

ALASKA LEGISLATURE COMMITTEE FILES 1995-1996 8672

8623 HOUSE JUDICIARY

Alaska State House of Representatives
House District 39

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



Interim
P.O. Box 137
Akiak, Alaska 99552
Phone: (907) 765-7526

Representative Ivan M. Ivan

SPONSOR STATEMENT - COMMITTEE SUBSTITUTE HOUSE BILL 391 (CRA)

This bill was introduced by request of the Department of Community and Regional Affairs and the Local Boundary Commission. Currently, the state automatically becomes the successor to a dissolved municipality unless another municipal government assumes such responsibility. In most cases, the state becomes the successor by default. This means the state takes over the responsibility and liability of owning properties such as solid waste facilities, bulk fuel storage facilities, power utilities, sewer systems and other facilities previously owned by the municipality.

Cs for House Bill 391 (CRA) allows the Local Boundary Commission to designate an Indian Reorganization Act council, a council that provides services under federal law, another municipality, non profit corporation or the state to be a direct successor to a dissolved municipality. The terms of the transfer of assets and liabilities of the dissolved municipality must be approved by the Department of Law. The bill also specifies that any transfer of assets or liabilities does not constitute recognition by the state of that organization.

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CHANGES IN COMMITTEE SUBSTITUTE FOR HB 391 (CRA)

The changes that were made in the Committee Substitute for House Bill 391 (CRA) were recommended by the Department of Community and Regional Affairs, the Department of Law and the Department of Natural Resources.

Changes are as follows:

- (1) Title. Adds "and to the administration and disposal of certain land of dissolved municipalities." This reflects the various changes made throughout the bill.
- (2) Section 1, Line 6. At the suggestion of the Department of Natural Resources, before the Local Boundary Commission and the Department of Law decide where a dissolved municipalities former state land assets will be transferred, DNR be consulted.
- (3) Section 1, Line 7. Reference is made to AS 38.05.825(d), suggested by DNR. This statute requires that tide and submerged land conveyed revert to the state upon dissolution of the municipality. The reason for this, as stated by DNR, is to protect the public interest as established through the public trust doctrine.
- (4) Section 1, Line 13. Moved the state as a successor from the first option to the last option as noted in subsection (b), found on page two, line 6 of the committee substitute. This addresses the Department of Law's concern that the state succeed to the dissolved municipality's assets or liabilities only if there is no other successor, as another municipality, under current law. This lessens the liability for the state in the succession process.
- (5) Section 1, Line 14. Reference is changed from "a Native council organized under federal law" to "a council formed under 25 U.S.C. 473(a)." This change was recommended by the Department of Law. According to the department, a Native council organized under federal law is generally considered to be a federal IRA council. This conflicts with current regulations and practice which allow traditional

councils, as well as IRA's and nonprofit corporations to be deeded certain real properties from dissolved municipalities. Also, in the original bill, reference was made to "within the entire area of the dissolved municipality" which may have caused problems since Indian country is not recognized in Alaska, except in Metlakatla, and it could be that the area where a Native council operates may be different from what were the boundaries of the former municipality.

(6) Section 1, Page 2, Line 18. The change in subsection (c) (Lines 18-19) is a change in drafting and technical in nature. This change was recommended by the Department of Community and Regional Affairs.

(7) Section 2, Page 3, Line 4. The original bill would have deleted authority of the commissioner of DC&RA to dispose of relevant trust lands to an appropriate village entity if a municipality dissolves. Current regulations allow the commissioner of DC&RA to transfer the lands of a dissolved municipality to an appropriate village entity. Deletion of this authority would make current regulations inapplicable to land asset distribution in the event of a municipal dissolution. Therefore, the Department of Law recommended reinstating this authority.

(8) Section 3. Recommendation by the Department of Law that requires that the transfer of land by sale, lease, right of way, easement or permit, may be made by the commissioner only after the approval of the appropriate village entity by resolution filed with the department.

(9) Section 4. Language added to AS 44.47.150 (c) which states that after one complete fiscal year after incorporation of a municipality that includes all or part of the area of a dissolved municipality, land or interest in land acquired under (a) (3) of this section and retained by the state will be conveyed without cost to the newly incorporated municipality.

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Representative Ivan M. Ivan

SECTIONAL ANALYSIS - CS for HOUSE BILL 391 (CRA)

Section 1: Amends AS 29.06.520. Succession. Upon dissolution by a municipality, the Local Boundary Commission, after consulting with the Department of Natural Resources, shall arrange for the assumption of assets or liabilities of the dissolved municipality by one or more successors. These successors may be a municipality, a council formed under 25 U.S.C. 473a (Indian Reorganization Act), a council that provides services under federal law to residents of the area of the dissolved municipality, a nonprofit corporation that is qualified for an entitlement under AS 29.60.140 (State Aid to Unincorporated Communities), or to the state. In this section, reference is made to AS 38.05.825(d). This statute requires that tide and submerged land conveyed revert to the state upon dissolution of the municipality. The reason for this, as stated by DNR, is to protect the public interest as established through the public trust doctrine. This section also states the Local Boundary Commission give preference to the above mentioned entities prior to turning over assets or liabilities to the state. A contract is to be signed prior to the transfer of assets or liabilities to an IRA Council or a council that provides services under federal law. This contract does not constitute recognition by the state of any governmental powers of that successor.

Section 2: Amends AS 44.47.150(a), Land Conveyed in Trust. A new subsection is added to existing language stating that with the concurrence of the Local Boundary Commission, the Commissioner of the Department of Community and Regional Affairs may accept, administer and dispose of land conveyed to the state, under the authority established under Section 1 of this bill, as a result of a dissolution of a municipality.

Section 3: Amends AS 44.47.150(b), Land Conveyed in Trust. This section requires that the transfer of land by sale, lease, right of way, easement or permit, may be made by the commissioner of the Department of Community and Regional Affairs only after the approval of the appropriate village entity by resolution filed with the department.

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Sectional Analysis
CSHB 391 (CRA)

Section 4: Amends AS 44.47.150(c), Land Conveyed in Trust. The new language added to this subsection states that after one complete fiscal year after incorporation of a municipality that includes all or part of the area of a dissolved municipality, land or interest in land acquired under (a) (3) of this section and retained by the state will be conveyed without cost to the newly incorporated municipality.

Testimony Before the House C&RA Committee
February 8, 1996

by:
Patrick K. Poland, Director
Municipal & Regional Assistance Division
Department of Community & Regional Affairs

Regarding Committee Substitute for House Bill No. 391
"An Act relating to succession to assets and liabilities of dissolved
municipalities."

The Department of Community and Regional Affairs strongly supports CSHB 391. Simply put, the bill allows the State to take itself out of the role of successor to the powers, rights, duties, assets and liabilities of dissolved municipalities.

Under existing law, the State automatically becomes the successor to a dissolved municipality, unless another municipal government assumes such responsibility. While the existing law provides a preference for another municipality to be the successor – in reality, the State has invariably taken on that role by default.

Since the mid-1980s, seven proposals have been filed to dissolve municipalities in Alaska. All were cities in the unorganized borough. As such, in every case, dissolution would saddle the State with potentially significant responsibilities and liabilities associated with properties such as solid waste facilities, bulk fuel storage facilities, electrical utilities, fire halls, community meeting halls, sewage systems, water utilities and the like.

Even if a city within an organized borough dissolves, the State may find itself as the successor. There is nothing in the current law that requires an organized borough to become the successor to a dissolved city within its boundaries.

The Local Boundary Commission now stipulates as a condition of dissolution, that some local group must accept a reconveyance from the State of all properties and obligations of the former municipality. While this substantially reduces the State's responsibilities and liabilities with respect to the local properties, it does not eliminate them since the State – by law – is in the "chain of title" for all properties of the dissolved municipalities.

CSHB 391 allows the Local Boundary Commission, after consulting with the Department of Natural Resources, to designate a local group to be the direct successor to a dissolving municipality. The group may be a Native council, non profit corporation or even another municipality if one is available and willing to serve as the successor. The transfer of assets and liabilities can take place only upon terms approved by the Department of Law.

Presently, when the State receives assets from a dissolved municipality and subsequently transfers them to a local successor, it does so through a formal agreement prepared by the Department of Law. DCRA has worked closely with the Local Boundary Commission and the Department of Law to develop a standard set of conditions for inclusion in those agreements.

They include:

- covenants that the properties will be used only for public purposes and will be available to the public without restrictions as to race, color, national origin or sex;
- a formal waiver of sovereign immunity whenever the successor is a Native village council, in order to ensure that the agreement is enforceable;
- covenants that lands transferred to a Native Village council as a successor do not constitute "Indian Country";
- provisions that the local successor must transfer all properties, without consideration or other conditions, upon request to a future city or organized borough encompassing the community in question.

In conclusion, it is my strong belief that CSHB 391 is good public policy in that it removes the State from unnecessary exposure to liabilities associated with the dissolution of municipalities.

STATE OF ALASKA

DEPARTMENT OF COMMUNITY AND REGIONAL AFFAIRS

OFFICE OF THE COMMISSIONER

TONY KNOWLES, GOVERNOR

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June 22, 1995

The Honorable Ivan Ivan
Co-Chairman
House Committee on Community and Regional Affairs
Alaska House of Representatives
716 W. 4th Ave; Suite 380
Anchorage, AK 99501-2133

Dear Representative Ivan:

This is to bring you up-to-date on our efforts to resolve one of the few remaining procedural impediments concerning dissolution of municipal governments.

AS 29.06.520 provides that if another municipal government does not succeed to the assets and liabilities of a dissolved municipal government, the State must do so. Such would be the case for each of the six pending city dissolutions (Akiak, Atmaultuak, Kasigluk, Newtok, Tuluksak and Tununak). Neither this agency nor any of those six communities want the State to succeed to the assets and liabilities of the cities pending dissolution.

In order to establish procedures under which the assets of dissolved cities may be returned to a local successor, I intend to propose regulations under AS 44.47.150(a)(2) to allow the Department to accept, administer and dispose of real property obtained from a dissolved municipality. The proposed regulations and public notice relating to the matter have been drafted and are currently being reviewed by the Department of Law.

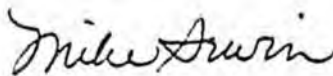
If adopted, the regulations will enable us to convey former municipal lands to an IRA council or traditional council. While this is the best we can do under our regulatory authority, I believe that a better long-term approach is warranted. I

The Honorable Ivan Ivan
June 22, 1995
Page Two

would prefer that AS 20.06.520 be amended to allow, upon approval by the Local Boundary Commission, that assets and liabilities of a dissolved city to be transferred directly to the local successor (bypassing the State). I would appreciate your support in making such a change to the statutes.

I will continue to keep you informed of matters relating to the proposed regulations and the pending dissolution of the six cities in question.

Cordially,



Mike Irwin
Commissioner

cc: Patrick K. Poland, Director, Municipal & Regional Assistance Division

CS FOR HOUSE BILL NO. 391(CRA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

Offered:

Referred:

Sponsor(s): REPRESENTATIVE IVAN

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to succession to assets and liabilities of dissolved municipalities,
2 and to the administration and disposal of certain land of dissolved municipalities."

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

4 * Section 1. AS 29.06.520 is amended to read:

5 Sec. 29.06.520. SUCCESSION. (a) When a municipality dissolves, the
6 Local Boundary Commission shall, after consulting with the Department of
7 Natural Resources and except as provided in AS 38.05.825(d) and AS 44.47.150(f),
8 arrange for the assumption of the liabilities and assets of the dissolved
9 municipality by one or more successors. Assets or liabilities may not be
10 transferred to a successor except upon terms approved in writing by the
11 Department of Law. A successor to assets or liabilities of a dissolved municipality
12 may only be

13 (1) a municipality;

14 (2) a council formed under 25 U.S.C. 473a;

1 (3) a council that provides services under federal law to residents
2 of the area of the dissolved municipality;

3 (4) a nonprofit corporation that is qualified for an entitlement
4 under AS 29.60.140; or

5 (5) subject to (b) of this section, the state.

6 (1) In arranging for the assumption of assets and liabilities of a dissolved
7 municipality by one or more successors, the Local Boundary Commission shall
8 give preference to entities listed in (a)(1) - (4) of this section. If the Local
9 Boundary Commission determines that it is not practicable for an entity listed in
10 (a)(1) - (4) of this section to be the successor to an asset or liability of a dissolved
11 municipality, the state may succeed to that asset or liability.

12 (c) If the state or a [A] municipality succeeds [SUCCEEDING] to assets or
13 liabilities of a dissolved municipality, the state or successor municipality succeeds
14 to all rights, powers, and duties [, ASSETS, AND LIABILITIES] of the dissolved
15 municipality necessary for the management of the assets or liabilities. The [.
16 OTHERWISE. THE STATE SUCCEEDS TO THOSE RIGHTS, POWERS, DUTIES,
17 ASSETS, AND LIABILITIES. IF THE STATE SUCCEEDS TO A DISSOLVED
18 MUNICIPALITY, THE] state may enter into a contract for the performance of duties
19 or powers in the area of the dissolved municipality.

20 (d) Transfer of assets or liabilities of a dissolved municipality to an
21 organization under (a)(2) or (3) of this section or [HOWEVER,] a contract with an
22 organization for the performance of duties or powers entered into by the state under
23 (c) of this section does not constitute recognition by the state of any governmental
24 powers of that successor or organization.

25 * Sec. 2. AS 44.47.150(a) is amended to read:

26 (a) The commissioner

27 (1) shall accept, administer, and dispose of land conveyed to the state
28 in trust by village corporations under 43 U.S.C. 1613(c)(3) (Sec. 14(c)(3) of the Alaska
29 Native Claims Settlement Act) for the purposes specified in that section;

30 (2) may, with the concurrence of an appropriate village entity
31 recognized by the commissioner under (b) of this section or, in the absence of an

1 appropriate village entity, under procedures prescribed by regulations of the
2 commissioner, accept, administer, and dispose of land conveyed in trust by a state or
3 federal agency;

4 (3) may, with the concurrence of the Local Boundary Commission,
5 accept, administer, and dispose of land conveyed to the state under AS 29.06.520
6 as a result of the dissolution of a municipality [AND BY THE DISSOLUTION OF
7 A MUNICIPALITY UNDER AS 29.06.450 - 29.06.530].

8 * Sec. 3. AS 44.47.150(b) is amended to read:

9 (b) Transfer of land acquired under (a)(1) or (2) of this section by sale, lease,
10 right-of-way, easement, or permit, including transfer of surface resources, may be made
11 by the commissioner only after approval of an appropriate village entity such as the
12 traditional council, a village meeting, or a village referendum. This approval shall be by
13 resolution filed with the department.

14 * Sec. 4. AS 44.47.150(c) is amended to read:

15 (c) Within one complete state fiscal year after the incorporation of a municipality
16 in the village or of a municipality that [WHICH] includes all or part of the village, land
17 acquired under (a)(1) or (2) of this section shall be conveyed without cost to the
18 municipality, and the municipality succeeds [SHALL SUCCEED] to all the entrusted
19 interest in the land. Within one complete state fiscal year after incorporation of a
20 municipality that includes all or part of the area of a dissolved municipality, land
21 or an interest in land acquired under (a)(3) of this section and retained by the state
22 shall be conveyed without cost to the newly incorporated municipality.

HOUSE BILL NO. 391

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY REPRESENTATIVE IVAN

Introduced:

Referred:

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to succession to assets and liabilities of dissolved municipalities."

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

3 * Section 1. AS 29.06.520 is amended to read:

4 Sec. 29.06.520. SUCCESSION. (a) When a municipality dissolves, the
 5 Local Boundary Commission shall arrange for the assumption of the liabilities
 6 and, except as provided in AS 44.47.150(f), the assets of the dissolved municipality
 7 by one or more successors. Assets or liabilities may not be transferred to a
 8 successor except upon terms approved in writing by the Department of Law. A
 9 successor may be

10 (1) the state;11 (2) a municipality;12 (3) a Native council organized under federal law that is operating
13 within the entire area of the dissolved municipality; or14 (4) a nonprofit corporation that is qualified for an entitlement
15 under AS 29.60.140 and that is operating within the entire area of the dissolved

1 municipality.

2 (b) If the state or a [A] municipality succeeds [SUCCEEDING] to assets or
3 liabilities of a dissolved municipality, the state or successor municipality succeeds
4 to all rights, powers, and duties [, ASSETS, AND LIABILITIES] of the dissolved
5 municipality necessary for the management of the assets or liabilities [.
6 OTHERWISE, THE STATE SUCCEEDS TO THOSE RIGHTS, POWERS, DUTIES,
7 ASSETS, AND LIABILITIES]. If the state succeeds to assets or liabilities of a
8 dissolved municipality, the state may enter into a contract for the performance of
9 duties or powers in the area of the dissolved municipality.

10 (c) Transfer of assets or liabilities of a dissolved municipality to an
11 organization under (a)(3) or (4) of this section or [HOWEVER.] a contract with an
12 organization for the performance of duties or powers entered into under (b) of this
13 section does not constitute recognition by the state of governmental powers of that
14 organization.

15 * Sec. 2. AS 44.47.150(a) is amended to read:

16 (a) The commissioner

17 (1) shall accept, administer, and dispose of land conveyed to the state
18 in trust by village corporations under 43 U.S.C. 1613(c)(3) (Sec. 14(c)(3) of the Alaska
19 Native Claims Settlement Act) for the purposes specified in that section;

20 (2) may, with the concurrence of an appropriate village entity
21 recognized by the commissioner under (b) of this section or, in the absence of an
22 appropriate village entity, under procedures prescribed by regulations of the
23 commissioner, accept, administer, and dispose of land conveyed in trust by a state or
24 federal agency [AND BY THE DISSOLUTION OF A MUNICIPALITY UNDER
25 AS 29.06.450 - 29.06.530].

STATE OF ALASKA
1986 LEGISLATIVE SESSION

BILL NO: HB 391

Revision Date: 1/11/96
Title: Relating to succession to assets and liabilities
of dissolved municipalities
Sponsor: Rep. Ivan
Requestor: Rep. Ivan

Dept. Affected: Community & Regional Affairs
BRU: Local Government Assistance
Component: Local Boundary Commission
COMPONENT SERIAL NO. 674

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

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

FUNDING: (Thousands of Dollars)

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

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

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Remond Henderson, Director *Remond Henderson* Phone: 465-4708
Division: Administrative Services Date: 1/11/96
Approved by Commissioner: Mike Irwin *Mike Irwin* Date: 1/11/96
Agency: Mike Irwin, Dept. of Community & Reg. Affairs

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FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. HB 391

Revision Date: _____ Dept. Affected: Department of Law
 Title: "An Act relating to assets and liabilities of BRU: Civil Division
dissolved municipalities." Component: General Legal Services
 Sponsor: Representative Ivan
 Requester: House C&RA Committee COMPONENT SERIAL NO. 2087

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY96) cost: \$ 0.0

POSITIONS

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

This bill amends AS 29.06.520 and AS 44.47.150 relating to the succession of assets and liabilities of dissolved municipalities. The bill, in part, requires that assets or liabilities of a dissolved municipality may not be transferred except upon terms approved in writing by the Department of Law. This requirement is already being followed in practice and therefore its codification will not have a fiscal impact for the Department of Law.

Other parts of the bill are of concern, however, because they appear unclear or appear inconsistent with the rest of the bill and with current law and practice. These concerns are noted below:

In Section 1, the bill establishes AS 29.06.520(a)(3), which allows a successor of assets and liabilities of a dissolved municipality to include: (3) a Native council organized under federal law that is operating within the entire area of the dissolved municipality.

Prepared by: Richard I. Peques, Director Phone: 465-3672
 Division: Administrative Services Division Date: 1/15/96
 Approved by Commissioner: Bruce M. Botelho, Attorney General Date: 1/15/96
 Agency: Department of Law

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FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. HB 391

ANALYSIS CONTINUATION:

This raises several issues. First, a "Native council organized under federal law" is generally considered to be a federal IRA council. This would not include a traditional village council. This conflicts with current practice and regulations, 19 AAC 94 which allows traditional councils, as well as IRA's and nonprofit corporations, to be deeded certain real properties from dissolved municipalities.

Second, the meaning of "is operating" as that terminology relates to a Native council, is unclear.

Third, "within the entire area of the dissolved municipality," is not particularly clear in this instance and may be geographically problematic because, except for Metlakatla, Indian country is not recognized in Alaska and it could be that the area where a Native council "operates" may be different from what were the boundaries of the former municipality.

Section 1 also provides for the rewrite of AS 29.06.520(b), which appears to create more liability for the state in the succession process. Under current law, the preference is that a dissolved municipality's assets succeed to another municipality (i.e., when a city dissolves within a borough the assets, etc., go to the borough; when a city dissolves simultaneously with its annexation to another city, the assets, etc., go to the city). If no municipality is available for the succession, then, under current law, the state succeeds to the dissolved municipality's assets, liabilities, etc., by operation of law. The amendment no longer provides for the preference for the municipality to be the successor before the state succeeds by operation of law. In sum, the intent or goal of the proposed amendment to AS 29.06.580(b) is not readily clear.

Section 2. AS 44.47.150(a)(2). The amendment to this subsection deletes the authority for the commissioner of Community and Regional Affairs (C&RA) to dispose of the relevant lands to an appropriate village entity if a municipality dissolves. The current regulations adopted pursuant to the authority of existing AS 44.47.150(a)(2), allow the commissioner of C&RA to transfer the lands of a dissolved municipality to an appropriate village entity (which includes IRA or traditional councils). Deletion of this authority would make the current regulations inapplicable to land asset distribution in the event of a municipal dissolution and, only the Department of Natural Resources would then have authority to transfer such lands in the event of a municipal dissolution. The proposed amendment to AS 44.47.150(a)(2) appears inconsistent with the rest of the bill and with current law and practice. Department of Law staff is available to resolve or clarify these concerns.

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. CSHB 391 (C&RA)

Revision Date: 2/9/98 Dept. Affected: Department of Law
 Title: "An Act relating to assets and liabilities of BRU: Civil Division
dissolved municipalities." Component: General Legal Services
 Sponsor: Representative Ivan
 Requester: House C&RA Committee COMPONENT SERIAL NO. 2087

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY96) cost: \$ 0.0

POSITIONS

POSITIONS	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

The House C&RA Committee Substitute for HB 391 revises the state laws relating to the succession of assets and liabilities of dissolved municipalities in AS 29.06.520 and AS 44.47.150. The CS resolves all of the concerns raised earlier in the Department of Law's fiscal note dated 1/15/96. The bill will not have a fiscal impact.

Prepared by: Richard I. Pegues, Director Phone: 465-3672
 Division: Administrative Services Division Date: 2/9/96
 Approved by Commissioner: Bruce M. Botelho, Attorney General Date: 2/9/96
 Agency: Department of Law

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FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. CSHB391(CRA)

Revision Date: 9-Feb-96 Dept Affected: Natural Resources
 Title: An Act relating to succession to assets and liabilities of dissolved municipalities. BRU: Resource Development
 Component: Land Development
 Sponsor: Representative Ivan
 Requestor: House Judiciary Component Serial No. 431

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY97	FY98	FY99	FY00	FY01	FY02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING						

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
----------------------	-----	-----	-----	-----	-----	-----

CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
------------------------	-----	-----	-----	-----	-----	-----

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY96) cost: \$ none

POSITIONS	FY97	FY98	FY99	FY00	FY01	FY02
FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

* If a decision is made to have the state (DNR) manage former municipal land, there will be a financial impact. This cannot be quantified at this time because it is unknown how much land, or what kind of land, is contemplated for transfer.

Prepared by: Jane Angvik, Director DM Phone: 289-8503
 Division: Land Date: 9-Feb-96
 Approved by Commissioner: [Signature] Date: 9-Feb-96
 Agency: Natural Resources

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Sec. 29.06.520. SUCCESSION.

A municipality succeeding to a dissolved municipality succeeds to all rights, powers, duties, assets, and liabilities of the dissolved municipality. Otherwise, the state succeeds to those rights, powers, duties, assets, and liabilities. If the state succeeds to a dissolved municipality, the state may enter into a contract for the performance of duties or powers in the area of the dissolved municipality. However, a contract with an organization for the performance of duties or powers entered into under this section does not constitute recognition by the state of governmental powers of that organization.

History -

(sec. 5 ch 74 SLA 1985; am sec. 5 ch 35 SLA 1988; am sec. 22 ch 58 SLA 1994)

Amendment Notes -

The 1988 amendment added the last three sentences and rewrote the first sentence, which read "The government succeeding to a dissolved municipality succeeds to all its rights, powers, duties, assets, and liabilities."

The 1994 amendment, effective August 22, 1994, inserted "rights, powers, duties" in the first and second sentences and made related stylistic changes.

Sec. 44.47.150. LAND CONVEYED IN TRUST.

(a) The commissioner

(1) shall accept, administer, and dispose of land conveyed to the state in trust by village corporations under 43 U.S.C. 1613(c)(3) (Sec. 14(c)(3) of the Alaska Native Claims Settlement Act) for the purposes specified in that section;

(2) may, with the concurrence of an appropriate village entity recognized by the commissioner under (b) of this section or, in the absence of an appropriate village entity, under procedures prescribed by regulations of the commissioner, accept, administer, and dispose of land conveyed in trust by a state or federal agency and by the dissolution of a municipality under AS 29.06.450 - 29.06.530.

(b) Transfer of land by sale, lease, right-of-way, easement, or permit, including transfer of surface resources, may be made by the commissioner only after approval of an appropriate village entity such as the traditional council, a village meeting, or a village referendum. This approval shall be by resolution filed with the department.

(c) Within one complete state fiscal year after the incorporation of a municipality in the village or of a municipality which includes all or part of the village, land acquired under this section shall be conveyed without cost to the municipality, and the municipality shall succeed to all the entrusted interest in the land.

(d) Separate accounts shall be maintained in the name of each village for the land, including the revenues from the land, acquired from each village corporation under this section, and every two years within 90 days of the close of the second state fiscal year a statement of the account for each municipality shall be prepared by the commissioner and be made available to the village and to the public upon request.

(e) Upon the conveyance of land to a municipality under this section, the commissioner shall account to the municipality for all profits including interest generated from the land. The municipality may then request the governor to submit a request to the legislature for an appropriation for the amount due the municipality.

(f) Title to or an interest in land acquired by the department under this section may not be acquired by adverse possession or prescription. Notwithstanding (a) - (e) of this section, on the dissolution of a municipality under AS 29.06.450 - 29.06.530, unimproved land that was owned by the municipality on the date of its dissolution and received by the municipality from the state under a municipal land grant entitlement program is transferred to the commissioner of natural resources.

(g) For the purposes of this section, "municipality" includes only first and second class cities incorporated under the laws of the state.

History -

(sec. 1 ch 119 SLA 1975; am sec. 47 ch 94 SLA 1980; am sec. 1 - 5 ch 84 SLA 1989; am sec. 12 ch 134 SLA 1990)

Amendment Notes -

The 1989 amendment, effective June 2, 1989, in subsection (a), added the paragraph (1) designation, substituting therein "shall" for "is designated to" at the beginning and inserting "(sec. 14(c)(3))," and added paragraph (2); deleted "from each village corporation" following "acquired" and substituted "village" for "municipality" and made stylistic changes in subsection (d); divided subsection (e) into two sentences; inserted "generated" before "from the land" in subsection (d) and in the present first sentence of subsection (e); made stylistic changes in the present second sentence of subsection (e) and in the first sentence of subsection (f); added the second sentence of

subsection (f), and substituted "municipality" for "the term municipality" in subsection (g).

The 1990 amendment inserted "every two years" and substituted "the second state fiscal year" for "each state fiscal year" in subsection (d).

HB

392

Alaska State House of Representatives
House District 39

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



Interim
P.O. Box 137
Akiak, Alaska 99552
Phone: (907) 765-7526

Representative Ivan M. Ivan

MEMORANDUM

TO: Members of the House Judiciary Committee

FROM: Representative Ivan M. Ivan *Ivan*

DATE: January 29, 1996

RE: HB 392 support and/or opposition

A question was raised during the House Judiciary Committee meeting concerning any opposition to HB 392 by any of the Native Corporations. Please be advised that the Alaska Federation of Natives and the thirteen regional corporations throughout the state have been asked to review HB 392. Request for review of the bill was sent out in late December. As of this time, no opposition has been expressed. However, I have received resolutions from the villages of Napaskiak and Sheldon's Point in support of this bill.

IMI/mj

Calista Corporation

601 W. 5th Avenue, Suite 200 • Anchorage, AK 99501-2225 • (907) 279-5518 Facsimile (907) 272-6080

January 25, 1996

Office of the President

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

Dear Representative Ivan:

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

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

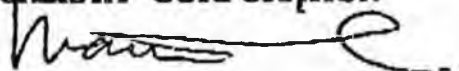
Village corporations are concerned about the lack of continuity on their board of directors and they feel that having a classified Board will provide the following advantages:

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

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

Sincerely,

CALISTA CORPORATION



Matthew Nicolai
President

LEGAL SERVICES

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

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


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

MEMORANDUM

January 30, 1996

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

TO: Representative Ivan Ivan

FROM: 
Theresa Baanister
Legislative Counsel

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

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

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

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

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

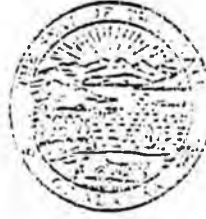
Representative Ivan Ivan
January 30, 1996
Page 2

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

If I may be of further assistance, please advise.

TLB:klb
96-047.klb

Alaska State House of Representatives
House District 39



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

Interim
P.O. Box 137
Akiak, Alaska 99552
Phone: (907) 765-7526

Representative Ivan M. Ivan

SPONSOR STATEMENT - HOUSE BILL 392

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

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

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. HB 392

Revision Date: _____
Title: Native Corp Director Classification

Department: Commerce and Economic Development
BRU: Banking, Securities and Corporations
Component: Banking, Securities and Corporations

Sponsor: Representative Ivan
Requestor: _____

COMPONENT SERIAL NO. 1233

Expenditures/Revenues	(Thousands of Dollars)					
OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE	(Thousands of Dollars)					
1002 Federal Receipts						
1003 GF Match						
1004 General Fund						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

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

POSITIONS

FULL-TIME					
PART-TIME					
TEMPORARY					

ANALYSIS: (Attach a separate page if necessary)

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

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FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO: h. 92

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

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

OPERATING	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ()						
Revenue Code						

FUNDING: (Thousands of Dollars)

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

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

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)

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

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HOUSE BILL NO. 392

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY REPRESENTATIVE IVAN

Introduced:

Referred:

A BILL

FOR AN ACT ENTITLED

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

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

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

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

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

A resolution to amend the Alaska Corporation Code (AS 10.06.455 (a)) ANCSA village corporations Articles of Incorporation and By Laws - Classified Boards

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

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

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

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

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

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

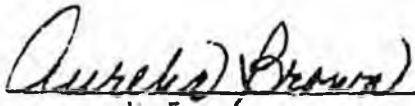
WHEREAS, it is very common for ANCSA village Corporations to be unable to obtain a two thirds attendance in person or by proxy, at a shareholder's meeting; and

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

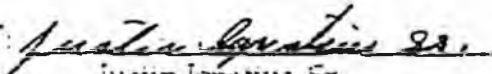
NOW, THEREFORE BE IT IS RESOLVED by the delegates to the 1995 Annual Convention of the Alaska Federation of Natives, Inc., that Aurelia Brown, as Chairperson and President of the Corporation, be and hereby is authorized and directed to contact and work in conjunction with Calista, the Alaska Federation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

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

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



Aurelia Brown
Chairperson

ATTEST: 
Justin Ignatius, Sr.
Secretary

NAPASKIAK INCORPORATED

BOARD OF DIRECTORS

RESOLUTION NO. 95-05

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

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

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

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

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

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

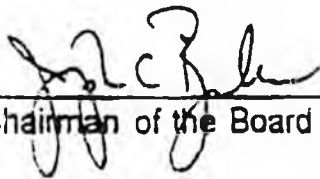
WHEREAS, it is very common for ANCSA village corporations to be unable to obtain a two-thirds attendance, in person or by proxy, at a shareholder's meeting; and

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

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

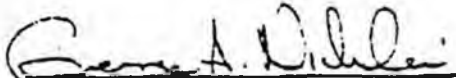
for either (i) a lower voting percentage to amend ANCSA village corporations' Articles with respect to authority for classified boards; (ii) the authority in a Board of Director's to amend a corporation's Bylaws to provide for a classified board; or (iii) some similar amendment that would assist ANCSA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

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



Chairman of the Board

ATTESTED TO:



Secretary

FOSTER PEPPER & SHEFELMAN

A LAW PARTNERSHIP INCLUDING
PROFESSIONAL SERVICE CORPORATION

January 12, 1996

VIA FACSIMILE

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

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

Dear Tom:

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

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

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

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

801 WEST FIFTH AVENUE, SUITE 800
ANCHORAGE, ALASKA 99501-2228
TEL 907-276-4411 FACSIMILE 907-276-4400

BELLEVUE, WASHINGTON PORTLAND, OREGON SEATTLE, WASHINGTON

Mr. Tom Wright
January 12, 1996
Page 2

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

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

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

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

Very truly yours,

FOSTER PEPPER & SHEFELMAN



Glen Price

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

Sec. 10.06.455. CLASSIFICATION OF DIRECTORS.

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

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

History -

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

Cross References -

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

Amendment Notes -

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

Sec. 10.06.453. NUMBER AND ELECTION OF DIRECTORS.

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

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

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

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

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

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

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

History -

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

Amendment Notes -

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

Editors Notes -

Section 57, ch. 82, SLA 1989, provides: "APPLICABILITY TO CERTAIN CORPORATIONS WITH CLASSIFIED DIRECTORS. (a) Notwithstanding AS 10.06.453(e) and 10.06.455, if a corporation is organized under 43 U.S.C. 1601 - 1629e and if the corporation's bylaws, as the bylaws exist immediately before July 1, 1989, contain a provision that complies with former AS 10.05 and provides for a board of directors consisting of three or fewer classes of directors with terms of office extending not longer than the third annual meeting after the directors' election, the corporation may continue to elect directors in the classes and for the terms provided under the bylaws.

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

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

Collateral Refs -

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

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

Sec. 10.06.504. PROCEDURE TO AMEND ARTICLES OF INCORPORATION.

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

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

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

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

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

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

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

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

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

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

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

History -

(sec. 1 ch 166 SLA 1988)

Editors Notes -

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

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

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

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

liability of a director to the corporation or its stockholders for monetary damages under AS 10.06.210(1)(N) may be adopted by the affirmative vote of a majority of the shares represented at the regular or special meeting at which a quorum is present in person or by proxy."

HB

414

Date of Committee Action: 4-17-96

The JUDICIARY Committee considered:

HB 414

HOUSE BILL NO. 414

MANDATORY MEDIATION/DESIGN PROF LAWSUITS

"An Act requiring conciliation panel review in a civil action against an architect, engineer, or land surveyor; and providing for an effective date."

recommends it be replaced with the following committee substitute CSHB 414 (JUD) the same title a new title

additional referral to _____ Committee
 attached amendment(s)

ADOPTS: _____ Letter of Intent

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

APPROVES PREVIOUS: (Dept/Date) _____

fiscal note(s) _____

fiscal note(s) _____

zero fiscal note(s) _____

zero fiscal note(s) Commerce 3/8/96

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>Boian Porter</i>	<input checked="" type="checkbox"/>			
<i>[Signature]</i>	<input checked="" type="checkbox"/>			
<i>Car Bender</i>	<input checked="" type="checkbox"/>			
<i>[Signature]</i>	<input checked="" type="checkbox"/>			
<i>[Signature]</i>			<input checked="" type="checkbox"/>	
<i>David J. [Signature]</i>				<input checked="" type="checkbox"/>

CHAIR'S SIGNATURE Boian Porter

CS FOR HOUSE BILL NO. 414(JUD)
IN THE LEGISLATURE OF THE STATE OF ALASKA
NINETEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVE GREEN

A BILL

FOR AN ACT ENTITLED

1 "An Act requiring mediation in a civil action against an architect, engineer, or
2 land surveyor; amending Rule 100, Alaska Rules of Civil Procedure; and
3 providing for an effective date."

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

5 * Section 1. AS 09.55 is amended by adding a new section to read:

6 ARTICLE 9. MALPRACTICE ACTION AGAINST DESIGN PROFESSIONAL.

7 Sec. 09.55.700. MANDATORY MEDIATION. (a) A civil action against a
8 design professional seeking damages resulting from professional negligence shall be
9 submitted to mediation unless all the parties to the civil action agree to waive
10 mediation. The court shall order that mediation be conducted as provided under the
11 Alaska Rules of Civil Procedure, except that if the court requires the costs of
12 mediation be paid by the party defending against the civil action, the provisions of this
13 section may be waived at the election of the party defending against the civil action.
14 If a party to the mediation is determined by the court to be indigent, the court may

1 impose the costs of mediation on another party. If more than one party is defending
2 against the civil action, waiver of mediation is not allowed unless all defending parties
3 agree to the waiver. For purposes of waiver allowed under this subsection, "civil
4 action" does not include a counterclaim, third-party claim, or cross claim.

5 (b) In this section,

6 (1) "design professional" means an architect, engineer, or land surveyor
7 licensed in this state;

8 (2) "professional negligence" means a negligent act or omission by a
9 design professional in providing professional services;

10 (3) "professional services" means services provided by a design
11 professional that are within the scope of the services for which the design professional
12 is licensed.

13 * Sec. 2. AS 09.55.700, enacted by sec. 1 of this Act, has the effect of amending Rule 100,
14 Alaska Rules of Civil Procedure, by requiring the parties to request mediation and the court
15 to order mediation in a civil action against a design professional.

16 * Sec. 3. This Act applies to causes of action that accrue on or after the effective date of
17 this Act.

18 * Sec. 4. This Act takes effect July 1, 1996.

A M E N D M E N T

OFFERED IN THE HOUSE

TO: CSHB 414(), Work Draft 9-LS1508, "R" version

- 1 Page 1, lines 1 - 2:
2 Delete "a civil action against an architect, engineer, or land surveyor"
3 Insert "certain civil actions"
- 4 Page 1, line 2, after "Procedure;":
5 Insert "repealing Rule 72.1, Alaska Rules of Civil Procedure;"
- 6 Page 1, line 6:
7 Delete "AGAINST DESIGN PROFESSIONAL"
- 8 Page 1, lines 7 - 8:
9 Delete "(a) A civil action against a design professional seeking damages resulting
10 from professional"
11 Insert "A civil action seeking damages resulting from"
- 12 Page 1, line 11, through page 2, line 4:
13 Delete all material.
- 14 Page 2, after line 4:
15 Insert new bill sections to read:
16 "* Sec. 2. AS 08.64.326(a)(12); AS 08.68.270(10); AS 09.55.535, 09.55.536, 09.55.560(2),
17 and 09.55.560(3) are repealed.
18 * Sec. 3. Rule 72.1, Alaska Rules of Civil Procedure, is repealed."
- 19 Renumber the following bill sections accordingly.

- 1 Page 2, line 7:
- 2 Delete "against a design professional"
- 3 Insert "seeking damages resulting from negligence"

A M E N D M E N T

OFFERED IN THE HOUSE

TO: CSHB 414(), Work Draft 9-LS1508, "R" version

- 1 Page 1, line 9, following "mediation":
- 2 Insert ", unless all the parties to the civil action agree to waive mediation"

OK

A M E N D M E N T

OFFERED IN THE HOUSE

TO: CSHB 414(), Work Draft 9-LS1508, "R" version

1 Page 1, line 10, following "Procedure":

2 Insert ", except that if the court requires the costs of mediation be paid by the party
3 defending against the civil action, the provisions of this section may be waived at the election
4 of the party defending against the civil action. If more than one party is defending against
5 the civil action, waiver of mediation is not allowed unless all defending parties agree to the
6 waiver. For purposes of waiver allowed under this subsection, "civil action" does not include
7 a counterclaim, third-party claim, or cross claim". *Conceptual amendment:*

*If a party indigent, court may order
other party to bear entire costs of
mediation.*

PASSES

WORK DRAFT

WORK DRAFT

WORK DRAFT

9-LS1508VR

Ford

4/2/96

CS FOR HOUSE BILL NO. 414()

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY

Offered:

Referred:

Sponsor(s): REPRESENTATIVE GREEN

A BILL

FOR AN ACT ENTITLED

1 "An Act requiring mediation in a civil action against an architect, engineer, or
2 land surveyor; amending Rule 100, Alaska Rules of Civil Procedure; and
3 providing for an effective date."

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

5 * Section 1. AS 09.55 is amended by adding a new section to read:

6 ARTICLE 9. MALPRACTICE ACTION AGAINST DESIGN PROFESSIONAL.

7 Sec. 09.55.700. MANDATORY MEDIATION. (a) A civil action against a
8 design professional seeking damages resulting from professional negligence shall be
9 submitted to mediation. The court shall order that mediation be conducted as provided
10 under the Alaska Rules of Civil Procedure.

11 (b) In this section,

12 (1) "design professional" means an architect, engineer, or land surveyor
13 licensed in this state;

14 (2) "professional negligence" means a negligent act or omission by a

1 design professional in providing professional services;

2 (3) "professional services" means services provided by a design
3 professional that are within the scope of the services for which the design professional
4 is licensed.

5 * Sec. 2. AS 09 55.700, enacted by sec. 1 of this Act, has the effect of amending Rule 100,
6 Alaska Rules of Civil Procedure, by requiring the parties to request mediation and the court
7 to order mediation in a civil action against a design professional.

8 * Sec. 3. This Act applies to causes of action that accrue on or after the effective date of
9 this Act.

10 * Sec. 4. This Act takes effect July 1, 1996.

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. CSHB 414 (JUD)

Revision Date: _____
Title: Design Professional Mediation
Sponsor: Rep. Green
Requestor: House Judiciary

Dept. Affected: Alaska Court System
BRU: Trial Courts
Component: _____
COMPONENT SERIAL NO. 768

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL	3.8					
CONTRACTUAL	0.3					
SUPPLIES	0.1					
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	4.2	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

Fund Source (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	4.2	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	4.2	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 96) cost: None

Positions

Full-Time						
Part-Time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

See attached fiscal analysis.

Prepared by: C. S. Christensen III, Staff Counsel 
Agency: Alaska Court System

Phone: 264-8228
Date: 04/16/96

Approved by: Arthur H. Snowden, II, Administrative Director 
Agency: Alaska Court System

Date: 04/16/96

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Alaska Court System
Fiscal Analysis
CSHB 414 (JUD)

CSHB 414 (JUD) amends the Code of Civil Procedure to require mediation of a civil action alleging professional negligence against an architect, engineer or land surveyor. Mediation must be conducted as provided under the Rules of Civil Procedure.

The court system does not keep statistics on the number of professional negligence claims filed against design professionals each year; based on testimony, it is assumed that only a few dozen such cases are filed each year in superior or district court.

This legislation will require the court system to draft and adopt rules for mediating professional negligence claims, as well as draft new forms and revise existing forms so that these types of cases can be tracked.

Court rules will specify that the costs of the mediation shall be paid by the parties. However, as long as mediation is mandatory, the state will be required to pay the costs of the mediator for any party who is legally indigent. Because of the small number of claims each year and the relatively low costs of mediation, this note assumes that there will be no costs to the state for indigent mediation. This could change dramatically from year to year, however. Several years ago, a school roof collapsed because of snow load. Because the building was empty, no one was injured and only one plaintiff (the school district) had standing to file a claim. If school had been in session, however, scores of children or their estates might have had grounds for filing a civil action. In such an event, there could be a large number of legally indigent plaintiffs ordered to mediation, and the engineers who designed the roof might not be financially able to pay their share of the costs of hundreds of mediation sessions. While the catastrophic failure of buildings or other structures is fortunately rare, the potential exists that the court system would need to return to the legislature for funding of indigent mediation at some time in the future.

Alaska Court System

Fiscal Analysis

CSHB 414 (JUD)

All one-time costs

Travel

This legislation will require the court system to draft new rules and revise forms. These changes will require the court's Mediation Committee to meet twice. The Committee is comprised of private attorneys from across the state and court staff. It is assumed that the meetings will last two days and that the court will pay transportation and per diem for committee members residing outside of Anchorage.

\$3,750

Contractual

Postage for mailing rules and forms

325

Supplies

Paper and printing supplies for forms and reprinting rules

130

\$4,205

Alaska State Legislature

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MEMBER, STATE AFFAIRS COMMITTEE

FINANCE SUBCOMMITTEES
DEPT. OF NATURAL RESOURCES
DEPT. OF COMMERCE & ECONOMIC DEVELOPMENT
DEPT. OF ENVIRONMENTAL CONSERVATION

Representative Joe Green
District 10

Sectional Description - HB 414

Conciliation Panel Review for Actions Against Design Professionals

Section 1

Sec. 09.55.700 (a) Requires a plaintiff with a legal claim against a design professional to submit the claim for review by the design professional conciliation panel. (b) Allows the design professional to petition the court that panel review is inappropriate. (c) Lists the reasons why a panel review can be considered inappropriate. (d) Allows the design professional against whom the claim is asserted to waive the proceedings.

Sec. 09.55.710 (a) States that the claim must be submitted to the department in writing, and with the fee. (b) Sets the fee at \$750. (c) Directs the department to form a panel comprised of a mediator, an attorney, and a design professional. (d) Disbands the panel after a decision is reached. (e) Sets compensation for panel members at \$300 per claim. (f) Directs the department to furnish office space and equipment.

Sec. 09.55.720 (a) Directs the panel to notify the defendant that a claim has been filed. (b) Allows the proceedings to be terminated if both parties agree.

Sec. 09.55.730 (a) States that the panel meetings are not open to the public. (b) States that panel hearings shall be informal. (c) Grants the panel and the commissioner the power of subpoena. (d) Establishes what information the panel can consider during the hearing. Limits compensation for expert witnesses to the state rate for per diem and travel expenses. (e) Allows the panel to encourage settlement at any time in the process.

Sec. 09.55.740 Requires the parties to attend panel hearings.

Section Description
HB 414

Sec. 09.55.750 (a) Requires the panel to forward their decision, including the issue of liability, in writing to the commissioner. Prohibits the panel from deciding on the issue of damages. (b) Requires panel members to sign the decision, and allows for dissenting opinion. (c) Allows the panel to forgo the written opinion if the claim is settled before the decision. (d) Directs the panel to make sure enough money has been deposited to cover the costs of the proceedings. Prohibits a panel decision from being released until all costs are covered.

Sec. 09.55.750 (a) Requires the defendant to formally reject the findings of the panel before an action can be filed in the appropriate court. Prohibits a statement made during the conciliation process from being used in court.

Sec. 09.55.770 Holds panel members immune from liability for action taken as a panel member.

Sec. 09.55.780 Stops the clock from running on the statute of limitations during the conciliation process, however, the clock may not stop for more than 12 months.

Sec. 09.55.790 Directs a party to the conciliation process to cooperate, and allows the court to assess penalties if they fail to do so.

Sec. 09.55.800 Directs the department to include information about claims brought before the panel in their annual report.

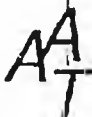
Sec. 09.55.810 Definitions.

Section 2 Amends Alaska Rule of Evidence 402 relating to the admissibility in court of decisions, conclusions, findings, or recommendations made during the panel process.

Section 3 Amends Alaska Rule of Evidence 613 relating to the admissibility in court of statements made during the panel process.

Section 4 Application date.

Section 5 Effective date.



Alaska Action Trust

P.O. Box 107323 • Anchorage, Alaska 99510
Office: 540 "L" Street, Suite 200 • Anchorage, AK 99501
(907) 258-4010 • FAX: (907) 276-7185

FAX TRANSMITTAL

TO: House Labor & Commerce
Attention: George Dozier
FAX #465-2189

FROM: Debra C. Gravo
Executive Director

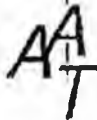
DATE: January 29, 1996

RE: HB 414, Mandatory Mediation/Design Professionals,
Position Paper by the Alaskan trial lawyers

George: What follows is our one-page position paper on HB 414, being heard before the House Labor & Commerce committee Wednesday, January 31st, 3:00 p.m. I would ask that this position paper be made part of the bill file and distributed to committee members prior to the hearing.

Kirsten Tinglum, chair of the Alaska Action Trust, is travelling to Juneau Wednesday, January 31st, to testify before the committee on HB 414. Should there be any changes in the hearing schedule of significance to her appearance, please advise ASAP.

Thank you kindly.



Alaska Action Trust

P.O. Box 102323 • Anchorage, Alaska 99510
Office: 510 "L" Street, Suite 206 • Anchorage, AK 99501
(907) 258-4040 • FAX (907) 276-7185

Analysis of HB 414/SB 119 Mandatory Mediation/Design Professionals

This position paper addresses HB 414 and SB 119, "An Act requiring conciliation panel review in a civil action against an architect, engineer, or land surveyor." This special interest legislation is unwarranted and unwise. It requires another stage of litigation before suit can be brought against architects, engineers, or surveyors for their negligence.

The bill imposes a duty on the plaintiff at the outset of his or her case to submit his or her claims to a design professional conciliation panel. The panel is to be comprised of a mediator, an attorney and a design professional. After a mini-trial, the panel would issue an advisory decision to the court and the parties. If the decision of the panel is rejected by any party, the matter then proceeds to trial in court. The panel's decision would not be admissible at the trial.

In essence, HB 414 and SB 119 require the parties to engage in a mini-trial and forced mediation before discovery. At this early stage, most of the information will be in the hands of the defendant, and the mini-trial will be unfair to the plaintiff.

Mediation makes sense, of course, as a way of resolving litigation. However, the plaintiff should be entitled to discovery before entering into the mediation process.

FISCAL NOTE

DRAFT

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. CSHB 414

Revision Date: _____
 Title: An Act requiring conciliation panel review prior to filing
a civil action against an architect, engineer, or land surveyor...
 Sponsor: Representative Green
 Requestor: Representative Green

Department: Commerce and Economic Development
 BRU: Occupational Licensing
 Component: Operations
 COMPONENT SERIAL NO. 1844

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL	9.3	9.3	9.3	9.3	9.3	9.3
CONTRACTUAL	1.3	1.3	1.3	1.3	1.3	1.3
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	10.6	10.6	10.6	10.6	10.6	10.6

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES	10.6	10.6	10.6	10.6	10.6	10.6
--------------------	------	------	------	------	------	------

FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 General Fund						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other 1091 Designated PR	10.6	10.6	10.6	10.6	10.6	10.6
TOTAL	10.6	10.6	10.6	10.6	10.6	10.6

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

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

CSHB 414 provides a conciliation review process for claims against design professionals. Both the claimant and the design professional(s) whom the claim is against are required to pay \$750.00 each to initiate the process. Starting with a funding source of \$1,500.00, all expenses related to a claim will be paid by the parties involved before the panel decision is released. This fiscal note identifies the costs involved with establishing a conciliation review panel and funding its activities. Attached is a detail of the costs identified above.

Prepared by: Jennife Strickler, Administrative Officer
 Division: Occupational Licensing
 Approved by Commissioner: William L Hensley
 Agency: Commerce and Economic Development

Phone: 465-2144
 Date: February 20, 1996
 Date: 2-20-96

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This fiscal note is based on utilizing at least six conciliation review panels each year. Each panel consists of three members. This fiscal note also assumes that each panel will require one day to conduct its business.

Assumptions are made that at least three reviews will be held in the Anchorage area, and three in Juneau or non-Anchorage locations. Each claim will start with a funding source of \$1,500.00 and costs exceeding this amount will be paid by parties involved before the panel decision is released.

TRAVEL

Anchorage: An assumption is made that only one panel member will be entitled to meal allowance payment, a result of commuting beyond the 50 mile radius of the meeting site making the member eligible to claim a meal allowance.

Stipend	\$300.00 x 3 members =	900.00
Per Diem	\$42.00 meal allowance for 1 member =	42.00
Travel		0.00
	Sub-Total Per Claim (for Anchorage):	942.00
	x	3 events
		<u>2,826.00</u>

Juneau (or other non-Anchorage locations): An assumption is made that at least two panel members will be required to travel.

Stipend	\$300 x 3 members =	900.00
Per Diem	\$80 hotel + \$42 meals = \$122.00 x 2 =	244.00
Travel	\$500.00 x 2 members =	1,000.00
	Sub-Total Per Claim (for Juneau or non-Anchorage):	2,144.00
	x	3 events
		<u>6,432.00</u>

TOTAL TRAVEL: 9,258.00

CONTRACTUAL

If rental of meeting space becomes necessary, space rent is anticipated to cost at least \$125.00 per event x 6 events = \$750.00.

Communication costs for postage, telephones, etc. are anticipated to cost at least \$100.00 per event x 6 events = \$600.00.

TOTAL CONTRACTUAL: 1,350.00

TOTAL COSTS: \$ 10,608.00

SUMMARY:

Staff time involved with selecting a Chairperson for each panel, operating supplies, and equipment costs are anticipated to be absorbed by the division.

Each event in Anchorage can be expected to cost:

Travel:	942.00
Contractual:	225.00
Total Costs per event in Anchorage:	<u>1,167.00</u>
x	3 events
	<u>3,501.00</u>

Each event in Juneau or non-Anchorage location can be expected to cost:

Travel:	2,144.00
Contractual:	225.00
Total Costs per event in Juneau or non-Anchorage location:	<u>2,369.00</u>
x	3 events
	<u>7,107.00</u>

This fiscal note does not include travel and per diem costs that may be incurred from consultants whose services are requested by the panel. This and any other costs must also be paid by parties to the claim before the panel decision is released.

FISCAL NOTE

No. 1
 Bill Version: CSHB 414(L&C)
 (H) Publish Date: 3/8/96

STATE OF ALASKA
1996 LEGISLATIVE SESSION

Revision Date: _____ Department: Commerce and Economic Development
 Title: An Act requiring conciliation panel review in a civil BRU: Occupational Licensing
action against an architect, engineer, or land surveyor,.... Component: Operations
 Sponsor: Representative Green
 Requestor: Representative Green COMPONENT SERIAL NO. 1844

Expenditures/Revenues	(Thousands of Dollars)					
OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
CHANGE IN REVENUES						

FUND SOURCE	(Thousands of Dollars)					
1002 Federal Receipts						
1003 GF Match						
1004 General Fund						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other 1091 Designated PR						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

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

POSITIONS	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)
 HB 414 creates malpractice provisions against design professionals. The bill does not affect licensing requirements for architects, engineers, and land surveyors, therefore, funding is not required.

Prepared by: Jennifer Strickler, Administrative Officer *JS* Phone: 465-2144
 Division: Occupational Licensing *JS* Date: January 16, 1996
 Approved by Commissioner: William L. Hensley *WH* Date: 1-19-96
 Agency: Commerce and Economic Development

HB

419

(7)

HOUSE COMMITTEE REPORT

Date Referred to Committee: January 30, 1996

FURTHER REFERRALS:

Date of Committee Action: 2/5/96

The JUDICIARY Committee considered:

HB 419

HOUSE BILL NO. 419

DISPOSAL OF FIREARMS BY PUBLIC AGENCIES

"An Act relating to the disposal of firearms and ammunition by the state or a municipality."

recommends it be replaced with the following committee substitute CSHB 419 (STA) the same title a new title

additional referral to _____ Committee
 attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) _____ APPROVES PREVIOUS: (Dept/Date) _____

fiscal note(s) _____ fiscal note(s) _____

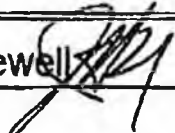
zero fiscal note(s) _____ zero fiscal note(s) _____

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>Brian Porter</i>	✓			
<i>[Signature]</i>	✓			
<i>[Signature]</i>	✓			
<i>[Signature]</i>				✓
<i>[Signature]</i>	✓	✓		
<i>Betty Davis</i>				✓

CHAIR'S SIGNATURE *Brian Porter*

FAX COMMUNICATION

JOHN NEWELL, Chief of Police PHONE: 907-747-3349
SITKA POLICE DEPARTMENT FAX: 907-747-1075
SITKA, AK 99835

To: Representative Brian Porter	From: John Newell 

<p>Rep Porter: Thanks for supporting changes to the vehicle theft statutes. We really believe that a class C felon is more appropriate. I would like to ask for your support in keeping juveniles in the juvenile system, at least for now. If the bill passes to make auto theft a felony, that will be a significant change. We need to let that change settle in before we decide to automatically waive juveniles into the adult system that is already having trouble keeping up with prosecution and incarceration. Thanks for your ear and support for law enforcement.</p>
<p>Attached is a letter I sent to Representative Sanders in support of HB 75.</p>

Alaska Association Chiefs of Police



February 2, 1996

**Representative Sanders
House of Representatives
State Capital, Juneau AK 99801-1182**

Honorable Representative Sanders,

I am writing on behalf of Alaska law enforcement in support of HB 75. We believe making vehicle theft in Alaska a class C felony is long overdue.

We have heard of some discussion about an automatic waiver of juveniles into adult court for felony vehicle theft. While law enforcement would agree there are times when that would be appropriate, we ask that you not make it automatic by legislation.

The current system will allow us to move those specific cases into adult court when it is appropriate. In a majority of instances, it will still be appropriate to deal with juvenile offenders within the juvenile system.

Thank you for being concerned and providing the laws necessary to deal with those who choose to violate the rights and property of another.

Sincerely,

A handwritten signature in cursive script, reading "John H. Newell", is written over the typed name and title.

**John H. Newell
President
Chief of Police, Sitka**

Alaska State Legislature House of Representatives

COMMITTEE ASSIGNMENTS.

LABOR & COMMERCE, CHAIRMAN
MILITARY & VETERANS AFFAIRS, CHAIRMAN
COMMUNITY & REGIONAL AFFAIRS
RESOURCES
INTERNATIONAL TRADE / TOURISM
LEGISLATIVE COUNCIL



INTERIM
10928 EAGLE RIVER ROAD, SUITE 141
EAGLE RIVER, AK 99577
PHONE (907) 694-8944
FAX 694-8949

SESSION
STATE CAPITOL
JUNEAU, AK 99801-1182
PHONE (907) 465-3777
FAX (907) 465-2819

SPONSOR STATEMENT HB 419

It has long been the practice of the Department of Administration's State and Federal Property Management program to sell excess service revolvers, confiscated firearms, and ammunition. This activity has been a source of revenue for the program in the past, and has also been a means by which gun collectors could obtain collectible items.

In a 1995 change in Administration policy, only hunting rifles and shotguns should be sold at public auction, but handguns would be destroyed. Therefore, on October 25, 1995, the state destroyed some 50 weapons, with an estimated market value of \$13,925. There is concern that collectible guns were included in this destruction. In less than a year's time, from August of 1994 to June of 1995, it appears that the State's Property Management section had accumulated some 600 firearms. If these remaining guns were sold at the same level as the 50 that were destroyed, the estimated revenue loss to the state in less than a year's time would be a considerable \$153,175.

Aside from revenue loss and loss to the public of collectible items, both the Administration and the Bill Sponsor are concerned with the issue of public safety. This bill would deal with this concern in two ways. First, the Department could only dispose of firearms and ammunition it deemed to be serviceable and safe. Second, the Department could only dispose of them to a federally licensed firearms dealer, rather than revert to selling them at auction. By doing a background check on any purchaser before sale, the licensed dealer would ensure that these items would not be sold to someone with a felony record. Thus, public safety is protected, a state revenue source can continue to be maintained, and collectibles can still be obtained by the public.



Representative Pete Kott



Statement of probable supporters and possible opponents to HB 419 (information requested by House Judiciary Committee):

Supporters:

- 1) National Rifle Association
- 2) Friends Of The NRA
- 3) 8 sponsors/cosponsors in house
- 4) 10 sponsors/cosponsors with Senate Companion bill

Opponents:

- 1) Governor Knowles & the Administration, including testimony taken from Gretchen Pense of DPS and Dugan Petty of DOA, both of whom indicated in House State Affairs that the Governor as a matter of policy opposes the sale of handguns to the public, because of their potential use in crimes or family violence. They did present a long list of alternative steps they would take; including giving collectible items to museums, not distributing guns that were mechanically unsafe, distributing lists of weapons to be sold to all law enforcement agencies, including state/municipal/local.
- 2) Possibly the ACLU
- 3) Possibly other pro-handgun control groups, but there was no testimony against the bill from the public (it was teleconferenced), and only the two administration officials above against it.

January 4, 1996

Page - 2 -

destroyed".

Fifty surplus firearms were destroyed by a cutting torch on 14 September 1995. Most of these firearms were not "Saturday Night Specials, sawed-off shotguns, and assault weapons". Many of these firearms were, in fact, collectors items. By the State's own estimate, the fifty firearms that were destroyed had a market value of \$13,925.00.

On or about the 26th of September 1995, the AGCA filed an amended complaint again seeking an injunction and seeking, among other things, damages against the Governor, his COS (Mr. Ayers), the Commissioner of Administration (Mr. Boyer), and the Commissioner of Public Safety (Mr. Otte), "personally, in favor of... the State of Alaska, for the total value of each and every firearm they have destroyed or will destroy in the future...".

The defendants filed an answer, on or about 25 October 1995, admitting that "before September of 1995 surplus firearms were disposed of by sale" but stating that "the policy of the defendant State of Alaska is to refrain from selling surplus and forfeited handguns directly to the public". Defendants admitted "that on September 14, 1995 approximately 50 deadly weapons were destroyed" but denied any conspiracy, denied that public notice was required before destruction, and denied that the "weapons belonged to anyone other than the defendant Department of Administration". For affirmative defenses, the defendants claimed, among other things, that the plaintiffs lack standing to bring the suit, that the defendants are immune from suit, and that the defendants "were authorized by law to destroy deadly weapons transferred to the Department of Administration as surplus state property".

Plaintiff has been furnished with a list of the firearms that were destroyed, as well as a list of firearms that are proposed for future destruction.

Defendants have recently filed a Motion to Dismiss plaintiff's Complaint, alleging, among other things, immunity and that plaintiff lacks standing to bring the suit in question. The plaintiff has not yet responded to that Motion.

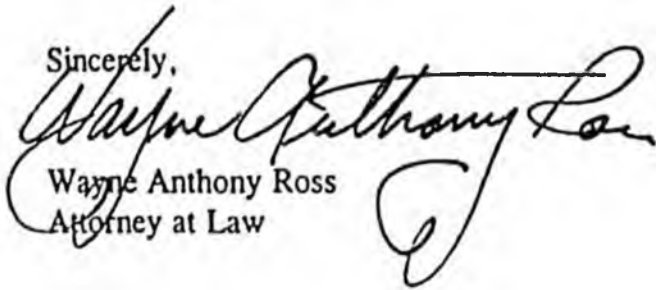
While the AGCA, and its more than 300 members, believes it has standing to bring such a suit, the Legislature is really the body who has the responsibility to protect the property of the State, and thus the people of Alaska, against an Administration bent on destroying valuable, revenue producing, state assets to further its own political agenda. This is particularly true in view of the current revenue shortfall that the State is experiencing.

It is respectfully requested that the Legislature intervene in this suit, against the Administration, on behalf of the people of the State. It is also requested that the Legislature adopt legislation this session that will prevent such destruction of State assets in the future.

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

January 4, 1996
Page - 3 -

Sincerely,

A handwritten signature in cursive script that reads "Wayne Anthony Ross". The signature is written in black ink and is positioned above the typed name and title.

Wayne Anthony Ross
Attorney at Law

cc
AGCA

Wayne
Anthony
Ross

Law Offices of
ROSS & MINER

A Professional Corporation
327 East Fireweed Lane, Suite 201
Anchorage, Alaska 99503

Wayne Anthony Ross
Edward L. Miner

(907) 276-5307
(907) 276-6672 - FAX

January 4, 1996
QUICK SUMMARY

To the members of the Alaska Legislature:

Re: Wilful destruction of valuable State property by State officials;
Lawsuit filed by AK Gun Collectors Association to attempt to end
such practice

June 20, 1995 - Boyer writes memo to Ayers regarding the disposal of the State's "surplus firearms" proposing destruction of handguns. Excerpts: "Receipts received from the disposal of these firearms contribute to the funding of the Property Management Program". The "Property Management section has sold excess service revolvers and confiscated firearms for the past decade". "There is no evidence that firearms disposed of by the Surplus Property Program have ever been involved in a crime". Proposes that "only hunting rifles and shotguns (should) be sold at public auction" and that "(h)andguns would be destroyed".

Ayers approves saying "This is clearly in the public interest and better government".

The Administration sets about implementing the destruction of these firearms.

September 13, 1995 - Alaska Gun Collectors Association (AGCA) files complain in Superior Court seeking an injunction. Baldwin tells court that the State was only going to destroy "Saturday Night Specials, sawed-off shotguns, and assault weapons". TRO denied.

September 14, 1995 - Fifty surplus firearms, including desirable collectors items, destroyed by cutting torch. State estimates the firearms destroyed had a market value of \$13,925.00.

September 26, 1995 - AGCA files amended complaint again seeking an injunction and personal damages against the Governor, his COS, the Commissioner of Administration, and the Commissioner of Public Safety.

October 25, 1995 - Defendants file answer admitting destruction and stating new State policy of destruction. transferred to the Department of Administration as surplus state property".

December, 1995 - Defendants file Motion to Dismiss plaintiff's Complaint, alleging, among other things, immunity and plaintiff lack of standing to bring the suit.

The Legislature has responsibility to protect the property of the State against an Administration bent on destroying valuable, revenue producing, state assets to further its own political agenda especially in view of the current revenue shortfall.

State's guns spared

Buyers limited
to peace officers

By SHEILA TOOMEY
Daily News reporter

The Knowles administration has backed off its decision to destroy state surplus guns rather than sell them at auction, as has been the practice.

Citing "lots of input from the public," Public Safety Commissioner Ron Otte said legal guns the state can't use will now be sold to a licensed dealer who promises to resell them only to police officers and law enforcement agencies.

The retrenchment is "a good first step" toward settling a lawsuit filed in September by the Alaska Gun Collectors Association, said attorney Wayne Anthony Ross.

But it's not enough, said Ross, who represents the gun collectors.

"To restrict sales to police officers doesn't make sense," Ross said. "The idea of banning citizens from purchasing them is philosophically repugnant."

Reflecting a position he first adopted when he was mayor of Anchorage, Knowles decreed in September that the 300 or so seized, found and surplus handguns in the state's possession should not be returned to the street by auctioning them to the general public, as had been done for at least 10 years.

In a test run, 50 guns were cut up by welders on Sept. 14, after a Superior Court judge refused to issue an injunction to stop their destruction. Ross argued that inadequate efforts had been made to find the owners of the lost and unclaimed weapons, that many of the guns were collector's items or other-

GUNS: State scraps plan to destroy surplus stock

Continued from Page B-1

wise valuable, and that it was illegal to destroy state property that could be profitably sold.

The subtext of the dispute is the old good guns vs. bad guns debate. The administration and a local victims' group think reducing the number of handguns in circulation will reduce the number used in crimes. Ross and his colleagues say guns aren't bad, but that people who misuse them are.

Knowles still does not want to sell handguns to the public, Otte said. "He simply does not think that is good policy."

But the reaction to destroying the guns — described by Otte as "fairly mixed" — was apparently critical enough to convince the administration to abandon the new policy.

Now only illegal or mechanically unsafe weapons will be destroyed, Otte said. Long guns will be sold, as previously planned. Antiques, curios

and collectibles will be kept and perhaps given to museums. Some of the guns will be loaned to gun safety programs around the state for use in fire-arms education.

Additionally, a better inventory system will be designed and better efforts made to find owners before anything is sold. Inventories will be made available to police agencies around the state who might be able to use some of the weapons.

Sales of what's left will be restricted to police officers and law enforcement agencies.

"This meets all of the tests of all the people the governor has heard from," Otte said Wednesday.

It doesn't meet Ross's test. And he doubts the board of the Alaska Gun Collectors Association will agree to dismiss the lawsuit. "I'm pleased with this first step," Ross said. "Probably the next step is to work with the Legislature to fine tune how they will be required to dispose of them."

Please see Page B-3, GUNS

ADN
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Post

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Around Juneau

Administration denies gun policy change

JUNEAU - Contrary to media reports last week, the Knowles administration has not changed its policy on destroying seized and surplus guns. It has simply refined it, Gov. Tony Knowles' press secretary Bob King said Saturday.

Those refinements include allowing legal guns the state can't use to be sold to licensed gun dealers. But in keeping with the policy, those dealers can only sell them to law enforcement agencies, King said.

Previously, those guns would not be sold to gun dealers. He said state agencies still will have first pick at those guns, but if they are not needed by the state, dealers could then buy them and sell them to enforcement agencies, possibly in other states.

King said illegal and unsafe weapons will continue to be destroyed.

"We're not letting them bid on Uzis and Saturday night specials," he said.

The policy continues to allow legal long guns to be resold and not to destroy antique or collectible weapons, King said. The state also will make every effort to return stolen guns to their owners, if they're legal.

Another refinement of the policy is that seized and surplus guns will not go only to agencies strictly for law enforcement, but will also be available to organizations like the Alaska Department of Fish and Game and gun safety programs, the press secretary said.

The Alaska Gun Collectors Association wants sales open to the general public and filed a lawsuit in September. Anchorage attorney Wayne Anthony Ross, representing the association, was out of state Saturday and could not be reached for comment.

New satellite may improve forecasts

JUNEAU - The National Weather Service has a new eye in the sky for spying on storms in Alaska.

On Monday, the new GEOS-9 weather satellite will take its final position 22,300 miles above the Pacific Ocean. From there, it will give forecasters a better view of the state's emerging weather, said Larry King, a meteorologist with the service. "It should be a bit better," said Larry King.

Notes on CS for HB 419 (STA) by Roger Poppe, aide to Rep. Kott:

Rep. Porter's requested deletion of municipalities from HB 419 in State Affairs Committee via a conceptual amendment. The request to do this was made jointly by phone by Daniella Loper and Walt Wilcox, and was directed to Jerry Luckhaupt, the bill drafter at Legislative Legal.

When Walt received a draft of the CS from Jerry, he showed me a copy of it to see if our office had any problems with it. Basically, Jerry had removed all language in the bill that had required anything of municipal law enforcement agencies.

However, in reading the draft, I noticed in Section #1 (b)(1), that under currently existing law, there are some procedures that municipal law enforcement agencies are required to follow for the disposal of some firearms and ammunition. I checked with Jerry Luckhaupt, and he confirmed that this is so.

As per Rep. Porter's request, we removed municipalities from HB 419; I call your attention to this additional matter in case Rep. Porter wants to consider in Judiciary Committee removing all requirements on municipalities relating to firearms and ammunition that are in existing statute.

You should receive the formal CS for HB 419(STA) from House State Affairs sometime today, January 30, 1996.

BILL: HB 419

SHORT TITLE: DISPOSAL OF FIREARMS BY PUBLIC AGENCIES

BILL VERSION:

SPONSOR(S): REPRESENTATIVE(S) KOTT, Ogan, Foster, Barnes, Sanders, Willis, Toohey
Vezey, Kelly, Phillips, James

CURRENT STATUS: (H) STA
THEN JUD

STATUS DATE: 01/12/96

TITLE: "An Act relating to the disposal of firearms and ammunition by the state
or a municipality."

01/12/96	2438	(H)	READ THE FIRST TIME - REFERRAL(S)
01/12/96	2438	(H)	STATE AFFAIRS, JUDICIARY
01/16/96	2457	(H)	COSPONSOR(S): OGAN
01/19/96	2495	(H)	COSPONSOR(S): FOSTER, BARNES
01/22/96	2512	(H)	COSPONSOP(S): SANDERS, WILLIS, TOOHEY
01/24/96	2529	(H)	COSPONSOR(S): VEZEY, KELLY
01/26/96	2548	(H)	COSPONSOR(S): PHILLIPS, JAMES



ALASKA STATE LEGISLATURE

PLEASE ENTER INTO THE RECORD MY TESTIMONY TO THE HSTA
COMMITTEE ON House Bill #419 DATED January 25, 1996
BILL SUBJECT

Please consider two options for House Bill Number 419.

The first would be to allow the Alaska Department of Fish and Game the opportunity to select forfeited firearms that are suitable for the Hunter Education Section for training purposes. I believe that in the past firearms have been made available to Hunter Education and they have been made inoperable and have been worked over by a machinist to allow the students to see the inside operations of how a firearm works.

Second item would be to allow a person who has had their weapon forfeited for a Fish and Game offense the opportunity to purchase their weapon back from the court if they make a donation to the Alaska Fish and Wildlife Safeguard Program in an amount set by the judge/magistrate and within a set amount of time.

Thank You

SIGNED JAMES E. LOW
TESTIFIER
ALASKA VOLUNTEER HUNTER EDUCATION INSTRUCTORS ASSOCIATION
REPRESENTING (OPTIONAL)
142 Frog Pond Circle Fairbanks, AK. 99712 (457-2637)
ADDRESS/PHONE NUMBER



ALASKA STATE LEGISLATURE

PLEASE ENTER INTO THE RECORD MY TESTIMONY TO THE STATE AFFAIRS
 COMMITTEE ON HOUSE BILL 419 DATED JAN 25, 1996
 BILLSUBJECT

THE ALASKA OUTDOOR COUNCIL ADVOCATES AMENDMENTS
 TO HB 419 TO ACCOMPLISH THE FOLLOWING:

- ALLOW SELECTION BY, AND TRANSFER TO THE AK. DEPT. OF FISH & GAME, FOR USE IN HUNTER EDUCATION & HUNTER SERVICES PROGRAMS. THESE ARE VITALLY IMPORTANT PUBLIC EDUCATION SERVICES THAT WOULD BENEFIT FROM THE AVAILABILITY OF VALUABLE FIRE ARMS FOR EDUCATION & TRAINING.
- ALLOW A PERSON WHO'S WEAPON HAS BEEN FORFEITED FOR FISH & GAME OFFENSES TO BUY BACK THEIR WEAPON FROM THE STATE/COURT IF THEY MAKE A DONATION TO THE ALASKA FISH & WILDLIFE SAFEGUARD PROGRAM IN AN AMOUNT & TIME PERIOD SET BY THE COURT.
- THERE IS ALSO A NEED TO CHANGE STATE LAW TO ALLOW FINES FOR FISH & GAME VIOLATIONS TO BE PAID TO THE SAFEGUARD PROGRAM, PROBABLY NOT IN THIS BILL.

SIGNED

TESTIFIER

RICHARD H. BISHOP
 RICHARD H. BISHOP
 EX-DIRECTOR

ALASKA OUTDOOR COUNCIL
 REPRESENTING (OPTIONAL)

PO BOX 73902 FAIRBANKS, AK 99707
 ADDRESS/PHONE NUMBER

**MEMORANDUM**

TO: Rep. Eldon Mulder
Dennis DeWitt

DATE: February 1, 1996

FROM: Jeff Spoon, VP-Development

DIV: Business Development

SUBJECT: WCC Responses To Organized Labor Testimonies During 1-31-96 HB-428
TeleConference

Thankyou for the opportunity to make a brief statement during your recent TeleConference. Regrettably, being first, and intentionally taking the "High Road," allowed the various organized labor representatives to record numerous inaccuracies and falsehoods. To not confuse the sponsorship of your Bill with additional controversial testimony, but to offer some information that may assist in its future defense, I am forwarding the following for your review.

1. Nationally, privately managed correctional facilities have significantly lower incidents of escapes and assaults than do their host agencies.
2. There are no privately managed correctional facilities under court supervision while most states, and large local jurisdictions, have serious consent decrees AND ongoing court monitoring.
3. There is a significantly higher percentage of privately managed correctional facilities that have been ACA and NCCHC accredited than in the public sector. Our insurance rates and legal fees reflect this perception of reduced exposure.
4. Numerous states have legislated and recorded 10-20% savings in annual operating costs when comparing privately managed to publicly operated similar facilities in each system. These results are documented in Texas, Louisiana, Florida and California.

5. If higher pay and more expensive benefit packages guaranteed better performance and more efficient operations then:

a. All Alaska Legislators would be competitively compensated with NFL Super Stars.

or

b. The Alaska Legislature would be under court supervision due to gross incompetence.

The ridiculousness of the forgoing supposition is that in order to win a contract, and earn a profit, the private vendor must offer a competitive wage and benefits package that guarantees a stable professional work force. The economic employment marketplace will tell us what that formula will be; not a labor contract that dictates post assignments and lifetime employment.

6. Public sector correctional staff vacancies typically are not the result of low pay, dangerous working environments and/or budgetary personnel shortfalls. Those vacancies are a result of civil service systems that reward longevity rather than performance, have bureaucratic recruitment and training divisions that are not responsive to the needs of the agency they are supposed to serve, have screening criteria and selection juggernauts that alienate and frustrate otherwise qualified and competent job applicants and that make job assignments and vacancy savings a budgetary issue rather than a professional needs assessment. Sixty percent of a public corrections facility's annual budget (Personnel) receives only ten percent of the staff's attention.

7. No private corrections company can afford to "fly employees from out-of-state" to work in Alaska. This labor testimonial does suggest recognition of the possibility that a for-profit company would find LARGE financial savings, and WILLING job applicants, if it went outside the existing correctional job market and its established wage scale. An interesting admission, but an implausible business strategy.

8. Wackenhut always receives 4 times, or more, the number of applicants than available jobs when opening new contract sites. Our wage and benefits packages have never prevented us from recruiting, training, fielding, retaining and promoting a professional work force. Our current operations are our best marketing tools. If we had high staff turnover or less-than-capable employees we would not be able to stay in business nor would we receive high recommendations from our clients or ACA / NCCHC accreditations.

9. If private enterprise somehow placed public safety in jeopardy then Wackenhut's contracts to provide security of the Alaskan Pipeline, Strategic Petroleum Reserves, Foreign US Embassies, Nuclear Power Plants, US Army Munitions Manufacturing and Storage Plants, numerous major US Airports and Mass Transit Systems would place millions of citizens in daily peril. Wackenhut is the largest provider of contract security to the US Government!

10. If Wackenhut's past contract performance was as poor as the labor spokesperson falsely reported then our corporate revenues, contracts retention and new contract signings would not be at the record pace reported quarterly to our stockholders and the SEC. Our business is one of the few things that is growing faster than the US's incarcerated population.

11. Contrary to the uninformed testimony of the ADOC's Sergeant, Wackenhut would be pleased to manage an intake (booking) facility, pre-trial detainees, maximum security inmates, female prisoners, youthful offenders, special needs populations, perform interstate and intrastate transportation, provide comprehensive medical care AND design, finance, construct and manage those facilities and inmate populations for significantly less than the State's average cost of \$105 per day. A quick review of our current corrections contracts will reveal that those services, the Sergeant stated we would be unwilling to perform, are exactly what we do provide elsewhere. What we refuse to provide are overcrowded, poorly managed, prisoner warehouses. We will not accept contractual terms that will predictably put us under court supervision or generate legitimate prisoner Civil Rights litigation.

12. Wackenhut, nor any of its reputable competitors, are self-insured nor is our insurance placed with small unknown carriers. Our property and liability insurance is through AIG (the largest and one of the oldest in the world). Most contracts require us to maintain between \$10 and \$20 million liability policies in effect for each contract site. Nevada just issued an RFP that requires \$50 million liability insurance for a 400-bed adult female maximum security facility to be located in Las Vegas. None of these contracts allow self-insurance nor less than A-rated insurers.

13. Labor consistently testified that Profit contradicts Quality of Service. Wackenhut finds that supposition incredibly ignorant of our nation's economic foundation. Our government clients, insurers, stockholders, corporate executives, contract monitors, employees and inmates believe that profitability (economic success) is directly proportional to quality of service. Our 40+ year corporate history, economic fortunes and reputation for quality security services have yielded a corporate motto "Professionalism with Integrity." Our ability to provide better public services to our government clients, for less cost than they have become accustomed, and realize corporate profits as a result of our performance, cannot possibly be viewed as a taxpayer disadvantage or unfair corporate advantage.

14. Every example of contractual malfeasance by private corrections companies that was offered by labor representatives during their testimonies grossly misrepresented the case-by-case facts and inaccurately reported existing data. Wackenhut has letters of recommendation and support from each of our past and present clients. We certainly have suffered our employee errors and embarrassing incidents. None of those have resulted in contractual sanctions, penalties or cancellations.

15. In every jurisdiction, where our services have been engaged, the public sector's performance has improved, as a natural result of friendly professional competition. We have typically become a training component for government client personnel who are unfamiliar with modern program provision. We take on the challenge of special needs inmate populations who have historically been under served due to limited public sector resources. Our clients' Contract Monitors become our greatest advocates because they observe daily the advantage we offer in the resolution of correctional challenges, operational difficulties and fiscal responsibility.

ALASKA JOB CORPS CENTER

MEMORANDUM

DATE: February 1, 1996

TO: Mike Williams
Business Advisor, Chugach Alaska Corporation

FROM: Roger Lydell, Manager, Educational Services
Alaska Job Corps Center, Phone: 746-8881

SUBJECT: Legislative Hearings, CS for HB 428 and 429

1. On January 31, several individuals testified during Judiciary Committee hearings on the above bill, that they believed it would be wise to expand existing state correctional centers rather than build a major new facility. Unfortunately perhaps, the expansion of existing state correctional centers would be a very expensive proposition. In fact, most of the infrastructures of existing facilities will not support expansion.

Simply adding on to existing correctional centers by adding a wing here or there is neither wise from a correctional management perspective, nor from an infrastructural perspective. Sewer, heating, ventilation, food service, library, classroom, shop and all other spaces have to be sized to handle expansion. For example, the sewer treatment plant at the Hiland Mountain/Meadow Creek complex near Eagle River is at maximum capacity; the Juneau, Cook Inlet Pretrial (Anchorage), Hiland Mountain, Palmer and Fairbanks correctional centers have already been previously expanded, Juneau and Fairbanks a couple different times. Further expansions at these sites will likely require totally new "stand alone" facilities in order to function safely.

Only the Spring Creek facility at Seward and the Palmer Pre-trial facility were designed for relatively easy expansion with utilities and layouts anticipating the doubling of population space.

2. Secondly, several individuals testified that they had strong doubts or concerns about whether the state correctional system should contract with the private sector for the provision of space and supervision for Alaska's criminal offender population. In fact, the state has a long history of such contracts.

The Alaska Department of Corrections currently has 455 prisoners held in-state under private sector contracts and 205 held out-of-state under private management services contracts.

Mike Williams
February 1, 1996
Page 2

The total of 660 Alaska prisoners now in privately operated space is not a new concept in Alaska, or elsewhere. The proposed legislation merely clarifies that larger facilities can also be utilized under contracts with private sector service providers.

3. A third and final point should be addressed. The largest single category of prisoners that continue to clog the Alaska correctional systems' chain of small local and regional jails is the male sentenced felony population. This is the group which must be targeted in order to unclog the entire system.

There are currently 1,501 sentenced male felons held in-state and 247 out-of-state for a total of 1,748 sentenced male felons. If even half of these prisoners were removed from the existing facilities where they now reside, the state correctional system would be uncrowded overnight! The local and regional jail facilities would then be able to manage unsentenced local misdemeanants and felons awaiting trial and local sentenced misdemeanants serving short sentences. Until the long-term sentenced male felon population is properly housed, there cannot be any viable solution to uncrowding the states' correctional system. The C.S. for HB 148 and 149 could provide a substantial step toward the correct solution.

428 429

February 2, 1996

Representative Brian Porter
Chairman
House Judiciary Committee
Alaska State Legislature
FAX: (907) 465-3834

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Dear Representative Porter,

I want to again thank you and the committee for the opportunity to speak to you on Wednesday, January 31, 1996, on House Bills 428 and 429. I was asked to provide two pieces of information, and I want to correct a cost figure that I gave the committee.

1) Representative Toohey asked what the starting salary of a new correctional officer is. A new correctional officer starts out as a Range 11 under the correctional officer schedule (attached.) This range pays \$1,209.50, semi-monthly. This is a total of \$29,028.00 annually.

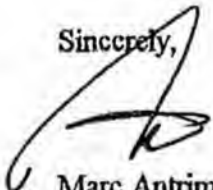
2) Representative Bunde asked for a figure representative of the cost difference between the \$59/per day per prisoner we are paying CCA to house prisoners at their facility in Arizona and what it actually costs. I can't get an exact figure using the resources available to me. That figure would include the \$59/per day per prisoner plus medical, transportation, and programming costs.

3) At the closing of my testimony during questioning I mentioned that it cost \$77/per day per prisoner to house a prisoner at Lemon Creek Correctional Center. I attributed this figure to a recent study conducted in support of a new program we had started. I was incorrect.

The study was a comparison between the per day cost at Lemon Creek and the per day at the local halfway house and was used to support the development of a work crew program as an even cheaper alternative to housing a prisoner at the halfway house. The figure to house someone at Lemon Creek is actually \$86.08/per day per prisoner compared to \$77/per day per prisoner at the halfway house. In addition, that \$86.08 figure didn't include medical, program, or administrative support costs. The total figure to house someone at Lemon Creek is \$104.92. I've attached a DOC-generated document that outlines the costs for each facility. I'm also keeping a copy for myself.

I apologize for providing the committee with this incorrect information and in future testimony I will stick with what I know.

Sincerely,



Marc Antrim

Attachments

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Each prisoner must be housed, supervised, and provided his/her fundamental living requirements as prescribed by statute, administrative regulations, and the... Final Agreement. The average daily cost of care in FY 94 for each institution, as well as the Division is set forth below:

FY 94 COST OF CARE- STATE CORRECTIONAL FACILITIES							
	Man-Days	Inst. Cost	Programs	Medical	Division Admin Cost	ST. Wide Admin Cost	TOTAL
Anvil Mt. C.C.	34,616	\$114.14	\$4.03	\$8.50	\$2.30	\$3.95	\$132.98
Cook Mt. Prolifal	144,604	\$83.75	\$4.03	\$8.50	\$2.30	\$3.95	\$102.59
Fairbanks C.C.	70,430	\$91.49	\$4.03	\$8.50	\$2.36	\$3.95	\$110.33
Island/Meadow Creek	105,931	\$68.43	\$4.03	\$8.50	\$2.36	\$3.95	\$87.27
Kelchikan C.C.	20,409	\$127.00	\$4.03	\$8.50	\$2.36	\$3.95	\$145.04
Lemon Creek C.C.	70,935	\$88.08	\$4.03	\$8.50	\$2.36	\$3.95	\$104.92
Mal-Su Prolifal	31,003	\$87.46	\$4.03	\$8.50	\$2.36	\$3.95	\$106.30
Pakner C.C.	141,050	\$62.51	\$4.03	\$8.50	\$2.36	\$3.95	\$81.35
Sixth Avenue C.C.	42,917	\$87.31	\$4.03	\$8.50	\$2.36	\$3.95	\$106.10
Spring Creek C.C.	160,932	\$86.14	\$4.03	\$8.50	\$2.36	\$3.95	\$104.98
Wildwood C.C.	92,008	\$75.67	\$4.03	\$8.50	\$2.36	\$3.95	\$94.51
Yukon-Kuskokwim C.C.	38,630	\$102.09	\$4.03	\$8.50	\$2.36	\$3.95	\$120.93
Average	962,447	\$87.22	\$4.03	\$8.50	\$2.36	\$3.95	\$106.56

PROGRAMS

\$ 87.22 = avg

The Division of Institutions is responsible for prisoner services including the following: Education, Substance Abuse, Sex Offender, Anger Management, and Religious programs. These services are provided through a combination of classified state employees, professional service contractors, and reimbursable service agreements with other agencies.

It is estimated that 85 % of the prisoners/offenders under the custody and supervision of the Department of Corrections are dysfunctional as a result of substance abuse. In addition to the treatment programs, the Department delivers assessment/referral services and alcohol and drug education programs at all twelve (12) correctional facilities. Through an agreement with the Department of Health & Social Services the Department of Corrections coordinates a continuum of treatment, allowing for the (through of thirty-one (31) prisoners to treatment beds.

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ADDITIONAL
EXPLANATION
FORM
1/7/91

AGENCY Department of Corrections
 BRU Statewide Operations
 COMPONENT Institutions

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Revised Date:

FY 96

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Correctional Officer Wage Schedule

Section 1 - Wage Schedule

From July 1, 1990, through June 30, 1992, the following shall be the wage schedule for bargaining unit members who are subject to AS 23.40.200(a)(1) (Class One) occupying positions in the Correctional Officer classifications and who are regularly assigned to an eighty-four (84) hour work period.

(Semimonthly--at each step pay rate has been adjusted to include additional step established pursuant to Appendix B, Section A3)

Range	WAGE SCHEDULE						LONGEVITY INCREMENTS			
	Step A	Step B	Step C	Step D	Step E	Step F	Step J	Step K	Step L	Step M
07	854.50	881.50	1,010.50	1,042.50	1,075.00	1,106.00	1,139.50	1,176.50	1,208.50	1,247.50
08	1,010.50	1,042.50	1,075.00	1,106.00	1,139.50	1,174.50	1,209.50	1,247.50	1,285.00	1,321.00
09	1,075.00	1,106.00	1,139.50	1,170.50	1,209.50	1,247.50	1,285.00	1,322.00	1,369.50	1,418.50
10	1,139.50	1,174.50	1,209.50	1,247.50	1,285.00	1,322.00	1,369.50	1,418.50	1,464.50	1,510.00
11	1,209.50	1,247.50	1,285.00	1,322.00	1,369.50	1,418.50	1,464.50	1,518.00	1,571.50	1,628.50
12	1,285.00	1,322.00	1,369.50	1,418.50	1,464.50	1,518.00	1,571.50	1,626.50	1,680.00	1,743.00
13	1,369.50	1,418.50	1,464.50	1,518.00	1,571.50	1,626.50	1,680.00	1,743.00	1,806.50	1,871.50
14	1,464.50	1,518.00	1,571.50	1,626.50	1,680.00	1,743.00	1,803.50	1,874.50	1,942.00	2,004.50
15	1,571.50	1,626.50	1,680.00	1,743.00	1,806.50	1,874.50	1,942.00	2,008.50	2,078.00	2,145.50
16	1,680.00	1,743.00	1,806.50	1,874.50	1,942.00	2,008.50	2,078.00	2,145.50	2,226.50	2,296.00
17	1,806.50	1,874.50	1,942.00	2,008.50	2,078.00	2,145.50	2,226.50	2,296.00	2,381.00	2,462.50
18	1,942.00	2,008.50	2,078.00	2,145.50	2,226.50	2,296.00	2,381.00	2,462.50	2,543.00	2,622.50

Section 2 - Compensatory Payment

Those members of the bargaining unit on May 12, 1990, subject to AS 23.40.200(a)(1) (Class One) not in layoff status shall receive a one (1) time compensatory payment of four hundred dollars (\$400.00).

Section 3 - Longevity Increments

Employees shall continue to receive longevity increments (Steps J, K, L and M) in accordance with the criteria of AS 39.27.022. The increments shall be those set out in this Agreement.

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