ALASKA LEGISLATURE COMMITTEE FILES 1995-1996 8672

8670 HOUSE LABOR & COMMERCE

ganize even after significant steps toward organization had been taken.[16]

The 1972 Act repealed AS 23.40.010, and in lieu thereof, the Act was specifically made applicable to "political subdivisions of the state, home rule or otherwise, unless the legislative body of the political subdivision, by ordinance or resolution, rejects having its provisions apply". More than a nice semantical distinction may properly be made concerning the fact that the legislature provided for the PERA to be applicable to all political subdivisions of the state unless they rejected it rather than making the Act inapplicable unless affirmative steps are taken by these same subdivisions to adopt the Act. In its arguments, the City contends that adopting the position that the Act must be rejected prior to substantial organizational activity by public employees limits the freedom of the political subdivision to consider whether it wishes the PERA to apply to it. While no doubt true, it is equally evident from the wording of the exemption provision that this is precisely what the legislature intended. Had the legislature wished to bestow upon local governments the unlimited, unfettered discretion to deal with the question of the applicability of the PERA at their leisure, the exemption provision could have been written, as was the prior provision, to require affirmative action by the political subdivision to adopt the Act. It is not so written and the reason it is not so written is apparently to prevent precisely what the City argues for here. Under the present statute, applicability of the PERA is the rule, exemption the exception.

The City in its able presentation contended that the reason that AS 23.40.010 was repealed and Section 4 of SLA ch. 113 (1972) enacted was to render the terms of the Act mandatory as to the state and not for the purpose of changing the requirements with reference to labor negotiations by political subdivisions. It is true that the state was not furnished the option to exempt itself from the Act by the 1972 amendment. But if that had been the only change desired by the legislature, the former provision could have been re-enacted limited to political subdivisions only. The change in the language of the provision thus retains its significance as to political subdivisions, despite the elimination of the state from the exemption authorization.

The City also argues that small municipalities may not become aware of the terms of the PERA until after substantial organizational activity occurs, at which time they would have no reasonable opportunity to elect to be exempted. As noted at the outset, however, the Act, although signed into law on June 7, 1972, did not become effective until September 5, 1972. This interim period afforded adequate time for municipalities to become informed in most cases. In any event, it is apparent from the record that members of the Petersburg City Council were well aware of the terms of the Act. We are thus not required to pass on questions that might arise in the event that a small municipality was unaware of the statutory provisions.

[4, 5] The City contends that under home rule provisions, its powers should be construed broadly, and the superior court based its decision on such a construction. Article X, § 1 of the Alaska Constitution provides in part that a liberal construction be given to the power of local government units, and Article X, § 11 specifies that a home rule borough may exercise all legislative powers not prohibited by law or charter. [illegible] re the Act was expressly made

16. The City of Petersburg seemingly concedes that once there has been an official demand for recognition by the public employee organization, the local governmental entity can no longer exempt itself from the PERA. As this case well illustrates, such a concession is rather meaningless. For all practical purposes, given the size of the communities in [illegible]ne local governmental entities will [illegible]are of the organizational activities well [illegible]ough in advance of a demand for recognition to pass legislation, however hastily, to prevent the necessity of ever being forced to deal with an organization selected by employees when such organization is not satisfactory to the city.

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applicable to home rule municipalities, and thus municipalities were impliedly prohibited from refusing to negotiate with organizations selected by employees unless the exemption was timely enacted.[17] Applying a liberal construction to the powers of local government cannot here override the express declaration of policy made a part of the PERA when coupled with considerations of the impact of the repeal of AS 23.40.010 and the different language used in the 1972 exemption provision, SLA ch. 113, § 4 (1972).[18]

The interlocutory order of the superior court is, therefore, overruled insofar as it permits the City to reject application of the PERA after becoming aware of the fact that all of the employees of the City power and light plant had authorized IBEW to represent them.[19]

Reversed and remanded.[20]

CONNOR and BURKE, JJ., dissenting separately.

CONNOR, Justice (dissenting).

I must respectfully dissent.

I am unable to read § 4, ch. 113, SLA 1972 as imposing any definite time limit upon organized boroughs and political subdivisions in their rejection of the coverage of the Public Employment Relations Act. If the legislature had intended that municipalities should act within some definite time, it would have been a simple matter to insert such a time limitation in the text of the statute. That the legislature did not do this is, to me, significant as a guide to interpreting the statute.

Several considerations buttress the conclusion which I have reached. For one thing, many small municipalities might not have been aware of the act and the need to expressly exempt themselves from its provisions until organizational activity actually occurred. Moreover, because the act stated no definite time limit, even those municipalities which were aware of the act might not have felt any sense of urgency in acting to exempt themselves before organizational activity among their employees began to occur. In these circumstances I have difficulty reading into the act an implied time limitation within which a municipality must exempt itself from the statutory coverage.

The majority opinion places emphasis on the contrast between the 1972 statute and the earlier provision contained in AS 23.40.010,[1] which did not require the state or any political subdivisions to enter into union contracts, although the state or a political subdivision was permitted to enter into such contracts. On the contrary, it can be argued that if the political subdivisions of the state were under no previous obligation to enter into union contracts they might well read the 1972 act as continuing the

17. *See Jefferson v. State*, 527 P.2d 37, 43 (Alaska 1974).

18. The state and the IBEW alternatively argued that the trial court erred in the standard of review it applied to the decision of the Department of Labor, contending that the superior court's review of the Department's construction of SLA ch. 113, § 4 (1972) should have been limited to a determination of whether there existed a reasonable basis for the hearing examiner's decision. Here the question presented involved statutory interpretation about which courts have specialized knowledge and experience. Although we disagree with the conclusions reached on the merits by the trial judge, we hold that he did not err in substituting his independent judgement for that of the hearing examiner. The standard applied by the trial court was consistent with the guidelines set forth in *Kelly v. Zamarello*, 488 P.2d 906, 916–17 (Alaska 1971). The appropriate standards of *Kelly* should also be applied upon remand in reviewing other portions of the Department's decision.

19. Our decision is limited in its application to the municipal power plant employees. We do not pass on the question of whether the PERA shall now apply to all employees of the City of Petersburg.

20. The trial court may conduct such further proceedings as are necessary to resolve the remaining issues presented by the City of Petersburg complaint as well as by the appeal and cross-appeal from the order of the Department of Labor.

1. § 1, ch. 108, SLA 1960.

right not to bargain collectively with labor unions, and as conferring upon the political subdivisions an indefinite time limit within which to exempt themselves should they be approached by a labor organization with a demand for collective bargaining. This might well explain why a municipality would wait until organizational activity among its employees actually occurred before acting to exempt itself from the coverage of the 1972 statute.

A quite different and more serious problem would be presented if a city had entered into a collective bargaining agreement with its employees and then later attempted to exempt itself from the coverage of the statute, but that is not the case here.

For the reasons stated I would affirm the judgment of the superior court.

BURKE, Justice (dissenting).

I respectfully dissent. Article X, Section 11 of the Constitution of the State of Alaska provides: "A home rule borough or city may exercise all legislative powers not prohibited by law or by charter." Exercising a legislative power expressly conferred upon it by Section 4, Chapter 113, SLA 1972, the City of Petersburg, by resolution, rejected the application of the provisions of the Public Employment Relations Act. The majority now says that such action was improper since the city was aware of "substantial organizational activity" on the part of certain of its employees. I do not agree.

We are required to give a liberal construction to the powers of local government units.[1] With that principle in mind I can find nothing in the language of the Public Employment Relations Act, or its legislative history, justifying the implied limitation suggested by the majority. Particularly where, as here, there has been an express delegation of legislative authority I believe that this court should act with the utmost restraint in placing any restriction on the exercise of that authority by a home rule city. In this case the legislature's failure to impose a time limitation, in express terms, is simply too obvious to be without meaning. To me there is clear evidence of an intent that there be no such limitation.

But, even if some limitation was intended, as found by the majority, I oppose the adoption of a standard as uncertain as one based upon a political subdivision's awareness of "substantial organizational activity" on the part of its employees. What level or awareness is sufficient? Is actual knowledge required? If so, whose knowledge? Does the term "substantial organizational activity" refer to the number of employees involved or the level of their activity? Does it mean substantial in relation to the size of the political subdivision's total work force, the number of employees eligible for membership in a particular union, or those working at a particular facility, such as a municipal light and power plant?

Because of these and other questions I foresee grave difficulty in any future attempt to determine whether a political subdivision is entitled to avail itself of the protection afforded by Section 4, Chapter 113, SLA 1972. The only safe course of action for such an entity would appear to be the immediate enactment of an ordinance or resolution rejecting the provisions of the Public Employment Relations Act.

1. Article X, Section 1, Constitution of the State of Alaska.

P E R A

Public Employment Relations Act

Copies of public documents and opinions pertaining to PERA

Compiled by

Anne M. Smith
1903 Capitol Avenue
Fairbanks, AK 99709-4123

January 24, 1991

Opinion Paper relating to the application of PERA in the operation of City of Fairbanks.

A group of concerned Fairbanks citizens gathered and studied the documents in this compilation pertaining to the Public Employment Relations Act (PERA) and arrived at similar opinions as set forth in this paper.

1. Study of compilation documents:

a. HB 683 am S, Chapter 113, dated 1972 located at Tab 10 was furnished by LAO, Fairbanks in January 1991 and verifed as being still in effect. There is no reference in this document to a specific date for opting in or out of PERA.

b. City of Fairbanks Memo at Tab 2 gives light to the fact that, in order for the PERA legislation to become law, an amendment known as the"Koslosky amendment" had to be included that would allow a political subdivision the opportunity to reject having the provisions of the act apply; therefore, it appears that the "original intent" of this legislation was to provide this escape mecnanism. Common sense dictates that "nothing is forever" as suggested in second paragraph of the Tab 1 memo.

c. Memo at Tab 2 also brings to light that the action taken by the city council in 1983 to opt into PERA may have been the result of what appears to be a political ploy, an act of coercion so to speak involving a proposed SB 154, the history of which is located at Tab 3.

d. It appears that the problem is not in the collective bargaining process for public employees, but in the method employed in the binding arbitration process which has proved to be oppressive and dictatorial in nature. This point is well made in the correspondence found at Tab 5. Included at Tab 5 is an ordinance enacted by Soldotna which provides for an alternative method of binding arbitration.

PERA Opinion Paper dated January 24, 1991)

3. Other concerns:

There are areas of concern to citizens of Fairbanks and questions as to the legality of the labor contracts now in existence between the City of Fairbanks and some bargaining units:

a. Are persons, other than the City Manager (or Deputy CM in the absence of CM) who conduct negotiations of labor agreements in violation of Sec. 2.505(4) of Fairbanks City Code? Example would be the City of Fairbanks/FPDEA (Police) contract that was negotiated for the city by a member of the police department whose salary was directly affected by the outcome of the resulting contract.

b. As required by Fairbanks City Code, Sec. 2.505(4)(a), was the acceptance of resulting negotiations by council effected by issuance of an ordinance, which would required advancement and an opportunity for citizens' input?

c. It was the understanding of the group that a contract should reflect EQUAL CONSIDERATION for involved parties. The examination of various labor contract copies brought up several areas that fall short of equal consideration:

(1) The results of possibly unauthorized, or at best unskilled negotiation attempts leave few city government options, resulting in a "takeover" by bargaining units of city management rights pertaing to the departments involved.

(2) In addition, there is no "sunset" for any of the present contracts since termination dates do not exist, making it impossible to close out these oppressive document in order to begin fresh negotiations.

3. It was the general concensus of the group that PERA, in its present form, does not reflect the will of the people, but rather reflects the lobbying by organized labor which resulted in an oppressive piece of legislation which literally has local communities held in bondage.

May 20, 1983

Opinion Paper #2
Justification for the City of Fairbanks to take action to exempt itself from PERA and conjunctively passing its own collective bargaining ordinance, in keeping with the intent of PERA as set forth in Article 2, Sec. 23.40.070 of the Act.

1. Numerous documents relating to PERA have been thoroughly studied by a group of concerned citizens of Fairbanks and the general concensus is set forth in this opinion paper:

a. Chapter 113 SLA 1972 titled "AN ACT" sets forth the PUBLIC EMPLOYMENT RELATIONS ACT as Sec. 2 of the Act. Also contained in the Act as Sec. 4 is the results of the "Kosloski amendment" which states:

> This Act is applicabale to organized boroughs and political subdivisions of the state, home rule or otherwise, unless the legislative body of the political subdivision, by ordinance or resolution, rejects having its provisions apply.

b. Nowhere in this Act is there a time limit stated regarding the exercising of this rejection step.

c. In a case considering sec. 4, State v. City of Petersburg, 538 P.2d 263 (Alaska 1975) the supreme court reversed a decision by a superior court judge who upheld the city's rejection. Three out of five supreme court judges, in rendering their opinion "read in" the time frame as it applied to the Petersburg case, and reversed the superior court decision because the rights of the government employees to organize for the purpose of having collective bargaining would have been denied by the rejection of the Act. The other two judges had dissenting opinions that express our findings:

(1) If the legislature had intended that municipalities should act within some definite time, it would have been a simple matter to insert such a time limitation in the text of the statute.

(2) Article X, Section 11 of the Constitution of the State of Alaska provides: "A home rule borough or city may exercise all legislative powers not prohibited by law or by charter. Further, Article X Section 1 requires that the courts give a liberal construction to the powers of local government units.

(3) There is nothing in the language of the Public Employment Relations Act, or its legislative history, that justified the implied limitation suggested by the majority opinion.

3. In a Memorandum issued by a Legislative Counsel of the State Legislative Affairs Agency, Febrary 3, 1988, a reference is made to a later case, City & Bor. of Sitka v. International Brotherhood of Electrical Workers, 653 P. 2d 332 (Alaska 1982). Sitka's exemption from PERA under Sec. 4 was allowed to stand but required Sitka to abide by the terms of its charter and recognize employee organizations.

2. Following is Sec. 23.40.070 DECLARATION OF POLICY, which in our opinion has not been met in crucial areas which will be noted later:

> "The legislature finds that joint decision making is the modern way of administering government. If public employees have been granted the right to share in the decision-making process affecting wages and working conditions, they have become more responsive and better able to exchange ideas and information on operations with their administrators. Accordingly, government is made more effective. The legislature further finds that the enactment of positive legislation establishing guidelines for public employment relations is the best way to harness and direct the energies of public employees eager to have a voice in determining their conditions of work, to provide a rational method for dealing with disputes and work stoppages, to strengthen the merit principle where civil service is in effect and to maintain a favorable political and social environment. The legislature declares that it is the public policy of the state to promote harmonious and cooperative relations between government and its employees and to protect the public by assuring effective and orderly operations of government. These policies are to be effectuated by
>
> (1) recognizing the right of public employees to organize for the purpose of collective bargaining;
>
> (2) requiring public employers to negotiate with and enter into written agreements with employee organizations on matters of wages, hours, and other terms and conditions of employment;

(3) maintaining merit system principles among public employees."

3. We agree with the intentions of the policy set forth above. However, in our opinion the results of being under PERA have been extremely negative in the following crucial areas:

a. Employees <u>should</u> have a voice in determining working conditions etc., but within reason.

(1) Since the City of Fairbanks came under PERA, management's control of the city's operations has been whittled away, at the dictates of the bargaining units using the threat of binding arbitration.

(2) Unprecedented high wage levels, verified by a wage study conducted by a professional firm, have continued to skyrocket to the detriment of the local community, as a result of binding arbitration decisions, slanted heavily in favor of bargaining units which were made without regard for the economic conditions of this community.

b. The merit principle has been weakened by an internal promotion practice which has taken place within the public safety department, that has tainted the political and social environment reflected in public disapproval of such actions.

c. The "public policy of the state to promote harmonious and cooperative relations between government and its employees and to protect the public by assuring effective and orderly operations of government," has failed miserably as a result of PERA dictates. A war has been raging between union representatives and disenchanted local citizens, who have gone through several years of recession and are being saddled with the burden of covering the unreasonable demands put in place because of decisions made by "outside" arbitrators.

4. We contend that binding arbitration requirements of PERA divests our local governing body of its publicly entrusted spending power and delegates it to an individual not elected by the people and with no fiduciary duty of loyalty and responsibility to local citizens. This divesture effectively removes the voice of the people over how their tax dollars are to be spent in the public domain.

5. By enacting a local labor relation ordinance similar to Soldotna's collective bargaining ordinance, binding arbitration can still be effected if an impasse in negotiations should result, by putting last and final offers by both parties to a vote of the people, who then become the arbitrators.

Greater Fairbanks Chamber of Commerce

709 Second Avenue (907) 452-1105

Fairbanks, Alaska 99701 FAX (907) 456-6968

RESOLUTION 94-0425

A RESOLUTION BY THE GREATER FAIRBANKS CHAMBER OF COMMERCE IN SUPPORT OF HB 255 - PERA

WHEREAS, it is the mission of the Greater Fairbanks Chamber of Commerce to improve the economic base of Interior Alaska by promoting a climate in which business thrives and Fairbanks remains a dynamic and attractive place to live, and

WHEREAS, residents of the City have expressed a perception that class one city workers are paid disproportionately high wages compared to private sector workers, and

WHEREAS, studies indicate that class one city workers are paid disproportionately high wages compared to other class one workers in communities similar to Fairbanks, and

WHEREAS, city managers and councils have repeatedly been unable, through collective bargaining, to bring class one city workers wages in line with the private sector's wages or the city's ability to pay for city services, and

WHEREAS, it is believed that collective bargaining fails because mandatory binding arbitration is in place, and

WHEREAS, based on the public's perception that class one city workers unfairly benefit from mandatory arbitration, the City of Fairbanks has been unable to raise voter approved taxes to pay for city services that improve the economic base of Interior Alaska and promote a climate in which businesses thrive, and

WHEREAS, no reasonable solution has been offered to voters except to opt out of those portions of collective bargaining which require mandatory arbitration with class one city workers, and

NOW, THEREFORE, BE IT RESOLVED that the Greater Fairbanks Chamber of Commerce supports HB 255 which would allow the voters to elect to opt out of those portions of the Public Employees Relations Act which requires mandatory arbitration with class one city workers.

Dated this 25th Day of April, 1994.

By Margo Goodhew
Margo Goodhew
President/CEO

By Keith D. Burke
Keith D. Burke
Chairman of the Board

ALASKA MUNICIPAL LEAGUE

217 Second Street, Suite 200 ▪ Juneau, Alaska 99801 ▪ Tel (907) 586-1325, Fax (907) 463-5480

March 20, 1995

TO: Representative Ivan Ivan, Chairman
and Members
House Committee on Community and Regional Affairs

FROM: Kevin C. Ritchie
Executive Director

RE: HB 248 - Local exemption from PERA

HB 248 would allow municipalities to choose, by vote of the people, to withdraw from coverage under the Public Employees Relations Act (PERA), which mandates collective bargaining. The bill is consistent with AML's overall philosophy of allowing maximum local control over the operation of municipal government, however, the AML Policy supports a choice by the elected body by ordinance consistent with the original PERA provisions.

The Alaska Municipal League 1995 Policy Statement (Part VII - Local Government Powers) includes the following statement:

"The League strongly opposes any legislation that would force municipalities to be subject to the provisions of the Alaska Public Employees Labor Relations Act. The League opposes, just as strongly, any legislative efforts to dictate the provisions of local public employee labor relations ordinances. **The League supports legislation to allow each municipality to reject or withdraw from the terms of the Alaska Public Employees Labor Relations Act at any time by action of the governing body.** The scope of decisions as to local government finance and labor policies is best left to the local governing body." (emphasis added)

While we would prefer that local governing bodies be allowed the maximum authority to address this issue, AML supports HB 248 as a move in the right direction.

JK/LEG/HB248.ltr

duced by: Council Member Cleworth
May 20, 1991

RESOLUTION NO. 3261, As Amended

A RESOLUTION URGING THE ALASKA STATE LEGISLATURE TO ENACT AN EXEMPTION BY POPULAR ELECTION PROVISION TO THE STATE PUBLIC EMPLOYMENT RELATIONS ACT.

WHEREAS, by resolution the City of Fairbanks exercised its exemption following the adoption of PERA, but in 1984 waived the exemption by ordinance, thus becoming the first major municipality in Alaska to fall under PERA's jurisdiction; and

WHEREAS, among its many provisions PERA provides for mandatory binding arbitration concerning wages, hours and terms and conditions of employment for Class I public employees; and

WHEREAS, binding arbitration divests a local governing body of its publicly entrusted spending power and delegates the same to an individual not elected by the people and with no fiduciary duty of loyalty and responsibility to local citizens; and

WHEREAS, this divestiture effectively removes the voice of the people over how their tax dollars are to be spent in the public domain; and

WHEREAS, the cost of local government must be controlled by those who pay for it; and

WHEREAS, an exemption by popular election amendment to PERA can restore to local citizens their constitutional entitlement of maximum local self government and the assurance that all local government powers will remain vested in those charged with the public trust.

03/31/95 LEGISLATIVE TELECONFERENCE NETWORK SYSTEM LTN1150

15:19:05 PARTICIPANT LIST (ALL PARTICIPANTS) BY:SOL

TCN:50521 SCHEDULED FOR:03/31/95 15:00 TO 17:00 FOR:SOL

PUBLIC HEARING HOUSE LABOR & COMMERCE

LOCATION:KEN/SOL

HB 248	MR.	JIM	SIMEROTH ✓ Left	KPEA	TESTIFY
HB 248	MS.	WANDA	BONILLAS ✓	KPESA	TESTIFY
HB 248	MS.	KAREN	MAHURIN ✓	KPESA	TESTIFY
HB 248	MS.	TRENA	RICHARDSON ✓	NEA-ALASK	TESTIFY

03/31/95 LEGISLATIVE TELECONFERENCE NETWORK SYSTEM LTN1150

15:11:07 PARTICIPANT LIST (ALL PARTICIPANTS) BY:DJT

TCN:50521 SCHEDULED FOR:03/31/95 15:00 TO 17:00 FOR:DJT

PUBLIC HEARING HOUSE LABOR & COMMERCE

LOCATION:DELTA JCT.

HB 248	MS.	JACKIE	NELSON-LIZARDI		TESTIFY

Official Business

COMMITTEE: LABOR & COMMERCE

DATE: 3/31

SIGN-IN

Subject of meeting: HB 248

PLEASE PRINT!

NAME	ADDRESS (MAILING) & (ZIP)	PHONE	REPRESENTING	DO YOU WANT TO TESTIFY?
VERNON MARSHALL	114 2nd St	586-3090	IVEA	Y
BRUCE LUDWIG		586-2334	APEA/AFT	Y
DON ETHERIDGE	8459 KIMBERLY ST JUN	586 6993	LOCAL 71 DISTRICT COUNCIL LABORERS	Y

HB

249

HOUSE COMMITTEE REPORT

(7)
Date Referred: March 10, 1995 FURTHER REFERRALS:

Date of Committee Action: 5-1-95

The LABOR AND COMMERCE Committee considered: HB 249

HOUSE BILL NO. 249 MCGRATH KUSKOKWIM RIVER ICE CLASSIC

"An Act authorizing the McGrath Kuskokwim River Ice Classic."

recommends it be replaced
with the following committee substitute CS HB 249(L&C) [ ] the same title [X] 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) _____

[X] zero fiscal note(s) Revenue [ ] zero fiscal note(s) _____

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
Rokeby			✓	
[illegible]			✓	
Irene Kubina	✓			
Beverly Masek			✓	
Jim Sanders			✓	
Pete Pott				

CHAIR'S SIGNATURE Pete Pott

CS FOR HOUSE BILL NO. 249(L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVE NICHOLIA

A BILL

FOR AN ACT ENTITLED

"An Act authorizing the McGrath Ice Classic."

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

* **Section 1.** AS 05.15.690(21) is amended to read:

(21) "ice classic" means a game of chance where a prize of money is awarded for the closest guess of the time the ice moves in a body of water or watercourse in the state and is limited to the Nenana and Chena Ice Pools in the same manner as they were conducted in 1959 and previous years, a Kuskokwim Ice Classic to be operated and administered by Bethel Social Services, Inc., a Kenai River Ice Classic to be operated and administered by the Kenai and Soldotna Rotary Clubs jointly or by either the Kenai Rotary Club or the Soldotna Rotary Club, a Yukon River Ice Classic to be operated and administered by the City of Fort Yukon, an Alaska-Soviet Ice Classic to be operated and administered jointly by CAMAI, Inc., and the City of Diomede, [AND] a Big Lake Ice Classic to be operated and administered by the Houston Junior-Senior High School Booster Club and the Big Lake Chamber of Commerce jointly or by either the Houston Junior-Senior High School Booster Club

or the Big Lake Chamber of Commerce, and a McGrath Ice Classic to be operated and administered by the Kuskokwim Public Broadcasting Company;

FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. HB 249

Revision Date:
Title: McGrath Kuskokwim River Ice Classic
Sponsor: Representative Nicholia
Requester: House Labor and Commerce

Dept. Affected: Revenue
BRU: Revenue Operations
Component: Charitable Gaming Division

COMPONENT SERIAL NO. 1883

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
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 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 (FY95) cost: $ 0.0

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

None

Prepared by: Dennis R. Poshard, Director
Division: Charitable Gaming Division
Approved by Commissioner: Wilson L. Condon
Agency: Department of Revenue

Phone: 465-2279
Date: 4/19/95
Date: 4/19/95

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4/28/95

CS FOR HOUSE BILL NO. 249( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVE NICHOLIA

A BILL

FOR AN ACT ENTITLED

"An Act authorizing the McGrath Ice Classic."

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

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or the Big Lake Chamber of Commerce**, and a McGrath Ice Classic to be operated and administered by the Kuskokwim Public Broadcasting Company**;

House District 36
Alatna
Allakaket
Anaktuvuk
Anvik
Arctic Village
Beaver
Bettles
Birch Creek
Canyon Village
Central
Chalkyitsik
Chicken
Chistochina
Chitina
Clonathbaluk
Circle
Circle Hot Springs
Coldfoot
Copper Center
Copperville
Crooked Creek
Dot Lake
Dry Creek
Eagle
Eagle Village
Evansville
Fort Yukon
Gakona
Galena
Grayling
Gulkana
Healy Lake
Holy Cross
Hughes
Huslia
Kaltag
Koyukuk
Lime Village
Livengood
Lake Minchumina
Lower Kalskag
Manley
Marshall
McCarthy
McGrath
Medfra
Mentasta
Minto
Nabesna
Nenana
Nikolai
Northway
Nulato
Pilot Station
Rampart
Red Devil
Ruby
Russian Mission
Shageluk
Slana
Sleetmute
Stevens Village
Stony River
Takotna
Tanacross
Tanana
Telida
Tetlin
Tok
Tuluksak
Tyonek
Upper Kalskag
Venetie
Wiseman

Representative Irene K. Nicholia

State Capitol • Juneau, Alaska 99801
Phone: 465-4527 FAX: 465-2294

Resources
Community and Regional Affairs
International Trade and Tourism

House Bill 249

SPONSOR STATEMENT

HB 249 modifies Alaska Statute 05.15.690 by authorizing the Kuskokwim Public Broadcasting Corporation (KPBC) to hold an annual McGrath Kuskokwim River Ice Classic.

KPBC has been operating out of McGrath for the past 12 years. They are the only broadcasting organization serving more than 4500 interior residents on both the Yukon and Kuskokwim Rivers. KPBC, along with the McGrath Volunteer Fire Department and the Kuskokwim Valley Rescue Squad--together known as McGrath Emergency Services--provide vital services to McGrath and the surrounding communities. These three organizations have been working together to develop the McGrath Kuskokwim River Ice Classic. They plan to continue this relationship in the future to ensure that the proceeds are mutually beneficial, and that a high level of service is maintained in this area.

Many public broadcasting and emergency service organizations across the State are faced with an impending decline in State and Federal support. If the State is going to continue putting more of the burden on these non-profit organizations, they must compensate for this loss in revenue by allowing these organizations the opportunity to search for alternative sources of funding. Allowing the Kuskokwim Public Broadcasting Corporation to oversee an ice classic could give them the funding necessary to ensure their continued service to rural areas. Please remember the efforts of KPBC and McGrath Emergency Services when you consider HB 249.

I appreciate your support.

House District 36
Alatna
Alcan
Allakaket
Aniak
Anvik
Arctic Village
Beaver
Bettles
Birch Creek
Canyon Village
Central
Chalkyitsik
Chicken
Chistochina
Chitina
Chuathbaluk
Circle
Circle Hot Springs
Coldfoot
Copper Center
Copperville
Crooked Creek
Dot Lake
Dry Creek
Eagle
Eagle Village
Evansville
Fort Yukon
Gakona
Galena
Grayling
Gulkana
Healy Lake
Holy Cross
Hughes
Huslia
Kaltag
Koyukuk
Lime Village
Livengood
Lake Minchumina
Lower Kalskag
Manley
Marshall
McCarthy
McGrath
Medfra
Mentasta
Minto
Nabesna
Nenana
Nikolai
Northway
Nulato
Pilot Station
Rampart
Red Devil
Ruby
Russian Mission
Shageluk
Slana
Sleetmute
Stevens Village
Stony River
Takotna
Tanacross
Tanana
Telida
Tetlin
Tok
Tuluksak
Tyonek
Upper Kalskag
Venetie
Wiseman

Representative Irene K. Nicholia

State Capitol • Juneau, Alaska 99801
Phone: 465-4527 FAX: 465-2294

Resources
Community and Regional Affairs
International Trade and Tourism

MEMORANDUM

TO: Representative Pete Kott, Chair
House Labor and Commerce Committee

FROM: Representative Irene Nicholia, Irene

DATE: April 7, 1995

RE: Scheduling of HB 249

I am requesting a hearing on House Bill 249, "An Act authorizing the McGrath Kuskokwim River Ice Classic," in the House Labor and Commerce Committee. Please schedule this Bill at your earliest convenience.

Attached you will find a copy of HB 249, along with the Sponsor Statement and several letters of support.

Thank you in advance for your prompt response.

Letters

KUSKOKWIM PUBLIC BROADCASTING CORPORATION
P.O. Box 70
McGRATH, ALASKA 99627
(907) 524-3001 FAX (907) 524-3436

TO: Representative Pete Kott
Chairman
Labor and Commerce Committee

FR: Betsy McGuire BM
KSKO Radio
General Manager

DT: April 3, 1995

RE: Support of HB 249, authorizing the McGrath Kuskokwim River Ice Classic.

CC: Brent Ursel, McGrath Emergency Services (MES)

Dear Representative Kott,

I am writing to you asking for your support of HB 249 which would authorize the Kuskokwim Public Broadcasting Corporation (KPBC) to hold an annual McGrath Kuskokwim River Ice Classic.

The KPBC manages KSKO-AM public radio in McGrath. We are a full, sole service radio station that Broadcasts to approximately 4500 interior residents on both the Yukon and Kuskokwim Rivers. KIYU-AM Galena is a sole service repeater radio station of KSKO. We have been under continual budget cuts for the past ten years and as you know, with the decline of state dollars, we are now facing the very real threat of loss of our full service status, leaving us with minimal service as a repeater station. For the past three years we have been looking earnestly for alternative funding to state dollars to keep this vital service at an adequate level.

KSKO and McGrath Emergency Services (MES), a combination of the non-profit groups, the McGrath Volunteer Fire Dept and the Kuskokwim Valley Rescue Squad, are working together to make the Kuskokwim River Ice Classic a reality and a possible funding source for all three non-profit organizations.

We live in a sparsely populated area that is very dependant on all of these non-profits for vital services. Vital services that the state can no longer afford to fund. There are very limited economic resources in the area for alternative funding and we are asking you to please support our efforts in alternative fundraising by voting yes to HB 249, the McGrath Kuskokwim River Ice Classic.

Thank-you for your support.

McGrath Health Center
P.O. Box 10
McGrath, Alaska 99627

April 4, 1995

Dear Representative Kott,

I am writing in support of HB0249a authorizing communities to hold ice classics. With declining state revenues, any organizations are looking for ways to fill the budget gap. The Kuskokwim Public Broadcasting Corporation is responsible for locale radio station KSKO, which reaches numerous surrounding villages. An ice classic is one method that could be used to help keep the station on the air.

I urge you to support this measure.

Sincerely,

Brent A. Ursel PAC
Clinic Director

P.O. Box 177
McGrath, Alaska 99627
April 13, 1995

The Honorable Pete Kott; Chairman
Labor and Commerce Committee
Juneau, Alaska

Dear Representative Kott,

I am a student In McGrath. The reason I'm writing is because of KSKO. KSKO is important for the messages and the weather. Also the emergency announcements. I would like your support on H. B. 249 for KSKO. Thank you for your support.

Sincerely,

Leonard Andrews

Leonard Andrews

P.O. Box 161
McGrath, Alaska 99627
April 11, 1995

The Honorable Pete Kott; Chairman
Labor and Commerce Committee
Juneau, Alaska

Dear Representative Kott:

I am writing as a student of the McGrath School in support of the House Bill 249. In my opinion, the Ice Classic raffle should be sold to the surrounding areas of McGrath and to former listeners of KSKO Radio.

I, myself rely on the KSKO Radio for messages, emergency announcements, news broadcasts, entertainment, and for sending important messages to persons of other villages that recieve the frequency of KSKO.

It would be a tragedy to the local listeners and surrounding villages of McGrath to see the radio station taken away.

Please support my request of the passage of H.B. 249. Thank you for your time and consideration.

Sincerely,

Kitty Edwards

Kitty Edwards

Official Business

COMMITTEE:

DATE:

SIGN-IN

Subject of meeting:

HB 249

PLEASE PRINT!

NAME	ADDRESS (MAILING) & (ZIP)	PHONE	REPRESENTING	DO YOU WANT TO TESTIFY?
DEBORAH OSTENDORF	STATE CAP - SO1	4527	Rep Nicholia	Y
DENNIS POSHARD	CHARITABLY GAMING DIVISION	2229	DEPT. OF REVENUE	ANSWER QUESTIONS

Official Business

COMMITTEE: LABOR & COMMERCE

DATE: ~~4/28/75~~ 5/1/75

SIGN-IN

Subject of meeting:

+ HB249
McGrath Kuskokwim River Ice Classic

PLEASE PRINT!

NAME	ADDRESS (MAILING) & (ZIP)	PHONE	REPRESENTING	DO YOU WANT TO TESTIFY?
Dennis Pashard	Charitable Gaming Division	2229	Dept. of Revenue	Answer Questions
DEBORAH CHRISTOFF	State Capitol	4527	Rep. Nicholia (sponsor)	Y

HB

251

(File 1)

FISCAL NOTE

DCED Work Draft
BILL NO. CSHB251

STATE OF ALASKA
1995 LEGISLATIVE SESSION

Revision Date: _____
Title: Native Corporations
Sponsor: Representative Moses
Requestor: _____

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

Expenditures/Revenues: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL EXPENDITURES	0	0	0	0	0	0
CHANGE IN REVENUES ( )	0	0	0	0	0	0

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	0	0	0	0	0	0
1005 GF/Program Receipts	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
Other	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

Estimate of current year (FY 95) cost: $ 0

POSITIONS

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.)

Prepared by: Willis F. Kirkpatrick, Director
Division: Banking, Securities and Corporations
Phone: 465-2521
Date: _____

Approved by Commissioner: William L. Hensley
Agency: Commerce and Economic Development
Date: _____

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FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. CSHB251 (L & C)

Revision Date:
Title: Native Corporations

Sponsor: Representative Moses
Requestor: Representative Kott

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

COMPONENT SERIAL NO. 1233

Expenditures/Revenues: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL EXPENDITURES	0	0	0	0	0	0
CHANGE IN REVENUES ( )	0	0	0	0	0	0

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	0	0	0	0	0	0
1005 GF/Program Receipts	0	0	0	0	0	0
1005 GF/MHTIA	0	0	0	0	0	0
Other	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

Estimate of current year (FY 95) cost: $ 0

POSITIONS

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.)
Disputes arising with respect to the requisite signatures, time frames, or repetitive issues will be subject to judicial resolution under private rights of action, thus the department has submitted a zero fiscal note, believing that we will not be involved in any dispute resolution on these issues.

Prepared by: Willis F. Kirkpatrick, Director
Division: Banking, Securities and Corporations
Phone: 465-2521
Date: 4/29/95

Approved by Commissioner: William L. Hensley
Agency: Commerce and Economic Development
Date: 4/28/95

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FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. HB 251

Revision Date:
Title: An Act relating to Native Corporations

Sponsor: Representative Moses
Requestor: Representative Moses

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

COMPONENT SERIAL NO. 1233

Expenditures/Revenues: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL	6.0	6.0	6.0	6.0	6.0	6.0
CONTRACTUAL	11.0	11.0	11.0	11.0	11.0	11.0
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	17.0	17.0	17.0	17.0	17.0	17.0
CAPITAL EXPENDITURES	0	0	0	0	0	0
CHANGE IN REVENUES ( )	0	0	0	0	0	0

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts	17.0	17.0	17.0	17.0	17.0	17.0
1006 GF/MHTIA						
Other						
TOTAL	17.0	17.0	17.0	17.0	17.0	17.0

Estimate of current year (FY 95) cost: $ 0

POSITIONS

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 the proposed amendments are adopted, the division expects to incur additional expenses for investigations, orders, and resultant hearings. These expenses include related increases in postage, phones, travel, and professional services.

Postage and phones are estimated at $3,000; travel at $6,000 (six trips per year to Anchorage and/or Fairbanks at $1,000 per trip) and professional services contracted through RSA to other department agencies for hearings at $8,000 (four hearings at $2,000 each).

Prepared by: Willis F. Kirkpatrick, Director
Division: Banking, Securities and Corporations
Phone: 465-2521
Date: 3-24-95

Approved by Commissioner: William L. Hensley
Agency: Commerce and Economic Development
Date:

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STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL VERSION CS HB 251(L&C)
PUBLISH DATE 4-26-95

F I S C A L N O T E

REQUEST:
Revision Date: 4-26-95 Affected Agency: Commerce and Economic Development
Title: An Act Relating to Native Corporations BRU: Banking, Securities and Corporations
Sponsor: Rep. Moses Components: Banking, Securities and Corporations
Requestor: House Labor and Commerce

EXPENDITURES/REVENUES: (THOUSANDS OF DOLLARS)

OPERATING	FY 96	FY 97	FY 98	FY 99	FY 2000	FY 2001
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants, Claims						
Miscellaneous						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (THOUSANDS OF DOLLARS)

General Fund						
Federal Fund						
Other						
TOTAL	0	0	0	0	0	0

POSITIONS:

Full-Time	0	0	0	0	0	0
Part-Time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

Estimated FY 95 Impact: 0
ANALYSIS: (ATTACH A SEPARATE PAGE IF NECESSARY)

Prepared By: Pete Kott Date: 4-28-95
Division: House Labor and Commerce Committee, Chair Phone: 465-4954

Approved By:
Agency: Date:

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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 March 16, 1995

SUBJECT: Sectional Summary of HB 251 (Work Order No. 9-LS0662\C)

TO: Representative Carl Moses
Attn: Tim

FROM: Theresa Bannister
Legislative Counsel

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

Section 1 adds a cross-reference to a new subsection created by the bill and dealing with the calling of special meetings of Native corporations.

Section 2 adds new subsections to the section on Native corporations in the state's corporations code.

Sec. 10.06.960(l) increases the fraction (from one-tenth to one-quarter) of shareholders required for calling a special meeting of a Native corporation by shareholders.

Sec. 10.06.960(m) establishes requirements for requests for special shareholder meetings of Native corporations. These requirements include giving notice to the corporation (including a copy of the request and of the solicitation materials), filing the request with the signatures of the requisite number of supporting shareholders, and setting a deadline for filing the signatures. Invalidates the request if it does not comply with the subsection and with the state securities act section that prohibits misleading statements.

Sec. 10.06.960(n) removes certain Native corporations from the application of the corporation code section that addresses the removal of directors without cause. To qualify, the corporation must have adopted articles that provide for classification of directors.

Sec. 10.06.960(o) allows a Native corporation to refuse to consider or submit a shareholder proposal to a shareholder vote if a proposal that dealt substantially with the same subject matter was submitted to a shareholder vote within the preceding two years.

Section 3 amends the section of the state's securities act that relates to orders, injunctions and civil penalties. Adds to the subsection on orders a cross-reference to the new subsection regulating requests for special shareholder meetings of Native corporations. Allows the administrator to issue an order for a knowing or intentional violation of that new subsection.

Section 4 amends the securities act section that relates to orders, injunctions, and civil penalties. Adds a cross-reference to a new subsection directing the administrator to take certain enforcement action relating to Native corporations.

Section 5 adds a new subsection to the securities act section that relates to orders, injunctions, and civil penalties. Directs the administrator to take certain listed action if informed that a person will violate or is violating certain laws, and if the violation relates to a regular or special shareholder meeting of a Native corporation. These laws are the corporations code subsection regulating requests for special shareholder meetings of Native corporations, the securities act section on filings, and the securities act section on misleading statements.

Section 6 amends the securities act section on criminal penalties to include a person who wilfully violates the corporations code subsection regulating requests for Native corporation special shareholder meetings.

Section 7 adds a new section to the state's securities act. The new section allows a Native corporation, a shareholder of the corporation, or both, to bring a civil action for a violation of certain laws if the violation relates to a regular or special meeting of the corporation's shareholders. Provides for the recovery of damages, the voiding of a proxy, and an injunction against additional violations.

Section 8 adds definitions of "Native corporation" and "proxy" to the state's securities act.

If I may be of further assistance, please advise.

TLB:pl:glc
95-059.plm

Alaska State Legislature

Representative Carl E. Moses

CHAIRMAN
HOUSE RULES COMMITTEE

CHAIRMAN
HOUSE SPECIAL COMMITTEE FISHERIES

MEMBER FINANCE SUBCOMMITTEES ON:
DEPT. OF FISH AND GAME
DEPT. OF PUBLIC SAFETY

SESSION:
CAPITAL BUILDING, ROOM 204
JUNEAU, ALASKA 99801-1182
PHONE: (907) 465-4451
FAX: (907) 465-3445

INTERIM
716 W. 4TH AVE. #630
ANCHORAGE, AK 99501-2133
PHONE: (907) 258-8167
FAX: (907) 258-8468

MEMORANDUM

DATE: March 16, 1995

TO: Rep. Pete Kott, Chairman
House Labor & Commerce Committee

FROM: Rep. Carl E. Moses, Chairman CEM
House Rules Committee

SUBJ: Request for Scheduling - HB 251

I respectfully request a Labor & Commerce Committee hearing on HB 251, the bill to address activities of dissident shareholders of Native corporations.

My staff will provide support material for your members' committee files. Please contact Tim Benintendi of my staff at 3764 as needed.

CEM/tb/m16

Alaska State Legislature

Representative Carl E. Moses

CHAIRMAN
HOUSE RULES COMMITTEE

CHAIRMAN
HOUSE SPECIAL COMMITTEE ON FISHERIES

MEMBER FINANCE SUBCOMMITTEES ON:
DEPT. OF FISH AND GAME
DEPT. OF PUBLIC SAFETY

SESSION:
STATE CAPITAL BUILDING
JUNEAU, ALASKA 99801-1182

INTERIM
716 W. 4TH AVE. #630
ANCHORAGE, AK 99501-2133
PHONE: (907) 258-8167
FAX: (907) 258-3468

MEMORANDUM

DATE: April 10, 1995

TO: Rep. Pete Kott, Chairman
House Labor & Commerce Committee

FROM: Rep. Carl E. Moses, Chairman
House Rules Committee

SUBJ: House Bill 251 - Meetings of Native Corporations

This will inform you of my recommendations for the L&C Committee Substitute on the above-mentioned bill, recommendations which I think will be responsive to the needs of the corporations, and the interests of shareholder groups. Recent discussion in committee hearings has been useful on several points of the bill, and I feel these suggestions will strengthen the measure.

I would like to see the percentages change from 25 down to 20% for corporations larger than 500 shareholders, and to be established at 25% for corporations of fewer than 500 shareholders.

I would like to lengthen the period of signature gathering from 90 to 120 days.

I would like to drop the criminal penalties for making false or misleading statements.

And lastly, I would like to restore administrative flexibility by changing "shall" to "may" on line 25, page 3.

If there are questions, please contact Tim Benintendi of my office at 3764.

CEM/tb/m13

9-LS0662\G
Bannister
3/24/95

CS FOR HOUSE BILL NO. 251( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES MOSES, MacLean, Williams

A BILL

FOR AN ACT ENTITLED

"An Act relating to the meetings, shareholder proposals, and removal of directors of Native corporations."

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

* **Section 1.** AS 10.06.480(a) is amended to read:

(a) In addition to other liabilities, a director is liable in the following circumstances unless the director complies with the standard provided in AS 10.06.450(b) for the performance of the duties of directors:

(1) A director who votes for or assents to a distribution to the corporation's shareholders contrary to the provisions of AS 10.06.358, 10.06.360, 10.06.363, or 10.06.365 or contrary to a restriction in the articles of incorporation, is liable to the corporation, jointly and severally with all other directors voting for or assenting to the distribution, for the amount of the distribution that is paid or the value of the assets that are distributed in excess of the amount of the distribution that could have been paid or distributed without violation of AS 10.06.405 - 10.06.438,

10.06.960(1), or the restrictions of the articles of incorporation.

(2) A director who votes for or assents to a distribution to the corporation's shareholders during the liquidation of the corporation without the payment and discharge of, or making adequate provision for, all known debts, obligations, and liabilities of the corporation is liable to the corporation, jointly and severally with all other directors voting for or assenting to distribution, for the value of the assets that are distributed, to the extent that the debts, obligations, and liabilities of the corporation are not thereafter paid and discharged.

(3) A director who votes for or assents to a loan of assets of the corporation to an officer or employee or a loan secured by the corporation's shares contrary to the provisions of AS 10.06.485 or contrary to a restriction in the articles of incorporation, is liable to the corporation, jointly and severally with all other directors voting for or assenting to the loan, for the amount of the loan that is in excess of a loan that could have been extended without a violation of AS 10.06.485 or the restriction in the articles of incorporation.

* Sec. 2. AS 10.06.960 is amended by adding new subsections to read:

(l) Notwithstanding AS 10.06.405 and 10.06.465(c), special meetings of the shareholders of a corporation organized under the Act may only be called by the board, the chair of the board, the president, the holders of not less than one-quarter of all the shares entitled to vote at the meeting, or other persons as may be authorized in the articles of incorporation or the bylaws.

(m) In addition to the other requirements of this chapter and AS 45.55 for special meetings, and subject to the penalties in AS 45.55.920 - 45.55.925, a written notice of a petition or other request for a special meeting of shareholders under (l) of this section shall be filed with the corporation before a person solicits support for the petition or request. The notice must state in detail the purpose of the special meeting and include a copy of the petition or request and all materials to be used in connection with the solicitation. A petition or request bearing the original signatures of the holders of the requisite number of shares supporting the petition or request shall be filed with the corporation within 90 days after the filing. If a petition or request covered by this section does not comply with this subsection and AS 45.55.160, the

petition or request is invalid.

(n) The provisions of AS 10.06.460 do not apply to a corporation organized under the act, if the corporation has adopted articles that provide for classification of directors under AS 10.06.455, or if the corporation is allowed by sec. 57, ch. 82, SLA 1989, to provide in its bylaws for the classification of directors.

(o) A corporation that is organized under the act is not required to consider or to submit to a vote of the shareholders a shareholder proposal that deals substantially with the same subject matter as a proposal that was submitted to a vote of the shareholders within the preceding two years.

* **Sec. 3.** AS 45.55.920(b) is amended to read:

(b) The administrator may issue an order against an applicant, registered person, or other person who knowingly or intentionally violates this chapter, [OR] a regulation or order of the administrator under this chapter, **or AS 10.07.960(m),** imposing a civil penalty of not more than $2,500 for a single violation, or not more than $25,000 for multiple violations, in a single proceeding or a series of related proceedings.

* **Sec. 4.** AS 45.55.920(d) is amended to read:

(d) Before issuing an order under (a)(1), (b), [OR] (c), **or (e)(1)** of this section, the administrator shall give reasonable notice of and an opportunity for a hearing. However, the administrator may issue a temporary order under (a)(1) **or (e)(1)** of this section pending the hearing, which remains in effect until 10 days after the hearing is held and which becomes final if the person to whom notice is addressed does not request a hearing within 15 days after the receipt of notice.

* **Sec. 5.** AS 45.55.920 is amended by adding a new subsection to read:

(e) If the administrator is informed that a person has engaged or is about to engage in an act or practice in violation of AS 10.06.960(m), AS 45.55.139, or 45.55.160, and if the act or practice relates to a regular or special meeting of the shareholders of a Native corporation, the administrator shall

(1) issue an order

(A) directing the person to cease and desist from continuing the act or practice; and

(B) voiding a proxy obtained in violation of AS 10.06.960(m), AS 45.55.139, or 45.55.160; or

(2) bring an action in the superior court to enjoin the acts or practice, to void a proxy obtained in violation of AS 10.06.960(m), AS 45.55.139, or 45.55.160, or to enforce compliance with AS 10.06.960(m), AS 45.55.139, or 45.55.160, and, upon a proper showing, the appropriate remedy shall be granted.

* **Sec. 6.** AS 45.55.925(a) is amended to read:

(a) In addition to the civil penalties assessed under AS 45.55.920, a person who wilfully violates a provision of this chapter except AS 45.55.160, [OR] who wilfully violates a regulation or order under this chapter, [OR] who wilfully violates AS 45.55.160 knowing the statement made to be false or misleading in a material respect or the omission to be misleading by any material respect, **or who wilfully violates AS 10.06.960(m),** upon conviction, is punishable by a fine of not more than $5,000, or by imprisonment for not less than one year nor more than five years, or both. Upon conviction of an individual for a felony under this chapter, imprisonment for not less than one year is mandatory. However, an individual may not be imprisoned for the violation of a regulation or order if the individual proves that the individual had no knowledge of the regulation or order. An indictment or information may not be returned under this chapter more than five years after the alleged violation.

* **Sec. 7.** AS 45.55 is amended by adding a new section to read:

Sec. 45.55.933. CIVIL ACTION FOR CERTAIN VIOLATIONS. A Native corporation, a shareholder of a Native corporation, or both, may bring a civil action in superior court against a person who violates AS 10.06.960(m), AS 45.55.139, or 45.55.160, if the violation relates to a regular or special meeting of the shareholders of the Native corporation. In the action, the Native corporation, shareholder, or both, may recover damages from the violator, void a proxy, or enjoin the violator from continuing the violation or committing additional violations. A shareholder may bring the action as a derivative action under AS 10.06.435.

* **Sec. 8.** AS 45.55.990 is amended by adding new paragraphs to read:

(14) "Native corporation" means a corporation organized under 43 U.S.C. 1601 - 1641 (Alaska Native Claims Settlement Act);

(15) "proxy" includes a petition or other request for a special meeting of shareholders under AS 10.06.960(m) and material distributed in connection with the petition or request or with the solicitation of support for the petition or request.

9-LS0662\M
Bannister
4/17/95

CS FOR HOUSE BILL NO. 251(L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVES MOSES, MacLean, Williams

A BILL

FOR AN ACT ENTITLED

"An Act relating to the meetings, shareholder proposals, and removal of directors of Native corporations."

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

* Section 1. AS 10.06.480(a) is amended to read:

(a) In addition to other liabilities, a director is liable in the following circumstances unless the director complies with the standard provided in AS 10.06.450(b) for the performance of the duties of directors:

(1) A director who votes for or assents to a distribution to the corporation's shareholders contrary to the provisions of AS 10.06.358, 10.06.360, 10.06.363, or 10.06.365 or contrary to a restriction in the articles of incorporation, is liable to the corporation, jointly and severally with all other directors voting for or assenting to the distribution, for the amount of the distribution that is paid or the value of the assets that are distributed in excess of the amount of the distribution that could have been paid or distributed without violation of AS 10.06.405 - 10.06.438,

10.06.960(1), or the restrictions of the articles of incorporation.

(2) A director who votes for or assents to a distribution to the corporation's shareholders during the liquidation of the corporation without the payment and discharge of, or making adequate provision for, all known debts, obligations, and liabilities of the corporation is liable to the corporation, jointly and severally with all other directors voting for or assenting to distribution, for the value of the assets that are distributed, to the extent that the debts, obligations, and liabilities of the corporation are not thereafter paid and discharged.

(3) A director who votes for or assents to a loan of assets of the corporation to an officer or employee or a loan secured by the corporation's shares contrary to the provisions of AS 10.06.485 or contrary to a restriction in the articles of incorporation, is liable to the corporation, jointly and severally with all other directors voting for or assenting to the loan, for the amount of the loan that is in excess of a loan that could have been extended without a violation of AS 10.06.485 or the restriction in the articles of incorporation.

* Sec. 2. AS 10.06.960 is amended by adding new subsections to read:

(l) Notwithstanding AS 10.06.405 and 10.06.465(c), special meetings of the shareholders of a corporation organized under the act may only be called by

(1) the board;

(2) the chair of the board;

(3) the president;

(4) a petition or other request of the holders of not less than one-tenth of all the shares entitled to vote at the meeting, if the corporation has 500 or more shareholders;

(5) a petition or other request of the holders of not less than one-quarter of all the shares entitled to vote at the meeting if the corporation does not have 500 or more shareholders; or

(6) other persons as may be authorized in the articles of incorporation or the bylaws.

(m) In addition to the other requirements of this chapter and AS 45.55 for special meetings, and subject to the penalties in AS 45.55.920 - 45.55.925, a written

notice of a petition or other request for a special meeting of shareholders under (l) of this section shall be filed with the corporation before a person solicits support for the petition or request. The notice must state in detail the purpose of the special meeting and include a copy of the petition or request and all materials to be used in connection with the solicitation. A petition or request bearing the original signatures of the holders of the requisite number of shares supporting the petition or request shall be filed with the corporation within 90 days after the filing. If a petition or request covered by this section does not comply with this subsection and AS 45.55.160, the petition or request is invalid.

(n) The provisions of AS 10.06.460 do not apply to a corporation organized under the act, if the corporation has adopted articles that provide for classification of directors under AS 10.06.455, or if the corporation is allowed by sec. 57, ch. 82, SLA 1989, to provide in its bylaws for the classification of directors.

(o) A corporation that is organized under the act is not required to consider or to submit to a vote of the shareholders a shareholder proposal that deals substantially with the same subject matter as a proposal that was submitted to a vote of the shareholders within the preceding year.

* Sec. 3. AS 45.55.920(b) is amended to read:

(b) The administrator may issue an order against an applicant, registered person, or other person who knowingly or intentionally violates this chapter, [OR] a regulation or order of the administrator under this chapter, or AS 10.07.960(m), imposing a civil penalty of not more than $2,500 for a single violation, or not more than $25,000 for multiple violations, in a single proceeding or a series of related proceedings.

* Sec. 4. AS 45.55.920(d) is amended to read:

(d) Before issuing an order under (a)(1), (b), [OR] (c), or (e)(1) of this section, the administrator shall give reasonable notice of and an opportunity for a hearing. However, the administrator may issue a temporary order under (a)(1) or (e)(1) of this section pending the hearing, which remains in effect until 10 days after the hearing is held and which becomes final if the person to whom notice is addressed does not request a hearing within 15 days after the receipt of notice.

* Sec. 5. AS 45.55.920 is amended by adding a new subsection to read:

(e) If the administrator is informed that a person has engag· 1 or is about to engage in an act or practice in violation of AS 10.06.960(m), AS 45.55.139, or 45.55.160, and if the act or practice relates to a reguiar or special meeting of the shareholders of a Native corporation, the administrator shall

(1) issue an order

(A) directing the person to cease and desist from continuing the act or practice; and

(B) voiding a proxy obtained in violation of AS 10.06.960(m), AS 45.55.139, or 45.55.160; or

(2) bring an action in the superior court to enjoin the acts or practice, to void a proxy obtained in violation of AS 10.06.960(m), AS 45.55.139, or 45.55.160, or to enforce compliance with AS 10.06.960(m), AS 45.55.139, or 45.55.160, and, upon a proper showing, the appropriate remedy shall be granted.

* Sec. 6. AS 45.55 is amended by adding a new section to read:

Sec. 45.55.933. CIVIL ACTION FOR CERTAIN VIOLATIONS. A Native corporation, a shareholder of a Native corporation, or both, may bring a civil action in superior court ag..inst a person who violates AS 10.06.960(m), AS 45.55.139, or 45.55.160, if the violation relates to a regular or special meeting of the shareholders of the Native corporation. In the action, the Native corporation, shareholder, or both, may recover damages from the violator, void a proxy, or enjoin the violator from continuing the violation or committing additional violations. A shareholder may bring the action as a derivative action under AS 10.06.435.

* Sec. 7. AS 45.55.990 is amended by adding new paragraphs to read:

(14) "Native corporation" means a corporation organized under 43 U.S.C. 1601 - 1641 (Alaska Native Claims Settlement Act);

(15) "proxy" includes a petition or other request for a special meeting of shareholders under AS 10.06.960(m) and material distributed in connection with the petition or request or with the solicitation of support for the petition or request.

9-LS0662\O
Bannister
4/24/95

CS FOR HOUSE BILL NO. 251(L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVES MOSES, MacLean, Williams

A BILL

FOR AN ACT ENTITLED

"An Act relating to the meetings, shareholder proposals, and removal of directors of Native corporations."

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

*** Section 1.** AS 10.06.960 is amended by adding new subsections to read:

(l) Notwithstanding AS 10.06.405 and 10.06.465(c), special meetings of the shareholders of a corporation organized under the act may only be called by

(1) the board;

(2) the chair of the board;

(3) the president;

(4) a petition or other request of the holders of not less than 15 percent of all the shares entitled to vote at the meeting, if the corporation has 500 or more shareholders;

(5) a petition or other request of the holders of not less than 25 percent of all the shares entitled to vote at the meeting if the corporation does not have 500

or more shareholders; or

(6) other persons as may be authorized in the articles of incorporation or the bylaws.

(m) In addition to the other requirements of this chapter, a written notice of a petition or other request for a special meeting of shareholders under (l) of this section shall be filed with the corporation before a person solicits support for the petition or request. The notice must state in detail the purpose of the special meeting and include a copy of the petition or request and all materials to be used in connection with the solicitation. A petition or request bearing the original signatures of the holders of the requisite number of shares supporting the petition or request shall be filed with the corporation within 180 days after the filing. If a petition or request covered by this section does not comply with this subsection, the petition or request is invalid.

(n) The provisions of AS 10.06.460 do not apply to a corporation organized under the act, if the corporation has adopted articles that provide for classification of directors under AS 10.06.455, or if the corporation is allowed by sec. 57, ch. 82, SLA 1989, to provide in its bylaws for the classification of directors.

(o) A corporation that is organized under the act is not required to consider or to submit to a vote of the shareholders a shareholder proposal that deals substantially with the same subject matter as a proposal that was submitted to a vote of the shareholders within the preceding two years.

* Sec. 2. AS 45.55.990 is amended by adding a new paragraph to read:

(14) "proxy" includes a petition or other request for a special meeting of shareholders under AS 10.06.960(m) and material distributed in connection with the petition or request or with the solicitation of support for the petition or request.

CS FOR HOUSE BILL NO. 251(L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVES MOSES, MacLean, Williams

A BILL

FOR AN ACT ENTITLED

"An Act relating to the meetings, shareholder proposals, and removal of directors of Native corporations."

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

* Section 1. AS 10.06.960 is amended by adding new subsections to read:

(l) Notwithstanding AS 10.06.405 and 10.06.465(c), special meetings of the shareholders of a corporation organized under the act may only be called by

(1) the board;

(2) the chair of the board;

(3) the president;

(4) a petition or other request of the holders of not less than 15 percent of all the shares entitled to vote at the meeting, if the corporation has 500 or more shareholders;

(5) a petition or other request of the holders of not less than 25 percent of all the shares entitled to vote at the meeting if the corporation does not have 500

or more shareholders; or

(6) other persons as may be authorized in the articles of incorporation or the bylaws.

(m) In addition to the other requirements of this chapter, a written notice of a petition or other request for a special meeting of shareholders under (l) of this section shall be filed with the corporation before a person solicits support for the petition or request. The notice must state in detail the purpose of the special meeting and include a copy of the petition or request and all materials to be used in connection with the solicitation concurrent with the distribution of the petition or request to shareholders. A petition or request bearing the original signatures of the holders of the requisite number of shares supporting the petition or request shall be filed with the corporation within 180 days after the filing.

(n) The provisions of AS 10.06.460 do not apply to a corporation organized under the act, if the corporation has adopted articles that provide for classification of directors under AS 10.06.455, or if the corporation is allowed by sec. 57, ch. 82, SLA 1989, to provide in its bylaws for the classification of directors.

(o) A corporation that is organized under the act is not required to consider or to submit to a vote of the shareholders a shareholder proposal that deals substantially with the same subject matter as a proposal that was submitted to a vote of the shareholders within the preceding year.

* Sec. 2. AS 45.55.990 is amended by adding a new paragraph to read:

(14) "proxy" includes a petition or other request for a special meeting of shareholders under AS 10.06.960(m) and material distributed in connection with the petition or request or with the solicitation of support for the petition or request.

HB No. 251
An Act Relating To Native Corporations

Wednesday March 15th, this bill, 251, was introduced. Already today, seven days later, we are having a hearing. The Native Indian people - which are approximately 75,000 in number in Alaska, know nothing about this. They have a right to be involved with this process - but no one invited them - no one told them what this was or how it was going to affect them. I know that Maxine Richert, of Sealaska Corporation, and Leslie Longenbaugh, legal counsel from an agency on the second floor of our Sealaska Corporation took an aggressive role in explaining what of the technical language they felt like, in the original introduction of this issue into the legislature last year, when it was nine pages long and called HB 501. The House Judiciary Committee office stated at that time, Sam Kito and Robert Loescher had worked for its introduction. Since that time, it has been known as "Sealaska Corporation's bill."

I refer the committee to Section (a) on page four of bill 251 regarding 'misleading' statements, and the same page, which addresses stock owners having to take on a burden of proof, having our corporation make us "PROVE" that we didn't know a regulation existed on 'misleading statements. I read a Native shareholder paper on the early version of this bill, from February 1994. There was an error within it. I thought to myself, it was just an oversight, a mistake. Then, after going to talk with Klukwan, Inc.'s attorney, and bankings & securities, I came to see what of the paper I read was mistaken, and what was not. "A mistake was all I thought." I let it go, it was no big deal. I knew the authors feeling of urgency regarding the issues, the urgency was in the writing, it caused me to look into it, where Sealaska gave us no opportunity to understand this bill. It never occurred to me that a $2,500.00 to $25,000.00 fine, and a minimum of 1 year in prison, or five years maximum; along with penalties, indictments ; convictions, felonies, and imprisonments were the appropriate thing to do to such a person. Anyone can make mistakes as they learn a process, but this bill feels Indians belong in jail for it. This is a crime bill, it is not a Native bill. I ask you when once did Sealaska Corporation try to educate even one Indian fully, or even in part on this legislation. I know the answer, because I am a Sealaska holder. Not even once, and now we are going to be going to jail for that (and fined). This legislation affects every Native, there is a moral responsibility to allow each and every one of them insight into how this legislation will truly affect them. It is their right as stock owners.

I am tired of the psychology from Sealaska, "Let's burn the Indian" - so that when they feel that something the share owners want imposes upon them, they can throw some scary circumstances such as "imprisonment, 25,000.00 fines, indictments, felonies," etc., as HB 251 quotes, the shareholders' way. We are tired of fearing the board. When we wonder where the land went for Indian use, and surmise, are they afraid of us when we ask? Do we get a satisfactory action on their part? No. We have never been afforded that respect or even the respect of a good, and sound, verbal response built on Indian principal. But, we are treated with scare tactics, and bills such as HB 251 emerge. Many Indians only got Sealaska as a corporation, they have no land, or an economic base to continue the Indian way of life. Our people are disappearing, they have no where to share in a common bond, and year after year, we cannot get Sealaska Corporation to listen. Bills such as this further prove, to me, that we cannot get through the corporate Berlin Wall that Sealaska has been steadfastly encroaching to incapacitate us. If this is such a good bill, why isn't it being applied to all corporations in the State. Do you know why? They would blow it right of this planet, where it belongs. Such severe and restrictive measures being placed on a low-income minority group of Indian people does not seem to be requiring an accounting for by anyone. This allows misconduct on the

part of a board to solidify. Inquiries of concern for the corporate business from shareholders would go by unanswered, which we could do nothing about. It seems that this allows a board member to remain a member through any circumstances. This board will now be as though they 'own' this corporation, solely themselves. Why do they have such a privilege before you, to no longer be responsible to the state, the Indians, or to anyone? We are not a passive people, we do care about what affects us.

There is a 90-day regulation being proposed in section 2 (m), page 2 of the bill, for petitions to be turned in. The cost for stock holders to turn in these petitions would be about $25,000 to $30,000 under this increase in petition signatures that the legislation calls for. What this legislation is in fact stating is that, you must have almost 3,000 signatures, you must have $30,000, and you have 90 days from the date you began your petition to accomplish it all. Well, Indian people are poor, you'll never see it. An already repressed voice, an Indian will never be heard again. I am asking you to kill this bill. Our Indian people deserve to be heard.

It has not been our right to challenge the management of Sealaska Corporation, and specialists at the Social & Economic division of the university in Anchorage have stated that if we could sell our stock that would change. If severe rules such as this bill are forced upon the Indians, when the day comes to open up our stock, the board will once again remain unchallengeable, our stock holdings without share owner rights, when other corporations are not allowed to be stock holders within ***prison walls.***

Why just Native Americans? You are discriminating . . . if it is such a good bill, bring it to the whole state. Our Indian people do not deserve such destruction, such severe measures. I am asking you to kill this bill.

My grandmother was a very beautiful full-blooded Athabascan-Tsimshian women of whom I am descent. I am very worried about this bill and that it will further cause older Indian people to not be allowed to challenge why they did not get any Indian land from Sealaska Corporation - please do not let this bill pass into law, I will go to the president if I have to, but please, do not let this bill pass.

Joan Mantei

Joan Mantei
Box 34711
Juneau, AK 99803-4711
463-7351

how many signatures have got to? It should be brought to show how we really are

Alaska State Legislature

Representative Carl E. Moses

CHAIRMAN
HOUSE RULES COMMITTEE

CHAIRMAN
HOUSE SPECIAL COMMITTEE ON FISHERIES

MEMBER FINANCE SUBCOMMITTEES ON
DEPT. OF FISH AND GAME
DEPT. OF PUBLIC SAFETY

SESSION
STATE CAPITAL BUILDING
JUNEAU, ALASKA 99801-1182

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716 W. 4TH AVE. #630
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SPONSOR SUMMARY

House Bill 251

HB 251 addresses issues relating to special meetings and proxy rules of Alaska Native corporations. Most of these proposed changes in statute are concerned with activities surrounding petition drives for special shareholder meetings.

Given the inalienable nature of stock holdings in Native corporations, some protections must be afforded against precipitous changes in management, and repetitive attempts at reviving failed bids to change corporate policy. The objective of HB 251 is to establish a balance between the needs of shareholders to responsibly petition for change, and management's needs to pursue the objectives of the corporation without undue attention to continual and repetitive actions of shareholder groups.

The main provisions of the bill are to require certain procedures for the filing of shareholder proposals; to establish penalties for knowingly making false or misleading statements; to offer some relief from frequent proxy fights; and to introduce some protection for the management and financial resources of the corporations.

Section 1 of HB 251 cross-references new sub-section (l) of Section 2 to the provisions of AS 10.06.405 regarding meetings of corporations.

Section 2 (l) increases the percentage of represented shares of corporate stock which can be voted at a special meeting, from ten percent to twenty-five percent. This effectively increases the number of shareholders needed to call a special meeting. It brings state law into conformance with provisions in the Alaska Native Claims Settlement Act (ANCSA), which recognized early on, the potential

expense and disruption imposed upon Native corporations by the requirement that special shareholder meetings and votes be held in response to shareholder petitions.

Section 2 (m) requires written notification (filing) of an impending petition by a shareholders group, to the corporation, including the purpose of a desired special meeting, a copy of the petition, and copies of all materials to be used in connection with the solicitation. This section calls for the final submittal of a petition bearing original signatures by 90 days after the initial filing.

Section 2 (n) institutes removal-for-cause options for directors of Alaska Native corporations if they have in their Articles of Incorporation or their By-laws, provisions for the classification of directors, that is, board members with staggered terms. This provision would make removal attempts more deliberate, and add a degree of protection against dramatic changes on the board, in view of the possible turnover of a third of the board each year. In the balance between corporate stability and management responsiveness to shareholders, this is a useful component.

Section 2 (o) gives an option to Native corporation boards to refuse to submit for a vote, a shareholder proposal which deals substantially with the same subject matter as a proposal submitted to a vote within the preceding two years. This would reduce the frequency of repetitive challenges on the same issue. In enacting ANCSA, Congress tried to balance the shareholders' right to petition against the potential distraction and expense of repeated proxy fights, and concluded that even fundamental issues affecting shareholders need only be addressed every two years.

Section 3 makes civil penalties applicable to violations of the new regulations in Section 2 (m), relating to requests for special shareholder meetings of Native corporations. It provides for the administrator (CED commissioner or the designee), to issue orders for such violations.

Section 4 adds the provisions of Section 5 (e) (1) of this bill to that which the administrator may consider prior to issuing an order or notice of an opportunity for a hearing.

Section 5 provides for actions on the part of the administrator in the event violations occur, or are about to occur, relative to reg-

ular or special shareholder meetings. These actions include the issuance of an order which may either direct the offending party to cease and desist, or which may void a proxy obtained in violation. The administrator may also bring action in Superior Court to halt the violation.

Section 6 applies criminal penalties to persons who willfully violate the new provisions of Section 2 (m) above, relating to requests for special shareholder meetings of Native corporations. Currently, those who issue false or misleading information regarding petitions, do so with relative impunity.

Section 7 would add a new section to the securities act, providing for a Native corporation or a shareholder, or both, to bring civil action for violations of Section 2 (m) above. This would allow for recovery of damages, voiding of a proxy, and/or an injunction against continued or additional violations.

Section 8 defines "NATIVE CORPORATION" and "PROXY" for the state's securities act.

Unique conditions exist for Native corporations in Alaska. Shareholders who lose confidence in management simply cannot sell their shares and walk away, as can be done by dissatisfied shareholders of other corporations. This acutely inspires both consideration for shareholders' rights, and concern for the stability and success of the corporation. The provisions of HB 251 stand to strengthen the process by which responsible challenges to management are conducted.

If there are questions, please contact Tim Benintendi of my office at 465-3764.

CEM/tb/statement.251

HB 251 - Appears To Have An Adverse Affect on Native People

The larger corporations can change the amount to 15% if they want, it doesn't seem right, but to acquire 15% of signatures does seem possible. I know the smaller corps can gather 10% of all shareholder's signatures easy, so this rule may be alright on shareholders in the smaller corporations, but this is not true for the big corporations where there is 15,770 members like at Sealaska Corporation - it would be a hard job for shareholders there. The proposals that it affect those with over 500 members and should require 25% of these, is not stated any place in the bill, as Cook Inlet Region, Inc.'s attorney stated.

I think that it is negotiable the timing of the petitions, that instead of waiting two years to start a new petition on a same issue, that it be not TURNED IN two months in front of, or behind of, an annual meeting. A two-year waiting period was proposed, due to Sealaska claims the problem is that it costs too much money when done around an annual meeting, or why isn't the legislation clarifying this issue? But, a petition can be BEGUN any time of the year, regardless of when an annual meeting is scheduled. There has NOT been a petition every year to recall the board (for Sealaska, only 3 recalls in 25 years), therefore, I don't know why they are complaining about something like this. The two-year provision would make Sealaska able to turn down a petition, or heavily regulate it to the point the Indians couldn't accomplish it in the proposed bureaucratic procedure & outrageously short proposed timelines, and therefore, if they threw the issue out and threw it out, an Indian would have to wait until they were old and dying, and still may never have their issue heard due to Sealaska's proposed austere measures. Sealaska Corporation should not be allowed to make the share owners answer to them in a petition process. The share owners are suppose to be dictating to them.

I know that Bankings & Securities flips a petition the corporation's way the minute the petition begins. Sealaska Corp. refuses to admit to this, probably believing that to do so supports their bill somehow, so that they can push a new process of shareholders being required to answer to Sealaska for every step of the petition - and giving them jurisdiction over deciding whether removal of a board member is done with or without cause. This is a type of self-monitoring, **they will never help you take their jobs.** If they want the petition filed with them, fine. Any other requirements, that the corporation be allowed to review, respond, or approve of the petition is NON NEGOTIABLE. The petitions are now turned into the corporation upon having the required amount, the only gap Sealaska Corporation is trying to fill in with this bill, is that they have TOTAL and final control in the corporation, and be allowed to legally ignore the voice of their Native shareholder members. It isn't their right, and it is like letting Hitler run the Jews, upon his asking. Absolutely do not force such things upon the Indian people.

Since the present petition has had enough signatures for many months (to call for a special meeting) but not enough money, and because it has been 6 mos. from the date it was begun (Sept. 22) - I believe the 90 day requirement is going to quite the low-income Alaskan Natives entirely, which is against the law, to put them out of control of their settlement. Remember, the settlement itself is a Congressional ordered compensation to the Indian people for loss of their lands. If a petition can be TURNED IN without interfering with the annual meeting, to assist the Corporation money-wise, then there is no reason to put a cap on the time you have to complete your petition. In any case, it should not be up to Sealaska to make this decision. If they are going to foot the bill for getting the recall materials sent to the 15,770 Sealaska Corporation shareholders, then 90 days may work for the Indians, who generally are extremely poor.

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We are not in favor of setting more bureaucratic procedures on petitioning or recall laws, which are going to diminish the rights of shareholders in THEIR for-profit corporation. If procedure can be demonstrated to be MUTUALLY beneficial to corporate management and shareholders, there are possibilities, otherwise, we are opposed to this bill.

Remember, of all the people that use the Glory Hole, 78% are Alaskan Native and about 75% of all those that use St. Vincent De Pauls are Alaskan Native. You cannot put a law on a people that will have an adverse affect on them. If they cannot get a petition turned in, in 6 months, then you are creating an adverse law by putting a 90 day cap on the petition, and deadening the Indian voice for good. All over an issue of money, is presently why the Native people cannot get their present (going 6 months now) petition in. Bankings & securities is there to enforce that state laws are abided by, to take an uninformed position on the Natives, of making a limit of 90 days on Native petitioners, but not all corporations in the State, was not their right.

About changing the law to read that a director can no longer be removed "without cause" in a Native corporation, this is ludicrous to impose *just* on Native people. Who will determine whether it is being done "with" our "without" cause? In the language of the bill as it stands now, Sealaska Corporation makes it their position to determine this. This is another Hitler syndrome if you ask me. Why can anyone think that this is fair to the Indians?

Let's change the provision in state law that says 50% + 1 of all shareholders are required to recall a board, to 50% + 1 of all votes cast at the last annual meeting. The 50% + 1 is not fair, because not all shareowners open their mail, or vote. Only upwards of 9,000 voted at last years (October 1994, Klawock, Alaska) election, which is now under investigation by Ketchikan State Troopers, who seized the altered proxies from Sealaska Corporation at the Klawock meeting.

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STATE WITNESSES

Doesn't the current law permit a single shareholder to require corporations to vote on removal at any annual meeting? [AS 10.06.460]

For example, didn't Cape Fox go through 2 such removal votes in 1994 alone?

And didn't Sealaska, in 1992, hold a special meeting on vote on removal, only to have a single shareholder demand that the corporation put the same question on the ballot for the annual meeting held just a couple of months later?

In your experience, doesn't the extended gathering of signatures hamper the business of the corporation?

Don't removal elections in general carry a large price tag for Native corporations?

Aren't many directors elected as independent candidates? [For example, most of Sealaska's board members were originally elected as independents, not as board slate candidates.]

Doesn't Alaska's Corporations Code require election of directors every year?

Don't all directors come up for vote frequently, at most corporations every three years?

So in three years' time couldn't shareholders vote out every single board member?

In spite of the numerous votes held over the years, has any Native corporation director in Alaska ever been removed?

SHAREHOLDER/PUBLIC WITNESSES

Frequency of removal votes:

Isn't it true that the current law permits a single shareholder to require corporations to vote on removal at any annual meeting? [AS 10.06.460]

For example, didn't Cape Fox go through 2 such removal votes in 1994 alone?

Two years ago, Sealaska held a special meeting to vote on removal of the entire board of directors. Within days after that vote failed by a wide margin, didn't a single shareholder demand that the corporation put the same question on the ballot for the annual meeting held just a couple of months later?

Number of shares needed to call special meeting:

Didn't the group now circulating a petition for a special meeting of Sealaska's shareholders state in an April 3 letter that they have collected 6,000 signatures, well over the 25% this bill would require?

So, if that group has done it, in a corporation with so many shareholders, why would 25% be a burdensome requirement?

Don't most village corporations have only a couple of hundred shareholders? What would be so burdensome in these cases?

Limitation on the period for circulating petitions:

If directors have done something that warrants their removal, shouldn't shareholders who support the removal be able to collect enough signatures in 90 days?

Doesn't the extended gathering of signatures hamper the business of the corporation and cost all shareholders money?

Removal generally:

Aren't removal elections costly to Native corporations?

Aren't these the directors that shareholders elected?

Aren't many directors elected as independent candidates? [For example, most of Sealaska's board members were originally elected as independents, not as board slate candidates.]

Doesn't Alaska's Corporations Code require election of directors every year?

Don't all directors come up for vote frequently, at most corporations every three years?

So in three years' time you could vote out every single board member?

Why not just wait for them to come up for reelection, and vote them out, if you're disappointed with their performance?

Doesn't removal require the affirmative vote of a majority of shareholders?

In spite of the numerous votes held over the years, has any Native corporation director in Alaska ever been removed?

So if the shareholders have never been able to get a majority of votes to remove directors, and the process is costly for all concerned, and shareholders are free not to reelect directors, why wouldn't we want to limit the frequency of removal votes?

2/3/95 Juneau Empire

Right move at the right time

Goldbelt changes election rules

Native corporations throughout Alaska are under the gun these days as unhappy shareholders strive to recall board members and divvy up corporate assets for bigger cash payouts.

Given the accusatory tone of the recall movements, it would be easy for corporate officials to try to cut off criticism.

That's why it is so encouraging to see the opposite response from Goldbelt Inc., Juneau's Native corporation.

Instead of withdrawing from critics of the corporation, board members recently voted to open up the process. They plan to even the election playing field by no longer endorsing a slate of management candidates or paying their campaign expenses.

Goldbelt also will do away with discretionary voting, which was heavily criticized by dissident shareholders. Under the old rules, shareholders who supported the status quo could check a "discretionary" box in corporate elections. Board members then would divide those votes among only management candidates.

Goldbelt management also no longer will use proxy workers – solicitors paid to gather shareholder votes. Allegations of forgery – of proxy workers tampering with ballots to favor management candidates – have arisen in the past.

Instead, Goldbelt simply will pay each shareholder $25 for turning in a valid proxy. It's part of a continuing effort to convince people to vote.

The changes are set to take effect June 3, the date of the next scheduled board election. In the meantime, a new ethics code governing the behavior of board members and corporate officers already is in place.

Without doubt, the new rules will give those critical of Goldbelt management a fairer shot at winning seats on the board and influencing decision-making. That probably wasn't an easy choice for many of those currently in power.

But, in the end, it's that kind of thinking that can help Goldbelt face the future with strength. If the playing field is even, shareholders can spend less time challenging the election process and more time debating important corporate decisions.

And, with a broader representation of opinion on the board, perhaps some shareholders will be more willing to listen to Goldbelt leaders and less inclined to demand huge dividend payouts. Goldbelt, like all Native corporations, has only limited assets. By opting for more cash now, shareholders are guaranteeing just one thing: a very uncertain future.

Surely there is lots of discussion to come on that issue.

But by making its elections bylaws more fair – in essence, assuring more say for more people – Goldbelt has set the stage for reasoned debate between corporate managers and shareholders.

Ideally, that will mean less "us against them" sentiment and more "we're all in this together" cooperation.

THE DUAL POLITICAL STATUS OF ALASKA NATIVES UNDER U.S. POLICY

INSTITUTE OF SOCIAL AND ECONOMIC RESEARCH

UNIVERSITY OF ALASKA ANCHORAGE

References Cited

Berger, Thomas R. 1985. *Village journey: The report of the Alaska Native Review Commission.* New York: Hill and Wang.

Case, David S. 1984. *Alaska Natives and American laws.* Fairbanks: University of Alaska Press.

Chance, Norman A. 1987. Alaska and American arctic policy: past practice and future prospects. Arctic policy papers presented at the Arctic Policy Conference, September 19-21, 1985. McGill University: Center for Northern Studies and Research.

Cherokee Nation v. Georgia, 30 U.S. (5 Pet.) 1 (1831).

Cohen, Felix S. 1982. *Handbook of federal Indian law.* Charlottesville, Virginia: Michie Bobbs-Merrill.

Dippie, Brian W. 1982. *The vanishing American: white attitudes and U.S. Indian policy.* Middletown, Connecticut: Wesleyan University Press.

Gross, Emma R. 1989. *Contemporary federal policy toward American Indians.* New York: Greenwood Press.

Gruening, Ernest. 1954. *The State of Alaska.* New York: Random House.

Jenness, Diamond. 1962. *Eskimo administration: I. Alaska.* Technical Paper No. 10. Arctic Institute of North America.

Jennings, Francis. 1975. *The invasion of America, Indians, colonialism, and the cant of conquest.* Chapel Hill: University of North Carolina Press.

Johnson v. M'intosh, 21 U.S. (8 Wheat) 543 (1823).

Josephy, Alvin M. 1976. *The patriot chiefs: a chronicle of American Indian resistance.* New York: Penguin Books.

McDowell v. Collingsworth, 784 P.2d 1 (Alaska 1989).

Miller v. U.S., 159F.2d 997 (9th Cir. 1947).

Naske, Claus-M. and Slotnick, Herman E. 1987. *Alaska: A history of the 49th State.* Second Edition. Norman, Oklahoma: University of Oklahoma Press.

Native Village of Noatak v. Hoffman, 896 F.2d 1157 (9th Cir. 1990).

Native Village of Stevens v. Alaska Management and Planning, 757 P.2d 32 (Alaska 1988).

Native Village of Tyonek v. Puckett, No. 89-3588 (9th Cir., January 13, 1992).

Price, Robert E. 1982. *Legal status of Alaska Natives.* A report to the Alaska Statehood Commission. Anchorage, Alaska.

Price, Robert E. 1990. *The Great Father in Alaska: the case of the Tlingit and Haida salmon fishery.* Douglas, Alaska: First Street Press.

Prucha, Francis Paul. 1985. *The Indians in American society: from the Revolutionary War to the present.* Berkeley: University of California Press.

Rogers, George W. 1962. *The future of Alaska: economic consequences of statehood.* Baltimore: The Johns Hopkins Press.

Smith, Eric and Kancewick, Mary. 1990. The tribal status of Alaska Natives. *University of Colorado Law Review* 61, No. 3, 455-516.

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University of Alaska Anchorage

State of Alaska. 1986. *Report of the governor's task force on federal-state-tribal relations.* Submitted to Governor Bill Sheffield. Juneau.

State of Alaska. 1990. *Administrative Order No. 123.* Office of the Governor, September 10, 1990.

State of Alaska. 1991. *Administrative Order No. 125.* Office of the Governor, August 16, 1991.

Tee-Hit-Ton Band of Indians v. *U.S.*, 348 U.S. 272 (1955).

U.S. Senate. 1971. *Alaska Native Claims Settlement Act.* Senate Report No. 92-581, 92nd Cong., 1st Sess. Committee on Conference.

U.S. Senate. 1989. *Report of the Alaska Federation of Natives on the status of Alaska Natives: a call for action.* Hearing before the Select Committee on Indian Affairs, 101st Cong., 1st Sess. Washington, D.C., March 3, 1989.

U.S. v. Libby, McNeill and Libby, 107F. Supp. 697 (D. C. Ak.1952).

Wilkinson, Charles F. 1987. *American Indians, time, and the law.* New Haven: Yale University Press.

Worcester v. Georgia, 31 U.S. (6 Pet.) 515 (1832).

References Cited

Berger, Thomas R. 1985. *Village journey: The report of the Alaska Native Review Commission.* New York: Hill and Wang.

Case, David S. 1984. *Alaska Natives and American laws.* Fairbanks: University of Alaska Press.

Chance, Norman A. 1987. Alaska and American arctic policy: past practice and future prospects. Arctic policy papers presented at the Arctic Policy Conference, September 19-21, 1985. McGill University: Center for Northern Studies and Research.

Cherokee Nation v. Georgia, 30 U.S. (5 Pet.) 1 (1831).

Cohen, Felix S. 1982. *Handbook of federal Indian law.* Charlottesville, Virginia: Michie Bobbs-Merrill.

Dippie, Brian W. 1982. *The vanishing American: white attitudes and U.S. Indian policy.* Middletown, Connecticut: Wesleyan University Press.

Gross, Emma R. 1989. *Contemporary federal policy toward American Indians.* New York: Greenwood Press.

Gruening, Ernest. 1954. *The State of Alaska.* New York: Random House.

Jenness, Diamond. 1962. *Eskimo administration: I. Alaska.* Technical Paper No. 10. Arctic Institute of North America.

Jennings, Francis. 1975. *The invasion of America, Indians, colonialism, and the cant of conquest.* Chapel Hill: University of North Carolina Press.

Johnson v. M'intosh, 21 U.S. (8 Wheat) 543 (1823).

Josephy, Alvin M. 1976. *The patriot chiefs: a chronicle of American Indian resistance.* New York: Penguin Books.

McDowell v. Collingsworth, 784 P.2d 1 (Alaska 1989).

Miller v. U.S., 159F.2d 997 (9th Cir. 1947).

Naske, Claus-M. and Slotnick, Herman E. 1987. *Alaska: A history of the 49th State.* Second Edition. Norman, Oklahoma: University of Oklahoma Press.

Native Village of Noatak v. Hoffman, 896 F.2d 1157 (9th Cir. 1990).

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Price, Robert E. 1982. *Legal status of Alaska Natives.* A report to the Alaska Statehood Commission. Anchorage, Alaska.

Price, Robert E. 1990. *The Great Father in Alaska: the case of the Tlingit and Haida salmon fishery.* Douglas, Alaska: First Street Press.

Prucha, Francis Paul. 1985. *The Indians in American society: from the Revolutionary War to the present.* Berkeley: University of California Press.

Rogers, George W. 1962. *The future of Alaska: economic consequences of statehood.* Baltimore: The Johns Hopkins Press.

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CONCLUSION

Charles Wilkinson (1987:103) remarks that "the Founding Fathers almost certainly assumed that tribes would simply die out under the combined weight of capitalism, Christianity, and military power." He notes how right the Founding Fathers were about the constitutional structures and processes of government, but how wrong they were about the survival of Indian tribes. This belief in the withering away of the tribes persisted through the nineteenth century and into the twentieth. It is still held by some people even now.

Although often with great reluctance, American politics and law accommodated the existence of the tribes, inventing and applying the doctrines of aboriginal rights, the trust relationship, and inherent powers. In most of the country, these doctrines were institutionalized in treaties and reservations that did as much to mark successive reductions in tribal power as to protect what was left of it. Nonetheless, the Indian tribes had a foothold in the American political system, and they refused to withdraw. Successive Congresses, courts, and executives have, as Wilkinson observes, continued "squarely to acknowledge this third source of sovereignty in the United States" (1987:103-104). Particularly during the late twentieth century, there has been a resurgence of political consciousness and action among the American Indian tribes.

Alaska Natives were the last of the Native Americans to feel the weight of capitalism, Christianity, and superior power on their cultures. They did not, for the most part, need to be conquered because there was plenty of land in Alaska and relatively few takers. After the early Russian occupation, Natives' contact with outsiders was mostly peaceful, and they made room for missionaries, traders, miners, fishermen, government agents, adventurers, and settlers. Alaska Natives were "conquered" by this process and by an invasion of politics and bureaucracy. The rules governing land ownership and claims on resources changed virtually beneath their feet, often without their knowledge or their understanding of the implications. In Alaska, too, non-Natives probably shared a widespread belief that the Native peoples would (and should) gradually wither away through assimilation.

By statehood, it was clear that Alaska Natives would lose their lands, resources, and cultures by default if something was not done. What followed was the land claims movement and Alaska Native Claims Settlement Act. ANCSA, however, underscored the equal and potentially assimilated status of Alaska Natives, not their special status, which was not as clearly set forth in federal law and policy for them as it was for Native Americans elsewhere. Yet, over the years Congress, courts, and executives built an incremental, often contradictory record of special provisions for Alaska Natives. In recognizing many specific tribal powers, this complex record supports recognition of their special tribal status, too.

Given the ambiguity of the record and the political resistance in Alaska to abstract and threatening claims to "sovereignty," Alaska Natives have increasingly turned to practical political and social action to strengthen their special status and their distinctive cultural identities. It seems increasingly clear that the issue of Alaska Natives' special status is ultimately a political question, not a legal one, and that their political status depends less on what federal policymakers say about it than on what Natives themselves choose to do.

SUBSISTENCE

Is "subsistence" more than hunting and fishing for basic economic sustenance? Is subsistence a fundamental element of Native culture and a Native "right"? If so, is it protected by Congress?

ANCSA extinguished aboriginal hunting and fishing rights, but Congress established rural Native (and other rural resident) subsistence rights on federal lands in Alaska under the 1980 Alaska National Interest Lands Conservation Act. The State of Alaska, in order to retain management authority on all Alaska lands, at that time agreed to apply the same subsistence rules on state lands.

Thus, ANCSA extinguished aboriginal hunting and fishing rights, and ANILCA created a new set of "statutory rights." Although subsistence preference was extended to all rural residents as a political compromise, Congress's primary concern was to protect "Native physical, economic, traditional, and cultural existence" (ANILCA, section 801 [1]).

Majority interests represented in state government view "subsistence" primarily as hunting and fishing for sustenance and recreation, an activity conducted by Natives and non-Natives alike. In this view, there is no distinctive connection to Native culture or traditions. Natives (and many non-Natives), on the other hand, see subsistence as a vital element of Native culture and a special Native right. They point out that Congress, despite having extinguished aboriginal hunting and fishing rights in ANCSA, also indicated in the Conference Committee report that it did not intend to abolish or restrict the practice of Native subsistence. In fact, finding that Native subsistence was in jeopardy after ANCSA, Congress "restored" subsistence as a Native (and rural resident) "civil right" in Title VIII of ANILCA.

The Alaska Supreme Court in 1989 (*McDowell v. Collingsworth*), ruled the state's rural preference subsistence law unconstitutional under the "common use" and other provisions of the Alaska Constitution's article on natural resources. Restoring the rural preference would require a constitutional amendment. A proposal to place an amendment before the voters failed by one vote in the Alaska Legislature in 1990.

The current stalemate over subsistence will not be broken without a significant shift in the political alignments involved. As in the case of the broader questions of tribal status and powers, Congress is reluctant to choose between state and Native positions, particularly where basic interests of strong, well-organized groups are affected. Additionally, in this case, the ANILCA subsistence provisions remain in force on federal lands (but not in navigable-water fisheries, which remain under state jurisdiction). These factors tend to work against further federal action to resolve the subsistence issue, and it appears that the issue will need to be resolved at the state level.

QUESTIONS FOR POLICYMAKERS:

What precisely is the constitutional-legal basis for a rural resident subsistence preference under federal law? under state law?

What is the constitutional relationship between federal and state levels of authority over Native subsistence?

Are there federal constitutional grounds (under Indian law doctrine) for Congress to authorize a Native subsistence preference?

Given ANCSA's extinguishment of aboriginal hunting and fishing rights, can traditional "use and occupancy" doctrine be used in defining Native subsistence rights on federal lands? on state lands?

How effective is Native participation in the state system of fish and game regulation? Should changes be made in the management system to strengthen Native participation?

comprehensive survey of Native programs but did not submit recommendations. Nonetheless, Congress generally expanded Native programs in the 1970s and, although rates of funding slowed or were reduced in the 1980s, overall levels of support have been maintained.

State funding for Alaska local government has followed a pattern similar to that of Native program funding at the federal level. The decline in state revenues caused by the fall of oil prices in the mid-1980s was felt primarily in capital budgets, not operating budgets. Together, federal and state programs for Native and non-Native communities in rural Alaska sustain a major share of the local economies. Government employment, cash payments, and services accounted for as much as half of the personal income and two-thirds of the economic base of village economies in the mid-1980s. This is why economists often refer to the "transfer economies" of Native villages. In many villages, state and federal government transfers play a vital role in filling the gaps left by the erosion of the subsistence economy and the absence of a market economy.

Janie Leask, then president of the Alaska Federation of Natives (AFN), commented before the U.S. Senate Select Committee on Indian Affairs in 1989 that "despite substantial improvements in health, standard of living, economic opportunity, and institutional services, an increasing number of Alaska Natives now face greater risks and declining opportunities." She went on to describe the dilemma confronting Native villagers who depend on government support for their survival:

> Most Alaska Natives live in communities in which the local economies cannot provide a life-sustaining standard of living without substantial ongoing public subsidies. And public policies intended to assist Native individuals, families, and communities, have created and perpetuated dependence rather than self-sufficiency (U.S. Senate 1989:13)

In many villages provision of increased state funding from surplus oil wealth has aggravated the dependency problem. Operation and maintenance costs associated with the schools, community halls, public utilities, and other facilities made possible by state oil revenues are probably beyond the financial capabilities of many villages, without continuing assistance. State and federal programs provide essential benefits, but they also perpetuate dependence.

Questions for Policymakers:

What are the current types and levels of federal funding for Native programs in Alaska and of state funding for rural communities?

What are the prospective levels of rural need, costs, and funding during the next decade?

Does the tribal or municipal status of Native communities affect their access to federal and state funds and, if so, how?

What special arrangements does the state make with Native governments and organizations as conditions of state funding?

What organizational arrangements are used for the administration of federal "P.L. 638" programs?

How effective are these state and federal arrangements, and what changes are needed?

Many Native villages have incorporated as cities, and some Native regions have incorporated as boroughs. Village municipalities are not strong organizations, however, and a number of them have been superseded by tribal governments, village corporations, or regional organizations. Yet others have preserved their direct links to state funding agencies and have served local needs. Boroughs have also been incorporated to serve the interests and needs of the Inupiat of the North Slope and of the northwest regions. These Native-controlled boroughs have exercised important powers of taxation and land use control over the North Slope oil fields and NANA regional corporation's Red Dog zinc mine.

Incorporation of boroughs and the continuing development of Native regional non-profit organizations suggest that many Natives recognize the limitations on individual village capacities, and the need to pool economic and political resources at the regional level.

The authority to recognize tribal governments lies at the federal level, but the state can choose either to assist tribal governments or to provide benefits only to municipalities. While the state prefers to work with municipalities, it nonetheless provides financial aid and services to Native village tribal governments and regional non-profits on condition that state interests and the rights of non-Natives are protected (State of Alaska 1986:28ff.). In such cases tribal governments and Native organizations agree to abide by equal protection standards and to waive "sovereign immunity" for the purpose of participating in state programs.

QUESTIONS FOR POLICYMAKERS:

Are there alternative models of "successful" village and regional governance?

What is the range of government options available at the village level, and what is the existing pattern of village governance structures? What range and pattern exist at the regional level?

Can tribal and other Native-controlled structures fulfill the functions of boroughs and municipalities?

Under what terms and conditions can boroughs and cities usefully co-exist with Native governments?

In what main ways does the state now cooperate with Native governments and vice-versa? Could these be expanded or should they be lessened?

What forms of recognition does the state extend to Native governments at village and regional levels? Should these be expanded or reduced?

How have regional non-profits adapted to their post-ANCSA roles as service agencies and quasi-governments, and how has the state adapted to the roles of the regional non-profits?

VILLAGE SERVICES

Should high-cost village services and facilities be subsidized? Who should pay? Can Native villages be both economically dependent and self-governing?

ANCSA continued Alaska Native eligibility for special federal programs. However, section 2(c) of the act directed the Secretary of the Interior to conduct a study of all federal programs for Native people and make recommendations to Congress for the operation and management of these programs. The Secretary did conduct a

There are many examples of this "building-block" approach to strengthening tribal status. Some villages have increased their control over the importation of alcohol under both federal and state liquor control laws. Others have expanded their access to fish and wildlife under court decisions supporting special subsistence harvests for Natives. Native IRA and traditional villages, as well as Native regional non-profit organizations, contract with federal and state agencies for the administration of services and funds.

QUESTIONS FOR POLICYMAKERS:

What have individual Native IRA and traditional village governments done to strengthen their tribal powers, function-by-function, under existing federal and state laws and judicial decisions, and have these actions produced desired results?

What is the specific relationship of tribal land ownership to the question of recognizing "Indian country" in Alaska?

What is the effect on "Indian country" status of transfers of ANCSA lands to tribal governments under federal law? under state law?

What likely impacts would establishment of "Indian country" have on a village's or region's further economic and political development?

VILLAGE AND REGIONAL GOVERNANCE

Should there be exclusively Native local or regional governments? What forms might they take? How would the rights of non-Native residents be protected?

This issue is closely related to the question of tribal status and powers. ANCSA designated state-chartered corporations, not IRA or traditional Native governments, to control the land and money provided in exchange for the extinguishment of aboriginal title. In addition, section 14(c)(3) of ANCSA encouraged incorporation of municipal governments (cities or, possibly, boroughs) by requiring that certain village lands be transferred to state-chartered municipalities rather than to tribal governments.

Many Native communities oppose incorporating as cities or boroughs for different reasons. Some perceive that municipal forms, powers, and procedures are too complex and not suited to rural, Native village, or regional conditions. Some believe there is no need for another form of government in communities that already have several local and regional institutions. Those forms include IRA governments, traditional councils, and village corporations at the local level, and regional corporations, non-profit organizations, and special service authorities at the regional level. Some places also fear that municipal governments, which must be open to participation by all local residents, may be taken over by non-Natives, even when they constitute a minority of voters.

On the other hand, the state government has promoted incorporation of cities and boroughs in rural Alaska because they are familiar institutions subject to state standards, including equal protection and participation of all residents (State of Alaska 1986:24). In the *Noatak* case, for example, the state Department of Law opposed special grants of state funds to tribal governments because state lawyers determined that these governments were "racially exclusive." (In taking this position, the state set aside the question of tribal governments' special political status, focusing instead on their "racial" constituencies.)

→ The non-Natives are racially "exclusive" - they racially excluded our Native people from our country by killing - "excluding" them.

Policy Issues

This section briefly explores issues of tribal status and powers, village and regional governance, village services, and subsistence. For each, we first state the main issues, then summarize effects of the Alaska Native Claims Settlement Act and related federal and state policies, and finally pose specific questions that could help inform policy.

Tribal Status and Powers

Are Alaska Native communities "tribes?" If so, what inherent powers of self-government do they have?

ANCSA did not focus on or directly affect the tribal status or powers of Alaska Native communities. ANCSA dealt primarily with the question of aboriginal title. Eligibility of Natives for special federal programs continued under the trust relationship. Congress recognizes Alaska Natives as tribes for the purposes of these programs, and it has also included them under many other Indian laws, such as the Indian Self-Determination Act.

Further, in determining that it was necessary to extinguish aboriginal title ("if any," says ANCSA in section 4[b]) in order to settle land claims, Congress implied that some 200 Native villages may be tribes in the fullest legal sense, since only such tribes can have aboriginal title. Whatever one makes of this implication, extinguishing aboriginal title does not extinguish tribal status.

On the other hand, ANCSA raised more questions about tribal powers. Most important, the act undermined the tribal powers of Native communities by assigning land title to state-chartered corporations rather than to tribal (IRA or traditional) governments. Consequently, tribal governments were separated from the land base that might otherwise be considered the territorial jurisdiction of Indian country, where tribal powers are greatest.

None of these actions constitutes denial of tribal government status or powers of Alaska Natives. However, they do show that, at least for purposes of ANCSA, Congress intended that Alaska Natives establish and operate corporate institutions under state law instead of Native institutions under the trust responsibilities of the Bureau of Indian Affairs.

Congress has the ultimate power to recognize tribes or to withdraw recognition from them. Although Congress has recognized Alaska Native tribes for many different purposes since the Treaty of Cession, it has not declared unambiguously that Alaska Native tribes exist for all purposes, and it is unlikely to do so now. Such a move would be strongly opposed by the State of Alaska as well as by other states also having to deal with tribes lacking treaties and reservations. Moreover, even in the current era of Indian self-determination, Congress is reluctant to make broad pronouncements about the separate political status and powers of tribes in Alaska or elsewhere, because it remains a very sensitive and contentious political issue 160 years after the Marshall trilogy.

In the case of Alaska Natives, tribal status is something of an abstraction that becomes real and concrete in the form of a build-up of specific tribal powers. Native communities themselves can expand their tribal powers, one-by-one, as IRA or traditional governments under specific federal and state laws and through court action. By developing their powers incrementally, and increasing their capabilities to exercise them, Native communities enhance their tribal status. This, in fact, is the principal way tribal governments have actually developed in Alaska after ANCSA.

The federal courts generally support the special political status of Native Americans, including Alaska Natives. This does not mean, however, that complexity, ambiguity, and contradiction have been eliminated from Indian law and policy, as the Alaska case continues to demonstrate. Even where policies appear consistent, there almost always is room for disputes about the meaning and application of the policies. This is because critical factors affecting the meaning and application of policies—contexts and questions, needs and demands, and values, expectations, and interests—are always changing.

These conditions give rise to *political* questions and conflicts. Usually, only limited parts of such questions and conflicts are susceptible to being resolved at a given time by a relatively straightforward statute, court decision, or executive action. Further, the sheer diversity of Alaska Native village conditions, like the diversity of Indian reservations and communities in the Lower 48, compounds the problem of devising comprehensive statutory, judicial, or administrative solutions (Wilkinson 1987: 7-9).

Despite their historical failure and disrepute, treaties and reservations elsewhere have provided the basis for clearer answers to questions about the status and powers of Indian tribes. A significant consequence of their absence from Alaska is that the political status of Alaska Natives is more in question than is the status of reservation Indians elsewhere. The question of special status involves extreme ideological and group conflict, particularly when it concerns competition for scarce resources, like fish and wildlife in Alaska. Political leaders either try to avoid such an issue or, if it cannot be avoided, they will try to deal with it indirectly or ambiguously. The result is more unsettled and ambiguous policy.

This is not to argue that Alaska Natives should have had treaties and reservations in the Lower 48 style, or that ANCSA should not have been enacted. Depending on timing and circumstance, Alaska Natives could have done much worse than they have under ANCSA. We simply have no way of knowing "what might have been"; the political uncertainties involved in such speculation are much too great.

From the Marshall trilogy on down, American Indian policy ultimately has been shaped by assumptions about what is the right thing to do as well as by what is considered to be legally sound, socially desirable, and politically possible. Like people generally, legislators, executives, and judges often disagree about such matters. This suggests that there is no single, simple, "correct" solution to the issue of Alaska Natives' special political status under American Indian laws. The issue instead breaks down into more specific and concrete questions about Native status and powers, and it involves alternative, often conflicting proposals for Alaska Native policies and programs.

The ambiguity of the law sometimes made it possible to use the same judicial or executive authority (such as the Treaty of Cession, and the 1884 and 1912 organic acts) to support opposing sides of a dispute.

Gruening and other Alaska political leaders achieved the goal of statehood, but aboriginal land claims were not resolved as they had hoped. In fact, statehood added substantial momentum to the Native land claims movement.

In the early 1960s, the state began selecting lands from the public domain in fulfillment of its land entitlement under the Alaska Statehood Act. This and related threats to aboriginal land rights caused Native leaders throughout the state to organize regional associations to protest state selections and to intensify their pursuit of a Congressional settlement. Both the statehood act and the Alaska Constitution included provisions (similar to those in the Treaty of Cession and the Alaska organic acts) disclaiming state rights to Native lands and looking to Congress to resolve aboriginal claims.

State land selections as well as all other major land transactions in Alaska were stopped by Secretary of the Interior Stewart Udall's "land freeze," beginning in 1966, pending settlement of Native claims. The final impetus to the settlement was the discovery of vast petroleum deposits at Prudhoe Bay in 1968. Transport of the oil required construction of a pipeline across lands claimed by Natives, and the economic stakes were much too great to permit a long delay of the project. This supplied the incentive—to the state, the oil companies, and Congress—for agreement with Native leaders on the terms of a settlement act compensating Alaska Natives for extinguishment of aboriginal title.

In some respects, the Alaska Native Claims Settlement Act of 1971 was an Alaska Native "treaty" or "treaty substitute" with the U.S. government (Wilkinson 1987:8). Like traditional Indian treaties, in return for grants of limited, designated lands and other benefits to Natives, ANCSA extinguished aboriginal title to much more extensive lands traditionally used and occupied by them. In other respects, ANCSA clearly is not like a traditional treaty. Congress deliberately wrote ANCSA to exclude the traditional features of treaties: reservations and BIA trust responsibility for the land and monetary benefits of the settlement. Moreover, Alaska Natives were not signatories to ANCSA, as would have been the case in an agreement.

ANCSA is an equivocal product of overlapping termination and self-determination eras of federal Indian policy. It speaks the language of self-determination, but it does so with a distinct accent of termination and assimilation. While ANCSA granted Alaska Natives full control of unprecedented amounts of money and land, it assigned this control not to tribal governments but to state-chartered Native corporations. Further, ANCSA extinguished not only aboriginal land title but aboriginal hunting and fishing rights as well (Section 4 [b]).

Although ANCSA extinguished aboriginal hunting and fishing rights, the conference committee responsible for the act "expect[ed] both the Secretary [of the Interior] and the State to take any action necessary to protect the subsistence needs of the Natives" (U.S. Senate 1971:37). Such action could include withdrawing lands for subsistence uses and closing them to non-residents when resources were scarce.

Finding that Native subsistence was not adequately protected and that neither the state nor the secretary had responded adequately, Congress later included provisions for subsistence hunting and fishing preference rights in the Alaska National Interest Lands Conservation Act of 1980 (ANILCA). These rights were to be assigned to all eligible "rural residents," however, and not exclusively to Natives. Congress thus avoided the issue of "special privileges" for Natives, to which the state strongly objected, and struck a political compromise. But Congress also made clear that its primary concern was to protect the subsistence activities of Alaska Natives, invoking "its constitutional authority over Native affairs and its constitutional authority under the property clause and the commerce clause...." (ANILCA, section 801 [4]).

encompassed extensive areas for subsistence activities. Only six reserves were established under the IRA in Alaska, and they helped to secure Native hunting and fishing rights in such villages as Venetie, Hydaburg, and Karluk (Case 1984:10-12, 99-107).

IRA reserves provoked fierce battles between territorial leaders and the Secretary of the Interior over control of Alaska lands and resources. Ernest Gruening, who was governor of the territory from 1939 to 1953, viewed reservations as barriers to the future development of Alaska and the progress of its people. Writing for the statehood cause in the early 1950s, Gruening vehemently opposed Secretary of the Interior Harold Ickes's "arbitrary and disingenuous efforts to impose his reactionary concepts [i.e., IRA and other reservations] on the people of Alaska." Gruening believed that the "people of Alaska" eventually would prevail:

> While it was probable that the considerable damage that [Ickes] had inflicted on orderly democratic progress and to a growingly harmonious interracial relationship in Alaska would, for a time, persist, it was clear that, in fairness to all the people of Alaska, the flames into which an issue unresolved for seventy years had been needlessly fanned should be promptly extinguished. The issue needed to be resolved particularly in justice to the native people who had been led to believe that they had valid claims to extensive land or to compensation for it....Congress could, if it would, provide to have that basic issue determined promptly, fairly—and finally (Gruening 1954:381).

Alaska leaders' opposition, which was reinforced by federal termination policy, blocked all but a few IRA reservations (State of Alaska 1986:118-121). Also under the termination policy, Congress extended P.L. 280 to Alaska, giving the state broad powers over criminal matters, and more limited powers in civil matters, in Native communities that might qualify as Indian country.

In 1957, a federal court had determined that the village of Tyonek, an executive-order reserve created in 1915 for education, subsistence, and related purposes, was Indian country. As such, the court declared that the tribal government, not the Territory of Alaska, had jurisdiction to try a criminal case in the village (Case 1984:14). Congress responded by making Alaska a P.L. 280 state in 1958, which brought Tyonek and all Native villages under state criminal jurisdiction (State of Alaska 1986:139-141).

Later, however, in 1971, Congress granted concurrent criminal jurisdiction to Metlakatla's tribal government at the request of both the state and the tribal government. The state found it impractical and too costly, because of the difficulties of travel and communication, to meet the village's law enforcement needs (Case 1984:456).

The ambivalent historical record of American Indian policy had already been extended to Alaska by the end of the territorial period. Thus, in his dispute with Secretary Ickes, Ernest Gruening was able to cite court decisions to support his condemnation of reservations and related claims of aboriginal title. One federal court, for instance, had held that the 1867 Treaty of Cession had extinguished aboriginal title, which was a legal basis for reservations (Miller v. U.S. 1947). Also, at about the time Gruening was writing his statehood book, another federal district court blocked an attempt by the Hydaburg IRA reservation to take over fish traps owned by a national food processing company. In this instance, the court held that the reservation had been created illegally (*U.S. v. Libby, McNeill and Libby* 1952).

Yet, for virtually every judicial or executive decision cited on one side of a case, there was another decision that could be cited in opposition. For example, an important case at the time was the land claims of the Tlingits and Haidas, which were based on aboriginal title. As noted above, a federal court had ruled that the Treaty of Cession extinguished aboriginal title, but later the U.S. Supreme Court disapproved this decision (*Tee-Hit-Ton v. U.S.* 1955). Subsequently, in a major decision in 1959, the Court of Claims awarded the Tlingits and Haidas a monetary settlement for the loss of their aboriginal lands (Case 1984:65-68).

Alaska Natives had experienced devastating problems by the end of the nineteenth century: cultural disruption that came with western occupation, trade, religion, and schools; degradation and collapse of subsistence economies following importation of new technologies and commercial harvests; and spread of demoralization, hunger, disease, and death. Sheldon Jackson introduced reindeer herding to Alaska in the 1890s in part as a means of warding off starvation among Natives (Case 1984:208-210; Jenness 1962: 35-37). By then, large numbers of Natives had died from new diseases, primarily smallpox and influenza, brought by outsiders.

At the time of contact with the Russians in the 1740s, the estimated population of Alaska's aboriginal peoples was 75,000. By the end of the nineteenth century, their numbers had been reduced to about 25,000 (Rogers 1962:61). The largest declines occurred among the Aleuts and Eskimos of the coastal regions. Only in recent years has the size of the Native population returned to the level where it was two and a half centuries ago.

Sheldon Jackson also established missionary schools, which later came under the control of the U.S. Commissioner of Education. At the end of the century, the commissioner described his agency's mission in Alaska, vowing to avoid mistakes made on Indian reservations elsewhere: The agency would "provide such education as to prepare the natives to take up the industries and modes of life established in the States by our white population, and by all means not to try to continue the tribal life after the manner of the Indians in the western states and territories" (Chance 1987:92-93).

In 1905, however, the Nelson Act established separate systems of public schools, one for "white children and children of mixed blood who lead a civilized life," and the other for "uncivilized Alaska Natives." The Native schools were patterned after the Indian reservation and boarding schools established in other territories and states.

Other special "Indian" measures were extended to Alaska Natives during a period in which the overall objective of federal policy was assimilation. Both the 1884 and 1912 Alaska Organic Acts contained provisions protecting Native land rights (though legal dispute continues even today about whether these were intended to protect "aboriginal title"). As early as 1870, Congress exempted Natives from a general prohibition on harvesting fur seals. Several other exemptions from fish and game laws and international treaties followed, including Native hunting provisions in the Migratory Bird Treaty Act of 1916. Earlier, in 1902, Congress had exempted Native subsistence hunting from regulation under the Alaska Game Act (Smith and Kancewick 1990:506; State of Alaska 1986:15).

Native land reserves were another area in which Congress and the executive made special provisions for Alaska Natives (Case 1984: 83-111). Congress made reindeer herding an exclusively Native activity with the Alaska Reindeer Act of 1937. Through such special measures, Congress and the executive were treating Alaska Natives in much the same way they dealt with Indian tribes elsewhere.

Officially, federal assimilation and allotment policies ended with the coming of Indian reorganization in the 1930s. In Alaska, allotments allowed individual Natives to own land, but they were not based on the breaking up of reservations as they were in the Lower 48 states. (Alaska Natives were eligible to apply for allotments until ANCSA was passed in 1971.) Many Native villages—about 70 as of recent years—adopted IRA constitutions. Indicating separate status and possible assertions of Indian country, these constitutions were opposed by Alaska's political leaders (as they generally still are today). Some of the most intense controversies of the pre-statehood years centered on the creation of IRA reservations, which could potentially provide the territorial bases for Indian country and assertions of Native sovereignty (State of Alaska 1986:118-119; Naske and Slotnick 1987:191).

Before the IRA, over 150 special Native reserves had been created in Alaska by executive order. (Metlakatla was established under unique circumstances by an act of Congress in 1891 [Price 1990: 78-83]). The main purposes of these special reserves were to support reindeer herding, schools, and vocational education. Some of the reserves

If Alaska Native tribal communities were within reservation "Indian country," their governmental powers would presumably be greatest (Cohen 1982:472-473). Despite the absence of reservations in Alaska, Native communities may still claim independent governmental powers: federal courts have held that Native allotments and "dependent Indian communities" may also be Indian country (Case 1984:457-458). The problem lies in determining the extent and applicability of these more elusive (dependent Indian communities) or limited (allotments) forms of Indian country in Alaska and elsewhere (State of Alaska 1986:121ff.).

Given the ambiguities and contradictions in the record and the peculiarities of the case of the Alaska Natives, the questions of tribal status, sovereign powers, and Indian country are more in dispute in Alaska than elsewhere. With one exception, the Alaska Native Claims Settlement Act of 1971 abolished all the reservations and reserves previously existing in Alaska. To date only the Metlakatla Indian community's tribal status and powers have been recognized by state as well as federal courts as being the same as those of tribes on reservations in the Lower 48 states.

Yet, even in the case of Lower 48 reservations and treaties, disputes continue over the nature and extent of tribal powers—for example, access to fish and game, water rights, law enforcement, taxation, and gaming operations. Relationships between tribal and state powers are continually being disputed, redefined, and adjusted, whether covered by treaty provisions or not.

In Alaska, the political conflict extends beyond definitions of specific powers to the fundamental issue of whether Native communities have any special powers or rights at all. This more basic issue underlies the current conflict over Alaska Native subsistence. Thus, many Alaskans see the subsistence issue as a fundamental ideological conflict between equality and special privilege, and they assert that, whatever the law may say, Natives' rights to fish and game are no different from those of anyone else. It is the clash of absolutist positions that makes the issue so difficult to define and resolve politically.

The question of the status and powers of Alaska Natives ultimately needs to be reviewed in historical perspective. One of the more salient facts in modern Alaska Native history is that Natives came under U.S. rule during the post-Civil War assimilation era of federal Indian policy, when American Indian tribes had been reduced to a condition of almost complete dependency. As viewed by federal authorities and no doubt by popular opinion, Indians had to be trained, educated, and morally uplifted—"civilized"—so that they might eventually be absorbed into mainstream society (Prucha 1985:28-54). This attitude carried over into the federal government's relationships with its new Native wards in Alaska.

The first agents of the U.S. government in Alaska were not teachers and missionaries, however, but military officers (Price 1990:23-42). After the Civil War, their mission was to control and pacify Indians on what was left of the American frontier. On the far edges of that frontier, in Alaska, the military could try to assure relative peace and order, but they were equipped to do little else to "civilize" the Natives. Whatever their attitudes toward Natives (and some were quite hostile), the military's responsibility was to enforce federal customs and Indian liquor laws, preserve order, and protect non-Native traders and settlers (State of Alaska 1986:74ff.).

From the Alaska Purchase until the early 1900s, many statutes, court decisions, and administrative rulings stated directly or indirectly that Alaska Natives were subject to the same federal and territorial laws that applied to non-Natives (State of Alaska 1986: 71ff.). At the same time, Congress, courts, and administrators also recognized the unique interests and needs of Natives and made many special provisions for them. These special provisions culminated in 1936 amendments to the Indian Reorganization Act which, according to Case (1984:10), "were apparently intended to place Alaska Native land ownership and governmental authority on the same footing as that of other Native American reservations."

The contemporary record of Indian policy is one of ambiguity and contradiction. Yet, this record also indicates that federal courts have preserved the special political status of Indian tribes, or what Wilkinson refers to as a "measured separatism." He attributes this record ultimately to the commitment judges have to the rule of law and their belief that "real promises" were made in old treaties that the U.S. Senate approved and made into "real laws" (Wilkinson 1987: 121).

It is a remarkable fact of American political and legal history that, despite Andrew Jackson and all the opposition and contradiction, John Marshall's Indian law principles have survived. Originally derived from the legal doctrines and moral philosophy of the late eighteenth and early nineteenth centuries, the principles of aboriginal title, the trust relationship, and inherent governmental powers continue to be reinterpreted and applied by the Congress, courts, and executive today. The preservation of these principles can be attributed not only to the moral and legal sensibilities of judges, but to the American tradition of minority rights.

Although denied or substantially qualified at different times in different policymaking arenas, Marshall's principles continue to distinguish the special status of Native Americans from the formally equal status they share with all other Americans. There is no question, however, that these two statuses are in tension with one another, and that they continue to be a matter of sharp legal and political conflict. Nowhere is this more apparent than in Alaska.

Federal Indian Policy in Alaska

The case of the Alaska Natives is both similar to and different from that of Native Americans elsewhere. It is similar in that Alaska Natives, as the original inhabitants of the region, could claim aboriginal rights, a trust relationship, and inherent governmental powers (Case 1984; Price 1982; Smith and Kancewick 1990; Berger 1985). It is different primarily in that, until recent times in most of Alaska, there was little or no pressure on Natives to surrender their lands, including their traditional hunting and fishing grounds. (A major exception was the Russian occupation of southern coastal and Aleutian regions before the American purchase.) Thus, Alaska Natives, unlike most other Native American tribes, were not conquered by Euro-Americans, did not sign one-sided treaties, and were not forced onto reservations.

Alaska Natives' "dependent sovereignty," or inherent governmental power, was not documented in treaties or institutionalized on reservations (although many special purpose reservations were created in Alaska; see discussion below). Ironically, the absence in Alaska of these traditional instruments of Indian subordination and control has tended to undermine rather than reinforce the tribal status and powers of Alaska Natives.

This issue has two interrelated but analytically distinct parts: tribal status and tribal powers. As a practical matter, there may be less at stake in the question of whether Alaska Native communities are formally recognized as "tribes" than in the question of what tribal powers they may have. Although the record is contradictory (see, for example, the majority and minority opinions of the Alaska Supreme Court in the *Stevens Village* case), Congress has referred to Alaska Natives as "tribes" in Indian legislation beginning in the early years after the Alaska Purchase. Alaska Natives' status as tribes, though often qualified, has many times been affirmed in executive and judicial actions (Case 1984; Smith and Kancewick 1990).

The more significant issue is what specific tribal powers Alaska Native communities possess. The actual extent of their powers depends on such questions as their individual histories and capabilities; the significance of the power to their tribal existence and well-being; the state's interest in the matter; and what federal laws may or may not say about the power in question (State of Alaska 1986:145-147; Case 1984:472-473). Such tribal powers are likely to be determined on a case-by-case basis. It is as if the exercise of powers establishes tribal status, rather than the other way around.

In 1978, Congress passed the Indian Child Welfare Act, which strengthens tribal control over adoption and guardianship of Indian children. Other legislation in the 1970s, when Indian self-determination policy reached its high point, included measures to support Indian economic development, health care, and educational programs.

All of this legislation explicitly included Alaska Native villages as "tribes"—for the specific purposes of these legislative acts. This qualification is important because it implies that Congress, which is the ultimate authority in Indian affairs, has not spoken unequivocally or unconditionally about the tribal status and powers of Alaska Natives (State of Alaska 1986:57ff.).

More generally, this is also a reminder that federal Indian policy—a cumulative product of changing times and different legislative, executive, and judicial arenas—has never pointed clearly in any one direction, whether toward separatism, assimilation, or self-determination.

Congress was the main arena of Indian policymaking in the 1970s. In the 1980s, the federal judiciary became relatively more important as Congressional activism receded. As a "political" institution, Congress can define broad problems and goals, such as "Indian self-determination," and adopt general courses of action. Courts, on the other hand, typically focus on specific problems laid before them, and, although there are many exceptions to the rule, they generally like to avoid venturing too far from established law and precedent in their decisions.

In a policy area like Indian law, where many different and inconsistent statutes have been enacted over the years, court decisions, too, will give conflicting answers to questions about tribal status and powers. These include questions about changes in aboriginal land title, the extent of Indian hunting and fishing rights, the relative jurisdictions of tribal and state courts, and limits of tribal and state tax powers, among many others. Thus, when the initiative in Indian policy passed from Congress to the courts in the 1980s, policymaking tended to become relatively more disjointed and piecemeal, and the inconsistencies and conflicts in Indian law were highlighted once again.

University of Colorado law professor Charles Wilkinson describes this evolution of federal Indian policy in the following way:

> Inevitably, Indian policy has been cyclic. This is due in part to the sheer length of time during which it has been made. Even more fundamentally, federal Indian policy has always been the product of the tension between two conflicting forces—separatism and assimilation—and Congress has never made a final choice as to which of the two it will pursue. Thus the laws are not only numerous; they are also conflicting, born of the explicit regimen and implicit tone of the eras in which they were enacted (Wilkinson 1987:13).

The current policy of self-determination says that tribes are to some extent sovereign as well as dependent. It says that all Native Americans, including Alaska Natives, are equal citizens under the law and, at the same time, it says that they are a distinct group of Americans with special political status under a unique set of laws. The law says that Native Americans can have collective, aboriginal title to tribal land and special rights to hunt and fish but, like other Americans, they can also have individual and corporate ownership of private land and resources. The law further says that, like Americans generally, Native Americans have access to federal programs, but that they also have additional, exclusive rights to programs enacted especially for Indians.

Self-determination policy gives Native Americans choices about all these matters and, in doing so, the policy often sounds unsure and ambivalent. Further, despite the broad range of choices legally provided, Native American tribal communities have derived limited benefits from these choices.

By the end of the nineteenth century, assimilation policy had generally replaced physical force as the principal means of controlling the tribes. Bureau of Indian Affairs boarding schools were the main assimilative institutions and BIA superintendents the reigning powers on the reservations. "Industrial education" was to provide young Indians with skills needed to enter the bottom ranks of a rapidly industrializing society, and Native languages and religions were to be eradicated. Like the waves of European immigrants flowing into the country at about the same time, Indians were to be "Americanized." It was not until the Indian Citizenship Act of 1924, however, that Indians (including Alaska Natives) who had not previously been made citizens under specific treaties and statutes were granted United States citizenship.

Franklin Roosevelt's New Deal in the 1930s included a new deal for Indians. Social and economic conditions on the reservations, which had continued to deteriorate, were documented by the Brookings Institution in the Meriam Report of 1928. John Collier, the new head of the Bureau of Indian Affairs, was determined to change all this, and he had the President's support (Dippie 1982:297-321).

At the urging of the Roosevelt Administration, Congress passed the Indian Reorganization Act of 1934 (which was fully extended to Alaska in 1936). The act ended the break-up of reservations and allotment of lands, which Collier had previously suspended by administrative order. It also provided new protections for trust lands, encouraged tribes to adopt constitutions for self-government, and authorized federally-chartered corporations and funds to support tribal economic development.

A number of tribes, understandably distrustful of federal authorities, rejected the IRA as a continuation of BIA paternalism and assimilation in a new form, but more of them accepted the new program (Dippie 1982:318-319). Overall, the IRA probably did more to reinforce the idea of Indian self-government through formal recognition of tribal powers than it did to improve social and economic conditions on the reservations (Gross 1989:20; Wilkinson 1987:68).

Another reversal of federal Indian policy occurred after World War II. Arguing that Indians should be "freed" of all federal supports and controls, in 1953 Congressional opponents of the reservation system, the trust relationship, and special status for Indians won passage of House Concurrent Resolution 108 (Gross 1989: 21-23). The resolution called for an end to the trust relationship and the "termination" of tribes. Under the new termination policy, tribal lands once again were to be broken up and transferred to private groups and individuals. All special federal programs for tribes and individual Indians were to be eliminated. State government powers were to be imposed on all Indians and their reservations. Also in 1953, Public Law 280 extended state criminal and civil jurisdiction over "Indian country"—generally, Indian reservations—in specified states. (In 1958 this law was extended to Alaska.)

P.L. 280, not federal termination of tribes, may be the most important legacy of the termination policy of the 1950s. Congress passed legislation terminating more than 100 tribes or tribal groups, but many of them have since been restored to tribal status and the trust relationship (Gross 1989:22-23). The termination policy itself was terminated. Congress abandoned HCR 180 (though the resolution was never officially rescinded), and yet another new federal policy, "self-determination," emerged in the late 1960s and the 1970s.

The self-determination era of federal Indian policy has emphasized powers of tribal self-government in a number of Congressional acts, presidential pronouncements, and judicial decisions (Gross 1989). In 1968, Congress passed the Indian Civil Rights Act, requiring tribal governments to observe the principles of the Bill of Rights, and amending P.L. 280, prohibiting further extensions of state jurisdiction in "Indian country" without tribal consent.

The legislative centerpiece of the new policy was the Indian Self-Determination and Education Assistance Act of 1975, Congress's clearest rejection of termination policy. This act (referred to as "638" because it was enacted as Public Law 93-638) reaffirms the trust relationship and special federal programs for Indians. These programs generally were expanded during the 1970s. Most important, the Self-Determination Act also encourages tribes to take over the planning and administration of Indian programs under contracts with federal agencies.

him guilty of residing on Cherokee land without a permit or an oath of loyalty to the state, and sentenced him to four years at hard labor. The Marshall court ruled that Georgia's law was "repugnant to the constitution, treaties, and laws of the United States" because it interfered with the federal government's exclusive relationship with the Cherokee tribe, a relationship guaranteed by the supremacy and commerce clauses of the U.S. constitution.

Marshall's *Worcester* opinion reviewed the discovery rule and aboriginal title, the history of contact with the Indian tribes, and the trust relationship between the tribes and the U.S. government. He noted that the U.S. constitution gave Congress exclusive power to make treaties and to regulate commerce with the Indian tribes, and that constitutional treaties and acts were the supreme law of the land. Having established the principle of federal supremacy in Indian affairs, he went on to the question of tribal sovereignty:

> The Indian nations had always been considered as distinct, independent political communities, retaining their original natural rights, as the undisputed possessors of the soil, from time immemorial, with the single exception of that imposed by irresistible power....The very fact of repeated treaties with [the Indians recognized their entitlement to self-government]; and the settled doctrine of the law of nations is that a weaker power does not surrender its independence—its right to self government, by associating with a stronger, and taking its protection.

The tribes, in other words, retained "dependent" sovereignty—their original powers as separate nations—except as these powers were limited by the tribes' association with the United States. "Sovereignty," therefore, is not an absolute. It is rather a dynamic and relative condition of self-government, and it is subject to redefinition and adjustment as relationships between tribes and the U.S. government change (Case 1984:435).

The Marshall Court laid down the principles of aboriginal title, federal trust, and inherent powers, but the real political status of the Indian tribes would be more directly determined by the overwhelming force of superior power. Upon hearing of the *Worcester* decision, President Andrew Jackson, who had risen in national politics partly on his reputation as an Indian fighter, reportedly said "John Marshall has made his judgment, now let him enforce it." Whether Jackson actually said this or not, the statement accurately shows where he stood on the issues of Indian sovereignty and the federal trust responsibility (Prucha 1985:14-16). The State of Georgia in fact rejected Marshall's decision in the *Worcester* case, and the Reverend Worcester served out his sentence.

Marshall's decisions established the basic rules, but political action and the use of force determined the outcomes. In nineteenth century America, the combined ideologies of capitalism, Christianity, racial and cultural superiority, and Manifest Destiny provided justifications for the guile and the force used to suppress and often destroy the Indian tribes.

After the Civil War, the last of the western tribes were conquered, subdued, and forced onto ever smaller reservations. Now all of the tribes were under federal control. Because of the defenseless condition to which most of them had been reduced, they were under federal protection as well. Although still termed "government-to-government," the relationships between federal authorities and tribes had degenerated to that of a superior power attending to defeated and demoralized subjects. Federal troops put down the last of the organized Indian resistance by the end of the century.

Around this time, many tribes lost most of what was left of their reservation lands under the notorious allotment policy authorized by the Dawes Act of 1887. This act was finally to solve the "Indian problem" by breaking up the reservations and distributing tribal lands to individual Indians who, as private land owners, would eventually enter the mainstream society and economy (Dippie 1982:161- 176). Between 1887 and 1934, when the Indian Reorganization Act ended the discredited allotment program, Indian landholdings fell from 138 million to 48 million acres, a loss of 90 million acres or two-thirds of all Indian lands.

Evolution of U.S. Indian Policy

Native Americans were originally independent, self-sufficient tribal peoples. European colonial and then U.S. government authorities recognized many tribes as politically independent nations. Based on their different territorial interests and relationships with the major combatants, Indian tribes took different sides in the wars between the colonial powers and in the war for American independence. Tribes were also strong defenders of their territories, especially during the early years of European settlement (Jennings 1975; Josephy 1976). In part because tribes for a time had the physical power to resist invading settlers (in the west, well into the nineteenth century), colonial and U.S. authorities dealt with them "government-to-government." Another rationale for attributing sovereign governmental status to the Indian tribes was provided in early American legal doctrine.

At the foundation of American Indian law lies the "Marshall trilogy" (Wilkinson 1987:24; Smith and Kancewick 1990:474-476; Berger 1985:121-124). Chief Justice John Marshall wrote three decisions for the U.S. Supreme Court in the 1820s and 1830s that established the principles of aboriginal land title, the federal trust responsibility, and inherent governmental powers of Indian tribes. These decisions continue to shape American Indian law and policy today (Case 1984:3-6).

The first decision was *Johnson v. M'Intosh* in 1823. In this case, Marshall held that although tribes might sell or otherwise transfer Indian lands to non-Indians, the courts would recognize only those transfers made to the federal government. In the absence of such recognized conveyances, the occupying tribes retained "aboriginal title" to their lands. This was a title subject to disposition only by the federal government.

Marshall based his argument for aboriginal title on the "rule of discovery," an international legal principle derived from the historical practices of European "discovering nations." In order to control competition among themselves, those nations agreed to recognize each others' "first discovery" claims on various parts of the western hemisphere. Although the Indian tribes of course were not parties to the Europeans' agreements, the legal theory was that the tribes held rights of first possession, and that these rights could be transferred, changed, or extinguished only by the affected discovering nation. This remains the basic limitation distinguishing "aboriginal" title from conventional forms of land ownership today.

The second decision of the Marshall court was *Cherokee Nation v. Georgia* in 1831. This case arose because the State of Georgia asserted jurisdiction over the Cherokees and seized lands reserved to the tribe by treaties with the United States. Marshall's decision focused on the nature of the relationship of Indians to the U.S. government. He wrote that although Indian tribes could not properly be considered "foreign nations," they should be deemed "domestic dependent nations....Their relation to the United States resembles that of a ward to his guardian....They look to our government for protection; rely upon its kindness and power; appeal to it for relief to their wants; and address the president as their great father." Again drawing on international law and practice, Marshall laid down the principle of the trust relationship—the legal and moral responsibility of the federal government to protect the vital interests of "dependent sovereign" tribes.

Chief Justice Marshall made his third and most comprehensive statement about the political status of Indian tribes in the case of *Worcester v. Georgia* in 1832. This decision recognized inherent powers of Indian self-government. Samuel Worcester was a politically active missionary on the side of the Cherokees in their struggle with the State of Georgia over control of their lands. Desiring to put a stop to Worcester's activities, state officials arrested him, found