefits, or other personnel actions.

* If a public employee, other than an elected official or an employee confirmed by the legislative body, has

committed a violation, the board may order discipline, including suspension or dismissal.

- Page 7, lines 15-17. Adds a new section, AS 39.90.220 which provides that a final order or decision of the personnel board may be appealed to the superior court.
- Page 7, line 20. Technical, to include in the Whistleblower Act, sections added by this bill.
- Page 7, lines 18-23. Adds a new section, AS 39.90.230 which provides that the personnel board shall adopt regulations for processing allegations, conducting investigations, reporting findings and recommendations and making decisions on them.
- Page 7, lines 24-25, Adds a new section which provides that the personnel board prepare an annual report.
- Page 7, lines 26-31. Spells out that administrative or contractual remedies need not be exhausted before a person is able to seek judicial relief. Also that a judicial action terminated without resolution on the merits of the case, not be grounds for the Personnel Board to refuse an otherwise timely and jurisdictional case.

HOUSE COMMITTEE REPORT

(7)

Date Referred: May 8, 1991

FURTHER REFERRALS:

2-5-72
Judiciary
Finance

Date of Committee Action: 2/3/92

The STATE AFFAIRS Committee considered:

HB 322

HOUSE BILL NO. 322

WHISTLEBLOWER PROTECTION

"An Act relating to protection of whistleblowers; and relating to the personnel board."

RECOMMENDATIONS:

be replaced with CS HB 322 (STA) the same title
 a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) _____

APPROVES PREVIOUS: (Dept/Date) _____

fiscal impact Admin.

fiscal note(s) _____

zero fiscal note Court System

zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Eugene G. Kubera</i>		<i>Mr. Stuenkel</i>			<input checked="" type="checkbox"/>
<i>Mr. Stuenkel</i>		<i>John Stuel</i>		<input checked="" type="checkbox"/>	
<i>E. (unclear)</i>		<i>Chris Stuel</i>			<input checked="" type="checkbox"/>
<i>Tom Weyh</i>	<input checked="" type="checkbox"/>				

Eugene G. Kubera
CHAIRMAN'S SIGNATURE

HOUSE COMMITTEE REPORT

(7)

Date Referred: February 5, 1992

FURTHER REFERRALS:

Finance

Date of Committee Action: 2-28-92

The JUDICIARY Committee considered:

HB 322

HOUSE BILL NO. 322

WHISTLEBLOWER PROTECTION

"An Act relating to protection of whistleblowers; and relating to the personnel board."

RECOMMENDATIONS:

be replaced with OS HB 322 (JUD) the same title
 a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): _____ (Dept)

APPROVES PREVIOUS: _____ (Dept/Date)

fiscal impact _____

fiscal note(s) Admin.

zero fiscal note law

zero fiscal note(s) courts

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Daniel Donley</i>	<input checked="" type="checkbox"/>	<i>Kevin Pat Varnell</i>		<input checked="" type="checkbox"/>	
<i>Mark Hunter</i>	<input checked="" type="checkbox"/>				
<i>Terry Martin</i>	<input checked="" type="checkbox"/>				

Daniel Donley
 CHAIRMAN'S SIGNATURE

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

Bill No. HB 322

Revision Date: _____ Department Affected: Alaska Court System
 Title: An Act relating to protection of BRU: Trial Courts
whistleblowers... Components: _____
 Sponsor: Ulmer
 Requestor: Ulmer COMPONENT SERIAL NO. 000 | 000 | 000 | 768

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUNDS	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: C. S. Christensen III, Staff Counsel *CS* Phone: 264-8228
 Division: Alaska Court System Date: 01/28/92

Approved by: Arthur H. Snowden, II, Administrative Director *AS*
 Agency: Alaska Court System Date: 01/28/92

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

FISCAL NOTE

BILL NO. CSEB 322 (SA)

STATE OF ALASKA
1992 LEGISLATIVE SESSION

Revision Date: _____

Department Affected: Administration

Title: Protection of Whistleblowers

BRU: Personnel/OEEO

Sponsor: Ulmer

Component: Personnel/OEEO

Requestor: House Judiciary

COMPONENT SERIAL NO.

		5	6
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	68.5	68.5	68.5	68.5	68.5	68.5
TRAVEL	20.0	20.0	20.0	20.0	20.0	20.0
CONTRACTUAL	15.0	15.0	15.0	15.0	15.0	15.0
SUPPLIES	.6	.3	.3	.3	.3	.3
EQUIPMENT	6.0					
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	110.1	103.8	103.8	103.8	103.8	103.8

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

REVENUE FUND SOURCE:	0	0	0	0	0	0
-------------------------	---	---	---	---	---	---

FUNDING: (Thousands of Dollars)

GENERAL FUND	110.1	103.8	103.8	103.8	103.8	103.8
FEDERAL FUNDS						
OTHER FUND SOURCE:						
TOTAL	110.1	103.6	103.8	103.8	103.8	103.8

POSITIONS:

FULL-TIME	1.0	1.0	1.0	1.0	1.0	1.0
PART-TIME						
TEMPORARY						

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)
See Attached.

Prepared by: R. H. King, Director *Richard P. King*
Division: Personnel/OEEO

Phone: 465-4430
Date: January 27, 1992 Feb. 18, 1992

Approved by Commissioner: Nancy Bear Usara *Nancy Bear Usara*
Agency: Administration

Date: 2/2/92

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., & Impacted Agency(ies).

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. CSHB 322 (SA)

ANALYSIS: (continued)

CSHB 322 (SA) provides that a person who alleges a violation of the whistleblower statute may file an allegation with the personnel board. This filing may be instead of or in addition to a civil action. This fiscal note assumes that allegation will be filed with the personnel board in order to avoid the risk of lost attorney's fees and to insure faster action than typically available in court.

If the allegation appears to be within the jurisdiction of the board, it shall immediately appoint a hearing officer to investigate and report on the allegation. The hearing officer shall investigate the allegation to determine if reasonable grounds exist to determine that a violation has occurred. The hearing officer must make numerous determinations in this process.

Each factual condition in AS 39.90.100, 110, 160, 170 and 180 would need to be investigated.

If reasonable grounds are found, the personnel board may order a stay of any action against an employee. The board may accept, amend, or reject a report of the hearing officer or may return a report for further proceedings. If the hearing officer petitions the board for corrective action, the board must provide a review process that can result in an order for corrective action. The board may also order discipline up to and including dismissal of a public employer for violation of AS 39.90.100.

A public employer or employee adversely affected by a final order or decision of the board may appeal to the superior court.

The above description of the process is meant to highlight the similarity of the proposed legislation to the process of the Executive Branch Ethics Act, AS 39.52. A whistleblower's complaint would have the following costs:

- public notice, travel, and per diem for a meeting of the board and its secretary for a determination that a complaint appears to be within its jurisdiction, and the appointment of a hearing officer;

- expenses of the hearing officer;

- expenses of the legal counsel for the board;

- public notice, travel and per diem expenses for the review hearing;

- legal expenses in defense of appeals to the superior court.

We assume the board would employ a permanent hearing officer to whom they would assign cases. We also assume the regulations would provide for the authority to issue a stay under AS 39.90.180 without a formal meeting.

Estimated costs are for a hearing officer at range 21. First year costs include initial office equipment. Costs also cover board meeting expenses and legal counsel, and travel funds to investigate in any potential subdivision of the State. No estimate is provided to defend cases appealed to superior court.

Position Title Hearing Officer		No. of Positions 1	Range / Step 21/A	Barg. Unit EE
Time Status FT	Staff Months 12.0	Location Anchorage		Election District 7
TYPE OF EXPENDITURE		AMOUNT		
Salary		49.9		
Benefits		18.6		
Premium Pay				
Other				
Total Personal Services		68.5		
Travel		10.0		
Contractual		5.0		
Commodities		.6		
Equipment		6.0		
Other				
Total Cost		90.1		
FUNDING SOURCE FOR TOTAL COST				
Federal Receipts 1002				
G.F. Match 1003				
General Fund 1004		90.1		
I-A Receipts 1007				
CIP Receipts 1061				
Other				
<p>Justification</p> <p>HB 322 provides for complaints of violation of the whistleblower protection statute to be investigated by a hearing officer appointed by the Personnel Board. This position will be the hearing officer. Initial duties will include the drafting of regulations required by HB 322.</p> <p>The whistleblower protection statute applies to the State and all political subdivisions. Travel is expected to take the hearing officer to the jurisdiction under investigation.</p> <p>Contractual costs include telephone, copying, and expert testimony.</p> <p>Commodities include initial office supplies and routine consumables.</p> <p>Equipment is for the one-time purchase of necessary computer hardware.</p>				

6/budget/fy93/4/rmp/02809.kp

Request For New Position

AGENCY ADMINISTRATION

BRU Personnel/OEEO

COMPONENT Personnel/OEEO

FY 93

Page 1 of 1

Revised Date:

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. CSHB 322 (STA)

Revision Date: _____

Department Affected: Department of Law

Title: "An Act relating to protection of whistleblowers..."

BRU: Legal Services

Sponsor: Representative Ulmer

Component: Operations

Requestor: House Judiciary Committee

COMPONENT SERIAL

		9	3
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
---------	--	--	--	--	--	--

REVENUE FUND SOURCE:						
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

Please see the attached analysis.

Prepared by: Richard I. Pegues, Director
 Division: Administrative Services
 Approved by Commissioner: Richard I. Pegues / FOR
 Agency: Department of Law

Phone: 465-3672
 Date: February 24, 1992
 Date: February 24, 1992

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., & Impacted Agency(ies).

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSHB 322 (STA)

This bill amends AS 39.90 to add new sections which provide an administrative remedy for violations alleged under the Alaska Whistleblower Act. These sections empower the state or a local personnel board to appoint a hearing officer to investigate a complaint of unlawful retaliation against a person who reports or is about to report a matter of public concern to a public body. Currently, a person who alleges a violation of the protections against retaliation provided by the existing Whistleblower Act must bring a civil action in court in order to seek relief. State employees who are members of collective bargaining units are already allowed to have allegations of retaliation heard as part of the grievance process.

The bill will probably not have a direct fiscal impact on the Department of Law, but there may be considerable impact for the state personnel board for hearing officer costs. Furthermore, there will be additional cost to the state because the state personnel board would also have to provide an administrative remedy process for complaints involving municipalities, where a municipality has not adopted its own hearing process by ordinance. There have not been many allegations at the state level that the Act has been violated in the past, and it is not known whether the bill may encourage more people to come forth with allegations in the future. It is also unclear whether the bill provides a second hearing process for members of collective bargaining units, in addition to the grievance process, but it appears that it might.

H B

3 2 7

HOUSE COMMITTEE REPORT

(7)

Date Referred: April 29, 1992

FURTHER REFERRALS:

Finance

Date of Committee Action: 5.1.92

The JUDICIARY Committee considered:

HB 327

HOUSE BILL NO. 327

PRIMARY ELECTIONS

"An Act relating to primary elections."

RECOMMENDATIONS:

be replaced with AS HB 327 (JUD)

the same title
 a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): _____ (Dept)

APPROVES PREVIOUS: _____ (Dept/Date)

fiscal impact _____

fiscal note(s) _____

zero fiscal note _____

zero fiscal note(s) Elections (4.29)

SIGNING <u>DO</u> PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
		<i>Donna Dowley</i>		✓	
		<i>Terry Masten</i>		✓	
		<i>Mark Bailey</i>		X	
		<i>Mike Hill, et</i>			✓
		<i>Bill Gumbert</i>			✓
		<i>Jim Ellis</i>		X	

Donna Dowley

 CHAIRMAN'S SIGNATURE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. CSHB 327

Revision Date: _____ Department Affected: Office of Gov.-Div. of Election
 Title: Primary Elections BRU: _____
 Component: _____

Sponsor: House State Affairs Committee
 Requestor: House State Affairs Committee COMPONENT SERIAL NO.

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EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0

REVENUE						
FUND SOURCE:						

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER						
FUND SOURCE:						
TOTAL	0	0	0	0	0	0

POSITIONS: N/A

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: 0

ANALYSIS: (Attach a separate page if necessary.)

There is no fiscal impact because the funding is included in the FY93 House budget.

Prepared By: House State Affairs Committee Phone: 465-4859
 Division: _____ Date: 4/29/92
 Approved by Commissioner: Representative Gene Kubina, Chairman
 Agency: House State Affairs Committee Date: 4/29/92

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., & Impacted Agencies/ies.

Alaska State Legislature

Chairman
State Affairs
Committee

Legislative Council

Transportation
Committee

During Session:
State Capitol
P.O. Box V
Juneau, Alaska 99811
(907) 465-4859

During Interim:
P.O. Box 2463
Valdez, Alaska 99686
(907) 835-2111

Representative Eugene Kubina

SPONSOR STATEMENT FOR CSHB 327

At the present time, the Alaska statutes regarding primary elections are not consistent with the federal constitutional requirements which govern a party's right to conduct primary elections. CSHB 327 has been introduced as a vehicle by which to correct these inconsistencies.

Under current state law, Alaska has an open primary in which a voter may vote for any candidate on the ballot, regardless of party affiliation. However, now that the Republican party has voted to close its primary, Alaska law must be amended to reflect a party's ability to restrict who votes in its primary. In a U.S. Supreme Court ruling, [Tashjian v. Republican Party of Connecticut, 479 U.S. 208 (1986)], it was decided that a political party's First Amendment right of association overrides state law. Alaska law must be changed to reflect that ruling.

Section One of CSHB 327 describes the intent of the legislature to continue the open primary system when it is legally and constitutionally possible to do so.

Section Two of CSHB 327 provides for the open primary to continue for those parties that do not close their primaries. It requires the Director of the Division of Elections to prepare an open primary ballot containing the names of all candidates whose parties choose to remain in the open primary system. This ballot may be distributed to any qualified voter in the state.

In the event that a party chooses to close its primary, Section Three would require the Director of Elections to prepare a separate ballot for the candidates of that party. This ballot would be named after the party whose candidates appear on it and would be available only to those voters allowed access by that party's rules.

CSHB 327 would also require that a party notify the Division of Elections of any change in their primary by March 1st of an election year in order to give the Division time to implement the changes. In order to support the one person-one vote standard, CSHB 327 states clearly that a voter may only be given one ballot.

— DISTRICT SIX —

• Chenega Bay • Chitina • Cooper Landing • Cordova • Hope • Moose Pass • Seward • Tatitlek • Valdez • Whittier •



HOUSE COMMITTEE REPORT

(7)

Date Referred: May 14, 1991

FURTHER REFERRALS:

Judiciary
Finance

Date of Committee Action: 4/29/92

The STATE AFFAIRS Committee considered:

HB 327

HOUSE BILL NO. 327

PRIMARY ELECTIONS

"An Act relating to primary elections."

RECOMMENDATIONS:

be replaced with CS HB 327 (STA) the same title
 a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) _____

APPROVES PREVIOUS: (Dept/Date) _____

fiscal impact _____

fiscal note(s) _____

zero fiscal note House State Affairs Com. for Office of Gov. Div. of Elections zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Eugene A. Kubena</i> INDYLLA		<i>Max Krumholz</i>			<input checked="" type="checkbox"/>
<i>Tommy</i>	<input checked="" type="checkbox"/>	<i>Mike Miller</i>			<input checked="" type="checkbox"/>
<i>Al Bruckman</i> BRUCKMAN	<input checked="" type="checkbox"/>	<i>Sam up Daley</i> BAKER			<input checked="" type="checkbox"/>
		<i>David Koc...</i> CROQUETTE			<input checked="" type="checkbox"/>

Eugene A. Kubena
CHAIRMAN'S SIGNATURE

STATE OF ALASKA

OFFICE OF THE GOVERNOR

DIVISION OF ELECTIONS
P.O. BOX AF
JUNEAU, ALASKA 99811-0105
PHONE (907) 465-4611

POSITION PAPER ON CSHB 327 (STA)

The Administration's position is that we support the Open Primary and the current State law which provides for the Division to operate under that premise. We also recognize the Tashjian decision as the "Law of the Land," and we realize we may be forced to accommodate each party which chooses to restrict access to their nominating process.

The Lieutenant Governor has firmly stated that he will uphold and administer the law. As the Legislature is constitutionally recognized as the policy makers, whatever legislation is passed is the law which will prevail when addressing the question of how best to accommodate the parties' associational rights while establishing an election system which is accessible to Alaskan voters while not disenfranchising any Alaskan voter.

The Lieutenant Governor's position on how the Director of the Division of Elections will strike the ballot (under party rules currently submitted to the Division of Elections) was clearly explained in his April 22, 1992 letter which was requested by the Republican Party Chairman for their party's recently held convention. The Division notified the four party chairmen that it would accept rule changes (either withdrawal of current rules or the submission of rules cleared by the Department of Justice) by the parties until 5:00 pm May 1st, 1992. Only after 5:00pm May 1st, 1992 can there be a clear determination of the individual parties' rules and how the Director will strike the ballots accordingly.

Once again, the Administration supports an Open Primary. We acknowledge the associational rights of the parties and will work to accommodate their restrictions on voter access to their individual nominating process'. The Lieutenant Governor and the Division of Elections will abide by the law as it is currently written, or as created in legislation passed by the Alaska State Legislature, the true policy makers.

GREEN PARTY OF ALASKA 92-17

ELECTION OPTIONS RESOLUTION

WHEREAS Alaska's structure for elections, is uncertain at this time, and

WHEREAS the Green Party needs to get preclearance from the Federal Government,

THEREFORE BE IT RESOLVED that the Green Party of Alaska will participate in the open blanket primary as it has been run for the last 20 years, allowing any voter to choose to vote for any candidate in the primary election, and

BE IT STILL FURTHER RESOLVED that if there is a non-partisan ballot that Green Party candidates shall be allowed to appear on such a ballot, and if there is a Republican-only ballot and a ballot of everyone but Republicans, the Green Party shall allow its candidates to be listed on the Non-Republican Ballot Only, and

BE IT STILL FURTHER RESOLVED that if parties are limited to listing their candidates on their own ballot that the Green Party of Alaska allow any Alaska voter access to the Green Party Ballot, so long as that voter does not vote the ballot of another political party, and

BE IT STILL FURTHER RESOLVED that the Green Party of Alaska Statewide council shall have the power to adjust proposals to meet the needs of the 1992 election according to the above-listed priorities.

Approved by Consensus
Green Party of Alaska Convention
Fairbanks, Alaska
~~April~~ 22, 1992
MARU



JOHN B. COGHILL
LIEUTENANT GOVERNOR

STATE OF ALASKA
P. O. BOX AA
JUNEAU 99811-0111
(907) 465-3520

April 22, 1992

Ms. Connie Zawacki, Chair
Republican Party of Alaska
P. O. Box 243732
Anchorage, Alaska 99524-3732

Dear Ms. Zawacki:

This letter is in response to your request to know what our current position is regarding the Primary Election. Secondly, you asked us to be specific about how the ballots would be printed.

The Alaska Statutes describe an open primary as being for the benefit of all the people of Alaska. If one party wishes to close their nomination process in the Primary Election, the logical position for us to take is to provide a separate ballot. If a second party wishes to close its nomination process, then we would provide them with their separate ballot. There would then be a third ballot for the parties who wish to remain with an open primary.

The ballots, then, would be as follows:

- A. One ballot with only Republican candidates listed
- B. One ballot with only Democratic candidates listed
- C. One ballot with Alaskan Independence candidates and Green candidates listed.

Our desire is to provide the people of Alaska with the clearest balloting process possible to prevent disenfranchising the electorate. The open primary has been in effect in Alaska for 25 years, and the clearest way to change that process through the "open classic" approach is to have separate ballots.

If you have any further questions, please let me know.

Sincerely,

John B. Coghill

cc: Joe Vogler, Alaskan Independence Party
Rhonda Robercs, Democratic Party of Alaska
Ronnie Roberts, Green Party of Alaska

DRAFT INSTRUCTIONS TO VOTERS

**BALLOT CHOICES AVAILABLE
IN AUGUST 25, 1992 PRIMARY ELECTION**

THE BALLOT EXAMPLES TO THE RIGHT DISPLAY THE BALLOTS AVAILABLE TO ALL ALASKA VOTERS, WHETHER REGISTERED TO SPECIFIC PARTIES, OR REGISTERED NON-PARTISAN, "OTHER," OR "UNDECLARED."

YOU MAY SELECT ONE BALLOT ONLY. YOU MAY VOTE FOR ONLY ONE CANDIDATE IN EACH CONTEST.

THE DEADLINE FOR VOTER REGISTRATION, INCLUDING AN ADDRESS CHANGE, IS 30 DAYS BEFORE ELECTION DAY, OR JULY 26, 1992, FOR THIS PRIMARY ELECTION.

AS 15.05.010

NOTICE:

ALASKA LAW PROHIBITS ELECTION BOARD WORKERS FROM DISCUSSING ANY POLITICAL PARTY, CANDIDATE OR ISSUE WHILE ON DUTY.

AS 15.15.160

FURTHER, DURING THE HOURS THE POLLS ARE OPEN, A PERSON WHO IS IN THE POLLING PLACE OR WITHIN 200 FEET OF ANY ENTRANCE TO THE POLLING PLACE MAY NOT ATTEMPT TO PERSUADE A PERSON TO VOTE FOR OR AGAINST A CANDIDATE, PROPOSITION OR QUESTION.

AS 15.15.170

ATTENTION VOTERS

**PRIMARY ELECTION
TUESDAY, AUGUST 25, 1992**

<p>IF YOUR PARTY AFFILIATION ON YOUR VOTER REGISTRATION IS:</p> <p>ALASKAN INDEPENDENCE DEMOCRAT GREEN REPUBLICAN UNDECLARED NON-PARTISAN OTHER</p> <p>YOU CAN VOTE A BALLOT WITH CANDIDATES FROM THE FOLLOWING PARTIES:</p>	<p>IF YOUR PARTY AFFILIATION ON YOUR VOTER REGISTRATION IS:</p> <p>REPUBLICAN UNDECLARED NON-PARTISAN</p> <p>YOU CAN VOTE A BALLOT WITH CANDIDATES FROM THE FOLLOWING PARTIES:</p>														
<div data-bbox="978 862 1425 1323"> <p style="text-align: center;">↑ TOP</p> <p style="text-align: right;">C</p> <p style="text-align: center;">OFFICIAL PRIMARY ELECTION BALLOT</p> <p style="text-align: center;">← →</p> <p style="text-align: center;">THIS STUB TO BE REMOVED BY ELECTION BOARD</p> <p>AKF01</p> </div> <table border="1" data-bbox="989 1323 1415 1622"> <tr> <td colspan="2" style="text-align: center;">STATE OF ALASKA Primary Election 8/25/92</td> </tr> <tr> <td>ALASKAN INDEPENDENCE</td> <td style="width: 20px;"></td> </tr> <tr> <td>DEMOCRAT</td> <td></td> </tr> <tr> <td>GREEN</td> <td></td> </tr> </table>	STATE OF ALASKA Primary Election 8/25/92		ALASKAN INDEPENDENCE		DEMOCRAT		GREEN		<div data-bbox="1521 862 1968 1323"> <p style="text-align: center;">↑ TOP</p> <p style="text-align: right;">C</p> <p style="text-align: center;">OFFICIAL PRIMARY ELECTION BALLOT</p> <p style="text-align: center;">← →</p> <p style="text-align: center;">THIS STUB TO BE REMOVED BY ELECTION BOARD</p> <p>AKF01</p> </div> <table border="1" data-bbox="1532 1323 1957 1622"> <tr> <td colspan="2" style="text-align: center;">STATE OF ALASKA Primary Election 8/25/92</td> </tr> <tr> <td>REPUBLICAN</td> <td style="width: 20px;"></td> </tr> <tr> <td colspan="2" style="height: 40px;"></td> </tr> </table>	STATE OF ALASKA Primary Election 8/25/92		REPUBLICAN			
STATE OF ALASKA Primary Election 8/25/92															
ALASKAN INDEPENDENCE															
DEMOCRAT															
GREEN															
STATE OF ALASKA Primary Election 8/25/92															
REPUBLICAN															

7.251

The duties of a State Party Standing Committee shall be fixed by the State Committee and all Standing Committee Chairs shall work at the direction of the State Chair.

7.22

A Chair may appoint pro tem. or the membership of any Alaskan Independence Party organization may elect, a moderator to chair a meeting.

Article VIII. SEVERABILITY

The various rules of the Alaskan Independence Party, including those relating to the primary elections, are severable. Any invalidity or unenforceability of any rule or part thereof shall not effect the remainder of these Bylaws in any way.

8.01

Between conventions of the Alaskan Independence Party, the State Committee may adopt temporary rules or clarifications that are necessary to insure that the bylaws and actions of the Alaskan Independence Party are consistent with state and federal law.

Article IX. PRIMARY ELECTIONS

The Alaskan Independence Party (AIP), believing in the principle of voting for the individual, do establish an open primary election which lists all parties' candidates for office, consistent with applicable law.

9.01

Any registered voter who has not voted another primary ballot may vote in the Alaskan Independence Party primary.

9.02

The fact that a voter has voted in the Alaskan Independence Party Primary Election shall not disqualify that voter from voting in the primary election of any other political party or parties, where that voter's participation in the primary election of the Alaskan Independence Party is authorized or permitted by the rules of the other party, or by the statutes of the United States or the State of Alaska.

Article X. MISCELLANEOUS

7.26

Terms implying or denoting gender in these bylaws or in any other official correspondence of the Alaskan Independence Party, such as Chair, Vice Chair, his, him, himself, and he, are used solely for brevity and ease of reference and are not to be construed as referring to any particular gender, masculine or feminine.

ARTICLE XIV - PRIMARY ELECTIONS

Section 1. Eligible Voters

Only registered Republicans, registered Independents, and those who state no preference of party affiliation shall be allowed to vote in the Republican primary election for Governor, Lieutenant Governor, U.S. Senator, U.S. Representative, and members of the State Legislature.

Section 2. Republican Designation

No person may use the word "Republican" on any ballot or in any campaign as part of a description of himself as a candidate unless that person is a candidate of the RPA, selected according to the Rules of the RPA.

Section 3. Maximize Voter Participation in Primary Elections

(a) Any voter qualified to vote in the Republican Party primary may vote in that election, regardless of whether or not that voter has voted in the primary election of any other party.

(b) The fact that a voter has voted in the Republican Party primary election shall not disqualify that voter from voting in the primary election of any other political party or parties, where that voter's participation in the primary election of other parties is authorized or permitted by the rules of the other party or parties, or the statutes of the United States or the State of Alaska.

Section 4. Implementation of Primary Election

The SCC, or the EC in the event that there is insufficient time to convene the SCC, may adopt any and all additional rules, regulations, interpretations, clarifications, and the like, which are necessary or desirable to implement the Republican primary election in accord with other rules adopted at this Special Convention (held March 2, 1991), and pursuant to Article XIV of the Rules of the RPA. Any action taken by the Central or Executive Committee under the provisions of this rule shall have the same force and effect as if adopted by this Convention.

Section 5. Prior Registration Requirement

In order to be a candidate in any Republican Party primary election, a person must have been a registered voter of the Republican Party of Alaska for a continuous period of six (6) months immediately prior to the filing deadline for the primary election.

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

April 24, 1992

Senator Rick Halford
Chairman, Senate Judiciary Committee
State Capitol, Room 103
Juneau, Alaska 99811

Re: Composition of ballot under the
party rules

Dear Senator Halford:

You have asked how the primary election ballot should be prepared if a) the Democratic and Republican party primary participation rules currently in effect are both still in effect on May 1, or b) if the Republican rule is still in effect, but not the Democratic rule.¹ A clear answer to this question cannot be given because of the ambiguous wording of the party rules, the lack of implementing statutes or regulations, and the prospect for litigation. However, in our opinion, if both rules remain in effect, it would be reasonable to implement the primary with the following three ballots:

- a Republican ballot containing the candidates of all four parties; only Republicans and independents (whether registered as independents or providing no designation at all) may cast this ballot;
- a Democratic ballot containing the Democratic, Alaska Independence, and Green candidates; any registered voter may cast this ballot;
- a third ballot (the "statutory primary" ballot) containing Alaska Independence and Green candidates; any registered voter could cast this ballot.

If the Democrats withdraw their rule, there should be two ballots -- the Republican ballot described above, and the statutory primary ballot, which would now also contain Democratic candidates. Regardless of the number of ballots, no one may vote more than one ballot.

¹ Both parties' rules have been precleared by the U.S. Department of Justice, as required by Section 5 of the federal Voting Rights Act of 1965, as amended. 42 U.S.C. § 1973c.

WALTER J. HICKEL, GOVERNOR

PLEASE REPLY TO:

1031 W. 4TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501-1994
PHONE: (907) 269-5100
FAX: (907) 276-3697

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Both the Republican and Democratic party rules are poorly drafted and ambiguous, and could be given a different interpretation.² However, our interpretation involves the least possible departure from the primary election statutes (AS 15.25.010 - 15.25.130).

Adherence to the Republican and Democratic party rules, even when inconsistent with the state blanket primary laws, is required by the decision of the United States Supreme Court in Tashjian v. Republican Party of Connecticut, 479 U.S. 208 (1986). See 1992 Inf. Op. Att'y Gen. (Feb 28.; 663-92-0407). However, Tashjian requires departure from state statutes only to the extent necessary to protect a party's associational rights under the First and Fourteenth Amendments to the United States constitution. Since all state officials are bound to uphold the laws of the state, it follows that ambiguities in party rules should be interpreted so as to be consistent with state statutes, rather than inconsistent.

The state's primary election laws, AS 15.25.010 -- 15.25.130, contemplate maximum participation by the electorate in a primary election: any qualified voter, regardless of party registration (or non-partisan status), can vote for any candidate of any party. Both parties' rules would require some modification of this principle. However, the modification should be minimized and harmonized with existing law. This means allowing voters the broadest choices possible consistent with party rules.

In the case of the Republican ballot, this reasoning requires that candidates of all parties appear on the Republican ballot. The Republican rule provides that voters registered as members of other parties may not vote for Republican candidates in the primary. The rule does not provide that persons wishing to vote in the Republican primary are restricted to voting only for Republican candidates. In Doyle v. State, A90-248 Civ. (D. Alaska), a lawsuit by the Republican Party of Alaska seeking to

² Lieutenant Governor Coghill, who by statute appoints and supervises the director of the Division of Elections, interprets the rules differently. In a recent letter to Republican Party chair Connie Zawacki, he stated that there would be three separate ballots, one with only Republican candidates, one with only Democratic candidates, and one (the statutory primary ballot) with Alaska Independence and Green candidates. As our letter to you indicates, we do not agree with the lieutenant governor's construction of the party rules. We believe his interpretation may depart from the election code to a greater degree than is necessary to satisfy the associational rights of the political parties without ceding to them control over state election procedures.

have its rule instituted for the 1990 primary election, we argued that the rule should be implemented in the manner just discussed. Because U.S. District Judge Russell Holland dismissed the suit on procedural grounds, he did not reach the issue of whether the state's proposed implementation was correct.

The Democratic rule is even more vague than the Republican rule; it states only that there will be a Democratic primary. Nothing in this rule can be remotely read as restricting the Democratic ballot to candidates seeking the nomination of the Democratic Party.

With respect to the Democratic rules, the party chair, Rhonda Roberts, stated that the rules were adopted only to protect the party against the Republican party's expressed desire, in its rules, that qualified voters be able to vote both the Republican ballot and the ballot of any other party allowing Republicans and independents to vote. According to Ms. Roberts, if the Division of Elections will not allow a voter to cast more than one ballot in the primary election,³ a separate Democratic ballot would be unnecessary; i.e., the Democrats would simply want to appear on the statutory primary ballot. However, the Democratic rule does state unequivocally, "There is established a Democratic Party primary in Alaska." In our opinion there must therefore be a separate Democratic ballot, even if it contains all candidates (except Republicans) and is open to all voters. If the Democratic Party wishes to have its candidates appear solely on the statutory primary ballot, it must rescind its rule.

In the absence of judicial intervention, the Division of Elections is the agency responsible by law for preparing the primary ballot. As discussed above, in note 2, the lieutenant governor has given notice of a different interpretation of the party rules than we have set out here. We will discuss the

³ Two Alaska statutes prohibit a voter from voting for more than one candidate when only one person can be elected. AS 15.15.360(a)(4) and 15.20.730(b)(5) (both made applicable to primary elections through AS 15.25.090). Two other statutes prohibit voters from voting more than once in an election. AS 15.15.210 (person whose right to vote is questioned must state in affidavit that person has not voted at same election); AS 15.15.410 (upon determining that person has voted more than once in same election, director of Division of Elections shall notify attorney general). Finally, the United States Supreme Court has stated that a state has a compelling interest in limiting a person to a single nominating act. Anderson v. Celebreeze, 460 U.S. 780, 802 n.29 (1983); American Party of Texas v. White, 415 U.S. 767, 785 (1973).

Senator Rick Halford
Chairman, Senate Judiciary Committee

April 24, 1992
Page 4

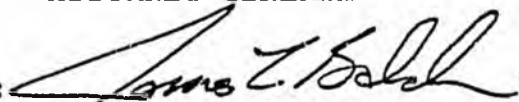
contents of the opinion with him and work toward a uniform application of the party rules to the procedures for primary elections set out in the election code.

Please feel free to contact us if we can be of further assistance.

Very truly yours,

CHARLES E. COLE
ATTORNEY GENERAL

By:



James L. Baldwin
Assistant Attorney General

cc: Lt. Gov. Coghill
Charlot Thickstun, Director, Division of Elections
Joe Vogler, Alaskan Independence Party
Rhonda Roberts, Democratic Party of Alaska
Ronnie Rosenberg, Green Party of Alaska
Connie Zawacki, Republican Party of Alaska

JLB:lmk



Alaska State Legislature

From Gruenberg

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

April 22, 1992

Hon. John B. "Jack" Coghill
Lt. Governor
State of Alaska
Juneau, Alaska 99811

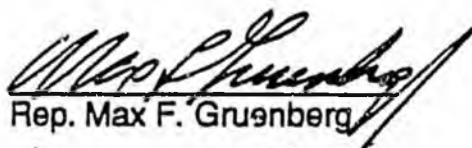
Dear. Lt. Governor Coghill:

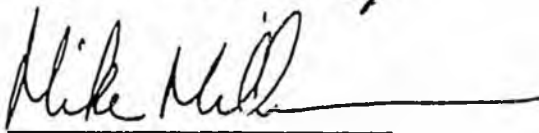
Enclosed are two opinions from the Division of Legal Services discussing whether the lieutenant governor and the Division of Elections have the legal authority to adopt regulations implementing party rules closing the primary election. The opinions conclude that the lieutenant governor and the division lack the authority to do so under present law.

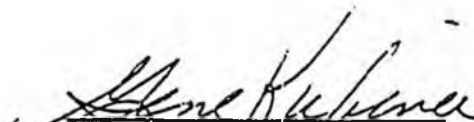
The legislature has before it two bills that would deal with the primary closure problem in very different ways. Both are constitutional under Tashjian. However we have not passed either of these proposals.

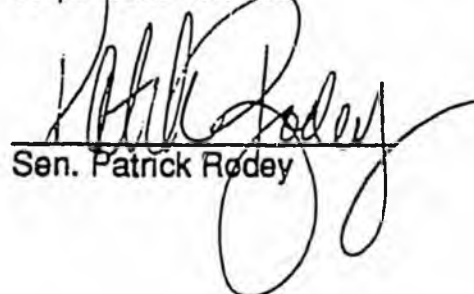
Unless and until the legislature passes legislation authorizing the implementation of restrictive party rules, we respectfully request you not to exceed your statutory authority.

Sincerely,


Rep. Max F. Gruenberg


Rep. Mike Miller


Rep. Gene Kubina


Sen. Patrick Rodey

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

240 Main Street, Suite 500
Juneau, Alaska 99801-2101

MEMORANDUM

March 13, 1992

SUBJECT: Present Ability of Lieutenant Governor to Promulgate Elections Rules That Complied With Tashjian Decision (Work Order No. 7-LS1188)

TO: Representative Max Gruenberg
Attention: Stan Robbins

FROM: Robert Glennon Casey *RGC* 3-13-92
Legislative Counsel

I. INTRODUCTION

You have asked for a discussion of the authority of the Lieutenant Governor of Alaska and the Division of Elections to adopt regulations to make Alaska's elections procedures comply with the U.S. Supreme Court's ruling in Tashjian v. Republican Party of Connecticut, 479 U.S. 208 (1986).

II. SUMMARY

The Lieutenant Governor and the Division of Elections probably lack authority to adopt regulations to make Alaska's primary election law comply with the Tashjian decision. No statute or constitutional provision appears to give the Lieutenant Governor or the Division of Elections the power to adopt regulations that make new election law.

The details behind this conclusion are provided in section IV of this memorandum.

III. FACTS

Alaska law currently provides for a "blanket" primary. In a blanket primary, all voters receive the same ballot and each voter may vote for any candidate regardless of party affiliation.

The Republican Party of Alaska, however, has adopted a conflicting rule that closes the voting for Republican candidates in primary elections to all voters except

Republicans and independents. Furthermore, the United States Supreme Court ruled in the Tashjian case that such a party rule is a constitutionally-protected exercise of the right of association. When such a party rule conflicts with a state election statute, it is the statute which must yield.

There had been some question as to whether the Tashjian case applied in Alaska, but a February 28, 1992 memorandum of Attorney General Charles E. Cole concluded that Tashjian was applicable and that "a court would hold that the Republican Party's rule limiting participation in the selection of the party's candidates must be implemented, notwithstanding its conflict with Alaska's blanket primary statutes."

IV. DISCUSSION

The difficult practical question is how to implement the Republican Party's rule. Neither the Lieutenant Governor nor the Division of Elections would appear to have the power to adopt regulations that would meet the participation requirements of the Republican Party rule.

1. The Requirement that Rule-Making Be Authorized. Under Alaska law, administrative rule-making requires a statutory or constitutional grant of authority. For example, Alaska's Administrative Procedure Act (APA) provides that "[t]o be effective, each regulation adopted must be within the scope of authority conferred and in accordance with standards prescribed by other provisions of law," AS 44.62.-020.

Court decisions have been consistent with that formulation. For example, in Rutter v. State, 668 P.2d 1343, 1349 (1983) the Alaska Supreme Court ruled that "[a]dministrative agencies are creatures of statute, deriving from the legislature the authority for the exercise of any power they claim." In a similar vein, the decision of State v. Alyeska Pipeline Service Co., 723 P.2d 76, 78 (Alaska 1986) ruled that "[r]egulations promulgated by an executive department must be authorized by statute."

In sum, it would seem that the Lieutenant Governor or the Division of Elections could only adopt regulations accommodating the Republican Party rule if some provision of law gave the Lieutenant Governor or the Division of Elections the power to do so.

2. The Lieutenant Governor and the Division of Elections Lack Authorization. There does not appear, however, to be any provision in either the Alaska Constitution or the Alaska Statutes which would authorize the Lieutenant Governor or the Division of Elections to adopt regulations that essentially made new primary election law.

For example, art. III, § 7 of the Alaska Constitution only states that the lieutenant governor "shall perform such duties as may be prescribed by law and as may be

Representative Max Gruenberg

March 13, 1992

Page 3

delegated to him by the governor." That provision does not authorize adoption of regulations that would change the essential nature of Alaska's primary election system.

Statutory provisions also would not authorize the lieutenant governor to adopt such regulations. AS 44.19.020 states that "[t]he lieutenant governor shall administer state election laws," and AS 15.10.105(a) provides that "[t]he lieutenant governor shall control and supervise the division of elections," but these statutes only authorize administrative functions of a ministerial nature. They would not authorize adoption of regulations that were inconsistent with Alaska's primary election statutes.

In this connection, the Alaska Supreme Court ruled in State v. Anderson, 749 P.2d 1342, 1344 (1988) that the validity of a regulation partly depends on "whether it directly conflicts with any other statute." Regulations from the lieutenant governor implementing a closed Republican primary would conflict with existing statutes. As Attorney General Cole noted in his February 28, 1992 memorandum:

Alaska has a "blanket" primary, in which all voters select the nominees of all parties. Under AS 15.25.010 - 15.25.130, all candidates of all political parties run on one ballot, and any registered voters, regardless of party affiliation, can vote for any candidate. The only restriction is that voters may cast only one vote for each office on the ballot.

[footnote omitted]

A regulation that conflicted with AS 15.25's provision of an open primary would not be statutorily authorized.

The same principle would apply to regulations that the Division of Elections might adopt under AS 15.07.070, AS 15.10.020, 15.10.030, AS 15.15.010, 15.15.060, 15.15.350, 15.15.361, and 15.15.370. Regulations adopted pursuant to those enabling sections must be consistent with Alaska's existing statutory provision of a blanket primary. In any event, the subject matter of regulations authorized by those statutes does not include the qualification of a voter to vote for particular candidates in a primary election.

In sum, the lieutenant governor and Division of Elections lack constitutional or statutory authority to provide by regulation for a closed Republican primary election.

Representative Max Gruenberg
March 13, 1992
Page 4

V. CONCLUSION

The lieutenant governor and the Division of Elections probably lack the authority to conform Alaska's primary elections to the Tashjian decision's requirements by means of regulation.

RGC:pl
92-171.plm

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

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Mail Stop 3101

240 Main Street, Suite 500
Juneau, Alaska 99801-2101

MEMORANDUM

March 30, 1992

SUBJECT: Supplemental Discussion of Regulations
Implementing Closed Primary Elections
(Work Order No. 7-LS1188)

TO: Representative Max Gruenberg
Attention: Stan Robbins

FROM: Robert Glennon Casey
Legislative Counsel

RGC 3-30-92

I. INTRODUCTION

This memorandum reconsiders the opinion expressed in an earlier memorandum from the Division of Legal Services, dated March 13, 1992. That earlier memorandum concluded that neither the Lieutenant Governor of Alaska nor the Division of Elections possessed the authority to adopt regulations that conflicted with the open (or "blanket") primary system provided in AS 15.25.010 - 15.25.130.

II. SUMMARY

The original opinion stands. Regulations would be unauthorized for reasons given in the previous memorandum and also for reasons given below.

III. DISCUSSION

The impetus for this discussion is a December 3, 1991 memorandum of the Department of Law. Pages 4 and 5 of that memorandum indicated that under Denardo v. State, 741 P.2d 1197 (Alaska 1987) the Division of Elections might possess authority to adopt regulations authorizing a closed primary. (Copies of the Denardo decision and the memorandum of the Department of Law accompany this memorandum.)

Denardo, however, seems to stand for the opposite conclusion. The Denardo ruling probably means that such regulations are unauthorized, if they conflict with either a currently effective statute or a currently effective statement of legislative intent.

In Denardo, a regulation was upheld, but it is important to examine the reasons why the court reached its result in that case. The Denardo court upheld the regulation because: (1) the regulation did not conflict with any statute in effect at the time the regulation was promulgated, (2) there were clear statements of legislative support for the substance of the regulation (thereby enabling the court to conclude that the regulation was within an express or implied delegation of rule-making authority under AS 15.15.010), and (3) the regulation was neither arbitrary nor unreasonable. The first two of these criteria would not attend an immediate adoption of regulations that facilitated closed primary elections.

First, the statute requiring an open (or "blanket") primary election, AS 15.25.060, continues to be in effect. Unlike the statute in Denardo, this statute has not been judicially invalidated. It is beside the point that a court would probably rule AS 15.25.060's mandate of open ("blanket") primary election balloting unconstitutional in certain factual settings. Statutes that are "probably unconstitutional" continue to be in effect until a court rules them unconstitutional. AS 15.25.060 is a currently effective statute, and "agency rules cannot amend a statute," Denardo, 741 P.2d at 1198.

Second, the Alaska Legislature has not stated any support for closed primary balloting. Absent such a statement of support, it is difficult to find in AS 15.15.010 an express or implied delegation of authority to adopt regulations that would conflict with AS 15.25.060.

There was legislative support for the regulation in Denardo, but the facts of that case differed from the current situation: (1) the legislature had passed a law that accorded with the regulation subsequently adopted by the Division of Elections, (2) the regulation merely filled the period prior to the statute's effective date, and (3) the regulation did not conflict with any currently-effective statute.

In the present case, by contrast, the Alaska Legislature has not enacted a law supportive of closed primaries. Instead, the legislature's only statement appears to be AS 15.25.060 - a statute opposed to closed primary balloting and certainly not a delegation of power to adopt a contrary regulation. So, the facts that enabled the Denardo regulation to be upheld are reversed in the present case, and regulations from the Division of Elections would be unauthorized.

IV. CONCLUSION

In conclusion, a regulation facilitating closed primary election balloting would conflict with a currently effective statute and would also lack any expression of legislative support. Under both Denardo and the authorities cited in this office's previous memorandum, such a regulation is not authorized.

Daniel R. DENARDO, Appellant,

v.

STATE of Alaska, Appellee.

No. S-1679.

Supreme Court of Alaska.

Sept. 11, 1987.

Independent gubernatorial candidate brought action challenging Alaska Division of Elections' refusal to place his name on the ballot. The Superior Court, Third Judicial District, Anchorage, Brian C. Shortell, J., sustained Division's actions, and appeal was taken. The Supreme Court, Compton, J., held that: (1) Division's action, in promulgating rule regarding number of names needed on nominating petitions for independent candidates, did not constitute improper attempt to amend an unconstitutional statute, and (2) regulation as to number of names required on petitions was valid.

Affirmed.

1. Elections ¶21

Statutes ¶133

After state statute requiring independent gubernatorial candidates to submit nominating petitions signed by qualified voters equal in number to at least three percent of number of votes cast in preceding general election was declared unconstitutional, State Division of Elections' promulgation of a one percent rule did not constitute an impermissible attempt to amend an unconstitutional statute; three percent provision became null and void upon its being declared unconstitutional, and Division's action was taken when legislature did not act to amend statute until after nomination petition deadline for gubernatorial election had passed. AS 15.25.160.

2. Elections ¶21

After state statute requiring independent gubernatorial candidates to submit nominating petitions signed by qualified voters equal in number to at least one percent of those voting in previous general

Alaska Rep. 737-741 P.2d-13

election was declared unconstitutional, State Division of Elections' promulgation of a one percent rule was consistent with delegating statute and reasonably necessary for administration of state elections; legislature did not immediately act to amend statute after three percent provision was declared unconstitutional, but had previously expressed its desire to place some limitation on access to the gubernatorial ballot. AS 15.25.160.

3. Action ¶6

Superior court properly determined that issue of write-in gubernatorial candidate access to a voter information pamphlet was not ripe for decision; despite allegation that State Division of Elections had informally indicated that such candidates would not have access to the pamphlet, there was no indication that any attempt to wage a write-in campaign had actually been made.

Daniel R. DeNardo, Anchorage, pro se.

Susan D. Cox, Asst. Atty. Gen., Grace Berg Schaible, Atty. Gen., Juneau, for appellee.

Before RABINOWITZ, C.J., and BURKE, MATTHEWS, COMPTON and MOORE, JJ.

OPINION

COMPTON, Justice.

Daniel R. DeNardo claims that the Alaska Division of Elections (Division) improperly refused to place his name on the ballot for the 1986 gubernatorial election. The division based its action on DeNardo's failure to comply with then 6 AAC 25.160 (Eff. 12/19/85), which required independent gubernatorial candidates to submit nominating petitions signed by qualified voters equal in number to at least one percent of those voting in the previous general election. DeNardo asserts that the regulation was invalid. The superior court sustained the actions of the division. We affirm.