

ALASKA LEGISLATURE COMMITTEE FILES 1995-1996 8672

8843 SENATE COMMUNITY & REGIONAL AFFAIRS

334

**HB**

**192**

# SENATE COMMITTEE REPORT

DATE: 4/15/96

FURTHER: Finance

DATE TURNED INTO OFFICE: \_\_\_\_\_

The C&RA Committee considered CS FOR HOUSE BILL NO. 192(FIN) and  
 Relating to Alaska Housing Finance Corporation loans.

and recommends:

- be replaced with Senate CS for CS HB 192 (CRA)
- adopt previous \_\_\_\_\_ CS \_\_\_\_\_
- attached amendment(s)
- adopt Letter of Intent by \_\_\_\_\_ Committee
- further referral to the \_\_\_\_\_ Committee

Senate Bill:

same title

new title

House Bill:

same title

technical change

new: SCR# \_\_\_\_\_

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>Paul E. Hill</i>	✓	<i>Tom Kelly</i>	✓		
<i>[Signature]</i>	✓				
<i>[Signature]</i>					
<i>[Signature]</i>					
CHAIR: <i>[Signature]</i>	✓				

**NEW FISCAL NOTE(S):**

Department                      Date    Zero    Fiscal

Department	Date	Zero	Fiscal

**PREVIOUS FISCAL NOTE(S):\***

Department                      Date    Zero    Fiscal

Department	Date	Zero	Fiscal
<i>Revenue- AHFC</i>	<i>3/15/96</i>	✓	

APPROPRIATION -- no fiscal note

\*include fiscal notes accompanying Governor's bill

**SENATE COMMITTEE REPORT**  
**First Committee of Referral**

DATE 3/22/96

FURTHER: C&RA  
 Finance

DATE TURNED INTO OFFICE: 7/15/96

The State Affairs Committee considered CS FOR HOUSE BILL NO. 192(FIN) am  
 Relating to Alaska Housing Finance Corporation loans.

and recommends:

- be replaced with S CS HB 192 (STA)
- adopt previous CS ( )
- attached amendment(s)
- adopt Letter of Intent by \_\_\_\_\_ Committee
- further referral to the \_\_\_\_\_ Committee

- Senate Bill:
- same title
  - new title
- House Bill:
- same title
  - technical title
  - new: SCR# \_\_\_\_\_

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>Karen D. Lewan</i>	<input checked="" type="checkbox"/>	<i>Steve Jolley</i>	<input checked="" type="checkbox"/>		
		<i>1000 E. C. Hill</i>	<input checked="" type="checkbox"/>		
CHAIR: <i>Bob Ambler</i>	<input checked="" type="checkbox"/>				

**NEW FISCAL NOTE(S):**

Department	Date	Zero	Fiscal

**PREVIOUS FISCAL NOTE(S) \***

Department	Date	Zero	Fiscal
<i>Revenue - AHEC</i>	<i>3/15/96</i>	<input checked="" type="checkbox"/>	



SENATE CS FOR CS FOR HOUSE BILL NO. 192(CRA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

Offered:  
Referred:

Sponsor(s): REPRESENTATIVES FOSTER, Ivan, MacLean, Long, Mackie, Kubina

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to housing assistance provided by the Alaska Housing Finance  
2 Corporation and to its rural housing programs, to the corporation's supplemental  
3 housing development grants to regional housing authorities, and to housing  
4 programs of regional housing authorities; permitting regional housing authorities  
5 to make, originate, and service loans for the purchase and development of  
6 residential housing; and amending the definitions of 'rural' and 'small  
7 community' as applied in various housing programs."

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

9 \* Section 1. AS 18.55 is amended by adding a new section to read:

10 ARTICLE 3A. GENERAL PROVISIONS.

11 Sec. 18.55.965. LIMITATION ON EXERCISE OF POWER. The Alaska  
12 Housing Finance Corporation may not make, participate in the making of, purchase,  
13 or participate in the purchase of a grant, loan, or investment, or exercise any other

1 power with respect to housing under AS 18.55.010 - 18.55.960, in violation of  
2 AS 18.56.096(a)(5) or AS 18.80.240, or if the effect or result of the exercise of the  
3 power would constitute a violation of AS 18.56.096(a)(5) or AS 18.80.240.

4 \* Sec. 2. AS 18.55.997 is amended to read:

5 Sec. 18.55.997. RESIDENTIAL LOANS. (a) A [IN ADDITION TO THE  
6 POWERS AUTHORIZED TO A REGIONAL HOUSING AUTHORITY UNDER  
7 AS 18.55.996, A] regional housing authority, in addition to the powers authorized  
8 to it under AS 18.55.996,

9 (1) may, in accordance with procedures and policies adopted and  
10 approved by the Alaska Housing Finance Corporation,

11 (A) in a small community, make, originate, and service loans  
12 for the purchase or development of residential housing; and

13 (B) in an area of the state not in a small community, make,  
14 originate, and service loans for the purchase or development of residential  
15 housing; however, a loan made or originated and serviced under this  
16 subparagraph may be made only from the proceeds of a loan made by the  
17 Alaska Housing Finance Corporation to the regional housing authority  
18 under regulations adopted by the corporation to meet the housing needs  
19 of borrowers who cannot obtain financing through the corporation's  
20 programs that are available to address the housing needs of borrowers;

21 (2) shall secure loans made under (1) of this subsection [IN RURAL  
22 AREAS OF THE STATE, OTHER THAN IN AN AREA WHERE THE  
23 CORPORATION HAS A LOAN OFFICE. A LOAN SHALL BE SECURED] by  
24 collateral in an amount acceptable to the corporation; the [. THE] rate of interest on  
25 a loan authorized by this subsection [SECTION] may not exceed the interest rate  
26 established by the Alaska Housing Finance Corporation for the corporation's  
27 corresponding loan program [ON A LOAN ORIGINATED OR PURCHASED  
28 UNDER AS 18.56.400 - 18.56.600].

29 (b) In this section,

30 (1) "development" means the construction of a new residence or the  
31 repair, remodeling, rehabilitation, or expansion of an existing home;

1 (2) ["RURAL" HAS THE MEANING GIVEN THE TERM] "small  
2 community" has the meaning given in AS 18.56.600.

3 \* Sec. 3. AS 18.55.998(a) is amended to read:

4 (a) There is created in the Alaska Housing Finance Corporation a supplemental  
5 housing development grant fund. Using corporate earnings or other available funds, the  
6 corporation shall make grants to regional housing authorities established under  
7 AS 18.55.996 for

8 (1) the cost of [ON-SITE] sewer and water facilities, whether on-site  
9 or off-site;

10 (2) road construction to project sites;

11 (3) [,] energy efficient design features in homes; [,] and

12 (4) extension of electrical distribution facilities to individual residences.

13 \* Sec. 4. AS 18.55.998(c) is amended to read:

14 (c) A grant made by the corporation to a regional housing authority under  
15 this section

16 (1) [GRANT MONEY] may be used by the regional housing  
17 authority only for the purpose and the permissible use for which the grant was  
18 made;

19 (2) may not [PURPOSES SPECIFIED IN (a) OF THIS SECTION,  
20 NO PART OF THE GRANT MONEY MAY] be used for administrative or other costs  
21 of a regional housing authority, whether the costs are directly associated with the  
22 construction or general costs of the authority.

23 \* Sec. 5. AS 18.55.998(d) is amended to read:

24 (d) The Alaska Housing Finance Corporation shall

25 (1) adopt regulations to carry out the purposes of this section; the [  
26 THE] provisions of AS 18.56.088(a) and (b) apply to regulations adopted under this  
27 section; and

28 (2) establish a priority system for the allocation of money for grants  
29 to pay for off-site sewer and water facility improvements authorized by  
30 AS 18.55.998(a)(1).

1 \* Sec. 6. AS 18.55.998 is amended by adding a new subsection to read:

2 (f) The Alaska Housing Finance Corporation may not make a grant or  
3 participate in the making of a grant for residential housing from the supplemental  
4 housing development grant fund if the grant money would support residential housing  
5 used or occupied, or offered for use or occupancy, in violation of AS 18.56.096(a)(5)  
6 or AS 18.80.240.

7 \* Sec. 7. AS 18.56.096 is amended by adding a new subsection to read:

8 (d) The prohibitions of (c) of this section do not apply to a loan made under  
9 AS 18.56.420(a)(2)(C) to renovate or improve small community housing if the amount  
10 of the loan does not exceed \$20,000.

11 \* Sec. 8. AS 18.56.300(d) is amended to read:

12 (d) This section does not apply

13 (1) to a nonconforming housing loan made or purchased by the  
14 corporation; or

15 (2) to a loan made under AS 18.56.420(a)(2)(B) or (C) to renovate  
16 or improve small community housing if the amount of the loan does not exceed  
17 \$20,000.

18 \* Sec. 9. AS 18.56.420(a) is amended to read:

19 (a) There is created in the corporation, as a revolving loan fund, the housing  
20 assistance loan fund consisting of money appropriated to it by the legislature and  
21 deposited in it by the corporation, and repayments of principal and interest on loans  
22 made or purchased from the assets of the fund. The corporation shall

23 (1) adopt regulations to administer the housing assistance loan fund  
24 under AS 18.56.400 - 18.56.600; and

25 (2) subject to appropriation, provide money for a rural assistance loan  
26 program to originate, purchase, [OR] participate in the purchase of, or refinance

27 (A) small community housing mortgage loans;

28 (B) loans made

29 (i) for building materials for small community housing;

30 or

31 (ii) to pay for the labor of third-party contractors for

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the installation of building materials in small community housing units;

(C) loans made for renovations or improvements to small community housing;

(D) loans made for the construction of owner-occupied small community housing other than loans to builders or contractors or loans that compensate an owner for the owner's labor or services in constructing the owner's own housing.

\* Sec. 10. AS 18.56.440 is amended to read:

Sec. 18.56.440. LIMITATIONS ON USE OF HOUSING ASSISTANCE LOAN FUND. The corporation may not use the money in the housing assistance loan fund to

(1) originate a direct loan or purchase or participate in the purchase of a small community housing mortgage loan that exceeds the limitations on mortgage loans purchased by the Federal National Mortgage Association as to principal amount or loan-to-value ratio;

(2) originate a direct loan or purchase or participate in the purchase of a loan made for building materials for small community housing

(A) that exceeds \$45,000 or exceeds

(i) 80 percent of the appraised value of the work completed on the small community housing for which the loan is made if the small community housing is pledged as collateral for the loan; or

(ii) 90 percent of the value of other property that is pledged as security for the loan and that is satisfactory to the corporation as collateral;

(B) unless the terms of the loan agreement require inspections and certifications, as required by regulations of the corporation, at the expense of the borrower; and

(C) unless the period of time allowed for repayment of the loan is equal to or less than 15 years;

(3) originate direct loans or purchase or participate in the purchase of

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1 a small community housing mortgage loan that is secured by real property the  
2 marketable title to which is shown under AS 18.56.480(b)(2) if the total amount of  
3 outstanding small community housing mortgage loans held by the corporation exceeds  
4 10 times the amount of money in the restricted title loss reserve account established  
5 by AS 18.56.490;

6 (4) originate a direct loan for small community housing or purchase or  
7 participate in the purchase of a small community housing mortgage loan, other than  
8 a loan for the repair, remodeling, rehabilitation, or expansion of an existing  
9 owner-occupied residence, if the borrower has an outstanding housing loan made under  
10 a state loan program, other than a loan for [NONOWNER-OCCUPIED] housing under  
11 AS 18.56.580 or for nonowner occupied housing under former AS 44.47.520, that  
12 bears interest at a rate that was less than the prevailing market interest rate for similar  
13 housing loans at the time the loan was made;

14 (5) originate a direct mortgage loan or purchase or participate in the  
15 purchase of a mortgage loan for rental housing unless the borrower agrees not to  
16 discriminate against tenants or prospective tenants because of sex, marital status,  
17 changes in marital status, pregnancy, parenthood, race, religion, color, national origin,  
18 or status as a student;

19 (6) originate, purchase, or participate in a loan to a person who has a  
20 past due child support obligation established by court order or by the child support  
21 enforcement division under AS 25.27.160 - 25.27.220 at the time of application.

22 \* Sec. 11. AS 18.56.460 is amended by adding a new subsection to read:

23 (c) For a loan originated or purchased in whole or in part from the housing  
24 assistance loan fund under AS 18.56.420, the corporation may make an unsecured loan.  
25 The authority of the corporation to make an unsecured loan under this subsection is  
26 limited to a loan made

27 (1) under AS 18.56.420(a)(2)(B) or (C) to renovate or improve small  
28 community housing that does not exceed \$20,000; and

29 (2) for real property if the housing unit for which the unsecured loan  
30 is sought

31 (A) is occupied by the borrower under an occupancy certificate

1 or similar instrument granting the borrower an exclusive right of possession of  
2 a specific dwelling unit in a cooperative housing development, mutual aid  
3 housing program, or similar program; or

4 (B) is located on land the title to which is held by the borrower  
5 under a restricted deed issued by the Secretary of the Interior or the secretary's  
6 designee, either as a Native restricted deed or as a restricted deed for property  
7 in a trustee townsite.

8 \* Sec. 12. AS 18.56.580(a) is amended to read:

9 (a) In addition to the powers authorized by AS 18.56.400, the corporation may  
10 adopt regulations under AS 18.56.088 allowing the use of money in the housing  
11 assistance loan fund to make loans for the purchase or development of rental  
12 [NONOWNER OCCUPIED] housing in small communities.

13 \* Sec. 13. AS 18.56.580(c) is amended to read:

14 (c) The principal amount of loans made for rental [NONOWNER  
15 OCCUPIED] housing under this section may not exceed 20 percent of the total  
16 principal amount of loans made for small community housing under AS 18.56.400 -  
17 18.56.600.

18 \* Sec. 14. AS 18.56.580(d) is amended to read:

19 (d) In this section,

20 (1) "development" means the construction of a new residence or the  
21 repair, remodeling, rehabilitation, or expansion of an existing residence;

22 (2) "rental [NONOWNER OCCUPIED] housing" means a  
23 single-family residence that is not occupied by the owner or a multi-family residence  
24 having up to 16 [EIGHT] dwelling units, one of which may be [AND THAT IS NOT]  
25 occupied by the owner; the corporation may modify this definition if it determines that  
26 there is a special need for rental [NONOWNER OCCUPIED] housing in small  
27 communities and that a change in the definition is necessary to enable the corporation  
28 to meet that need.

29 \* Sec. 15. AS 18.56.600 is amended to read:

30 Sec. 18.56.600. DEFINITIONS. In AS 18.56.400 - 18.56.600,

31 (1) "housing"

1                   (A) means owner-occupied housing having four or fewer  
2 dwelling units [, SINGLE-FAMILY HOUSING AND OWNER-OCCUPIED  
3 DUPLEXES] in which not more than 25 percent of the gross floor area is or  
4 will be devoted to commercial use;

5                   (B) does not include a multi-family residence that constitutes  
6 housing for which a loan is made under the rental housing loan program  
7 of AS 18.56.580 when one of the dwelling units in the multi-family  
8 residence is occupied by the residence owner;

9                   (2) "small community" means a community with a population of 6,500  
10 [5,500] or less that is not connected by road or rail to Anchorage or Fairbanks, or with  
11 a population of 1,600 [1,400] or less that is connected by road or rail to Anchorage or  
12 Fairbanks; in this paragraph, "connected by road" does not include a connection by the  
13 Alaska marine highway system.

14 \* Sec. 16. AS 18.56.799(2) is amended to read:

15                   (2) "senior housing"

16                   (A) means construction or improvement undertaken primarily  
17 to provide dwelling accommodations

18                   (i) for persons 55 years of age or older in residential  
19 cooperatives organized under AS 10.15 or AS 34.08; and

20                   (ii) for persons 60 years of age or older, in  
21 [INCLUDING] conventional housing, housing for frail elderly, group  
22 homes, congregate housing, residential horizontal property regimes  
23 organized under AS 34.07, [RESIDENTIAL COOPERATIVES  
24 ORGANIZED UNDER AS 10.15 OR AS 34.08,] residential  
25 condominiums organized under AS 34.08, and other housing that meets  
26 special needs of the elderly;

27                   (B) includes acquisition, construction, or rehabilitation of land,  
28 buildings, improvements, and other nonhousing facilities that are incidental or  
29 appurtenant to the housing described in (A) of this paragraph.

30 \* Sec. 17. AS 18.56.800 is amended to read:

31                   Sec. 18.56.800. DECLARATION OF PURPOSE. There exists in the state a

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serious shortage of decent, safe, and sanitary residential housing available at low or moderate prices or rentals to persons of the age set by law to qualify for senior housing [60 YEARS OF AGE OR OLDER]. There also exists in the state organizations whose purposes are to provide the kinds of housing needed to alleviate this shortage. Development work to provide such housing involves substantial expense that is often beyond the resources of the organizations.

A M E N D M E N T

OFFERED IN THE SENATE

TO: SCS CSHB 192(STA)

1 Page 8, lines 16 - 22:

2 Delete all material and insert:

3 "(A) means construction or improvement undertaken primarily  
4 to provide dwelling accommodations

5 (i) for persons 55 years of age or older in residential  
6 cooperatives organized under AS 10.15 or AS 34.08; and

7 (ii) for persons 60 years of age or older in [,  
8 INCLUDING] conventional housing, housing for frail elderly, group  
9 homes, congregate housing, residential horizontal property regimes  
10 organized under AS 34.07, [RESIDENTIAL COOPERATIVES  
11 ORGANIZED UNDER AS 10.15 OR AS 34.08,] residential  
12 condominiums organized under AS 34.08, and other housing that meets  
13 special needs of the elderly;"

14 Page 8, line 29:

15 Delete "55" [60] years of age or older."

16 Insert "of the age set by law to qualify for senior housing [60 YEARS OF AGE OR  
17 OLDER]."

## SENATE CS FOR CS FOR HOUSE BILL NO. 192(STA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE STATE AFFAIRS COMMITTEE

Offered:  
Referred:

Sponsor(s): REPRESENTATIVES FOSTER, Ivan, MacLean, Long, Mackie, Kubina

## A BILL

## FOR AN ACT ENTITLED

1 "An Act relating to housing assistance provided by the Alaska Housing Finance  
 2 Corporation and to its rural housing programs, to the corporation's supplemental  
 3 housing development grants to regional housing authorities, and to housing  
 4 programs of regional housing authorities; permitting regional housing authorities  
 5 to make, originate, and service loans for the purchase and development of  
 6 residential housing; and amending the definitions of 'rural' and 'small  
 7 community' as applied in various housing programs."

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

9 \* Section 1. AS 18.55 is amended by adding a new section to read:

10 ARTICLE 3A. GENERAL PROVISIONS.

11 Sec. 18.55.965. LIMITATION ON EXERCISE OF POWER. The Alaska  
 12 Housing Finance Corporation may not make, participate in the making of, purchase,  
 13 or participate in the purchase of a grant, loan, or investment, or exercise any other

1 power with respect to housing under AS 18.55.010 - 18.55.960, in violation of  
2 AS 18.56.096(a)(5) or AS 18.80.240, or if the effect or result of the exercise of the  
3 power would constitute a violation of AS 18.56.096(a)(5) or AS 18.80.240.

4 \* Sec. 2. AS 18.55.997 is amended to read:

5 Sec. 18.55.997. RESIDENTIAL LOANS. (a) A [IN ADDITION TO THE  
6 POWERS AUTHORIZED TO A REGIONAL HOUSING AUTHORITY UNDER  
7 AS 18.55.996, A] regional housing authority, in addition to the powers authorized  
8 to it under AS 18.55.996.

9 (1) may, in accordance with procedures and policies adopted and  
10 approved by the Alaska Housing Finance Corporation,

11 (A) in a small community, make, originate, and service loans  
12 for the purchase or development of residential housing; and

13 (B) in an area of the state not in a small community, make,  
14 originate, and service loans for the purchase or development of residential  
15 housing; however, a loan made or originated and serviced under this  
16 subparagraph may be made only from the proceeds of a loan made by the  
17 Alaska Housing Finance Corporation to the regional housing authority  
18 under regulations adopted by the corporation to meet the housing needs  
19 of borrowers who cannot obtain financing through the corporation's  
20 programs that are available to address the housing needs of borrowers;

21 (2) shall secure loans made under (1) of this subsection [IN RURAL  
22 AREAS OF THE STATE, OTHER THAN IN AN AREA WHERE THE  
23 CORPORATION HAS A LOAN OFFICE. A LOAN SHALL BE SECURED] by  
24 collateral in an amount acceptable to the corporation; the [. THE] rate of interest on  
25 a loan authorized by this subsection [SECTION] may not exceed the interest rate  
26 established by the Alaska Housing Finance Corporation for the corporation's  
27 corresponding loan program [ON A LOAN ORIGINATED OR PURCHASED  
28 UNDER AS 18.56.400 - 18.56.600].

29 (b) In this section,

30 (1) "development" means the construction of a new residence or the  
31 repair, remodeling, rehabilitation, or expansion of an existing home;

1 (2) ["RURAL" HAS THE MEANING GIVEN THE TERM] "small  
2 community" has the meaning given in AS 18.56.600.

3 \* Sec. 3. AS 18.55.998(a) is amended to read:

4 (a) There is created in the Alaska Housing Finance Corporation a supplemental  
5 housing development grant fund. Using corporate earnings or other available funds, the  
6 corporation shall make grants to regional housing authorities established under  
7 AS 18.55.996 for

8 (1) the cost of [ON-SITE] sewer and water facilities, whether on-site  
9 or off-site;

10 (2) road construction to project sites;

11 (3) [,] energy efficient design features in homes; [,] and

12 (4) extension of electrical distribution facilities to individual residences.

13 \* Sec. 4. AS 18.55.998(c) is amended to read:

14 (c) A grant made by the corporation to a regional housing authority under  
15 this section

16 (1) [GRANT MONEY] may be used by the regional housing  
17 authority only for the purpose and the permissible use for which the grant was  
18 made;

19 (2) may not [PURPOSES SPECIFIED IN (a) OF THIS SECTION.  
20 NO PART OF THE GRANT MONEY MAY] be used for administrative or other costs  
21 of a regional housing authority, whether the costs are directly associated with the  
22 construction or general costs of the authority.

23 \* Sec. 5. AS 18.55.998(d) is amended to read:

24 (d) The Alaska Housing Finance Corporation shall

25 (1) adopt regulations to carry out the purposes of this section; the [.  
26 THE] provisions of AS 18.56.088(a) and (b) apply to regulations adopted under this  
27 section; and

28 (2) establish a priority system for the allocation of money for grants  
29 to pay for off-site sewer and water facility improvements authorized by  
30 AS 18.55.998(a)(1).

1 \* Sec. 6. AS 18.55.998 is amended by adding a new subsection to read: --

2 (f) The Alaska Housing Finance Corporation may not make a grant or  
3 participate in the making of a grant for residential housing from the supplemental  
4 housing development grant fund if the grant money would support residential housing  
5 used or occupied, or offered for use or occupancy, in violation of AS 18.56.096(a)(5)  
6 or AS 18.80.240.

7 \* Sec. 7. AS 18.56.096 is amended by adding a new subsection to read:

8 (d) The prohibitions of (c) of this section do not apply to a loan made under  
9 AS 18.56.420(a)(2)(C) to renovate or improve small community housing if the amount  
10 of the loan does not exceed \$20,000.

11 \* Sec. 8. AS 18.56.300(d) is amended to read:

12 (d) This section does not apply

13 (1) to a nonconforming housing loan made or purchased by the  
14 corporation; or

15 (2) to a loan made under AS 18.56.420(a)(2)(B) or (C) to renovate  
16 or improve small community housing if the amount of the loan does not exceed  
17 \$20,000.

18 \* Sec. 9. AS 18.56.420(a) is amended to read:

19 (a) There is created in the corporation, as a revolving loan fund, the housing  
20 assistance loan fund consisting of money appropriated to it by the legislature and  
21 deposited in it by the corporation, and repayments of principal and interest on loans  
22 made or purchased from the assets of the fund. The corporation shall

23 (1) adopt regulations to administer the housing assistance loan fund  
24 under AS 18.56.400 - 18.56.600; and

25 (2) subject to appropriation, provide money for a rural assistance loan  
26 program to originate, purchase, [OR] participate in the purchase of, or refinance

27 (A) small community housing mortgage loans;

28 (B) loans made

29 (i) for building materials for small community housing;

30 or

31 (ii) to pay for the labor of third-party contractors for

1                   the installation of building materials in small community housing  
2                   units:

3                   (C) loans made for renovations or improvements to small  
4                   community housing;

5                   (D) loans made for the construction of owner-occupied small  
6                   community housing other than loans to builders or contractors or loans that  
7                   compensate an owner for the owner's labor or services in constructing the  
8                   owner's own housing.

9                   \* Sec. 10. AS 18.56.440 is amended to read:

10                   Sec. 18.56.440. **LIMITATIONS ON USE OF HOUSING ASSISTANCE**  
11                   **LOAN FUND.** The corporation may not use the money in the housing assistance loan  
12                   fund to

13                   (1) originate a direct loan or purchase or participate in the purchase of  
14                   a small community housing mortgage loan that exceeds the limitations on mortgage  
15                   loans purchased by the Federal National Mortgage Association as to principal amount  
16                   or loan-to-value ratio;

17                   (2) originate a direct loan or purchase or participate in the purchase of  
18                   a loan made for building materials for small community housing

19                   (A) that exceeds \$45,000 or exceeds

20                   (i) 80 percent of the appraised value of the work  
21                   completed on the small community housing for which the loan is made,  
22                   if the small community housing is pledged as collateral for the loan; or

23                   (ii) 90 percent of the value of other property that is  
24                   pledged as security for the loan and that is satisfactory to the  
25                   corporation as collateral;

26                   (B) unless the terms of the loan agreement require inspections  
27                   and certifications, as required by regulations of the corporation, at the expense  
28                   of the borrower; and

29                   (C) unless the period of time allowed for repayment of the loan  
30                   is equal to or less than 15 years;

31                   (3) originate direct loans or purchase or participate in the purchase of

1 a small community housing mortgage loan that is secured by real property the  
2 marketable title to which is shown under AS 18.56.480(b)(2) if the total amount of  
3 outstanding small community housing mortgage loans held by the corporation exceeds  
4 10 times the amount of money in the restricted title loss reserve account established  
5 by AS 18.56.490;

6 (4) originate a direct loan for small community housing or purchase or  
7 participate in the purchase of a small community housing mortgage loan, other than  
8 a loan for the repair, remodeling, rehabilitation, or expansion of an existing  
9 owner-occupied residence, if the borrower has an outstanding housing loan made under  
10 a state loan program, other than a loan for [NONOWNER-OCCUPIED] housing under  
11 AS 18.56.580 or for nonowner occupied housing under former AS 44.47.520, that  
12 bears interest at a rate that was less than the prevailing market interest rate for similar  
13 housing loans at the time the loan was made;

14 (5) originate a direct mortgage loan or purchase or participate in the  
15 purchase of a mortgage loan for rental housing unless the borrower agrees not to  
16 discriminate against tenants or prospective tenants because of sex, marital status,  
17 changes in marital status, pregnancy, parenthood, race, religion, color, national origin,  
18 or status as a student;

19 (6) originate, purchase, or participate in a loan to a person who has a  
20 past due child support obligation established by court order or by the child support  
21 enforcement division under AS 25.27.160 - 25.27.220 at the time of application.

22 \* Sec. 11. AS 18.56.460 is amended by adding a new subsection to read:

23 (c) For a loan originated or purchased in whole or in part from the housing  
24 assistance loan fund under AS 18.56.420, the corporation may make an unsecured loan.  
25 The authority of the corporation to make an unsecured loan under this subsection is  
26 limited to a loan made

27 (1) under AS 18.56.420(a)(2)(B) or (C) to renovate or improve small  
28 community housing that does not exceed \$20,000; and

29 (2) for real property if the housing unit for which the unsecured loan  
30 is sought

31 (A) is occupied by the borrower under an occupancy certificate

1 or similar instrument granting the borrower an exclusive right of possession of  
2 a specific dwelling unit in a cooperative housing development, mutual aid  
3 housing program, or similar program; or

4 (B) is located on land the title to which is held by the borrower  
5 under a restricted deed issued by the Secretary of the Interior or the secretary's  
6 designee, either as a Native restricted deed or as a restricted deed for property  
7 in a trustee townsite.

8 \* Sec. 12. AS 18.56.580(a) is amended to read:

9 (a) In addition to the powers authorized by AS 18.56.400, the corporation may  
10 adopt regulations under AS 18.56.088 allowing the use of money in the housing  
11 assistance loan fund to make loans for the purchase or development of rental  
12 [NONOWNER OCCUPIED] housing in small communities.

13 \* Sec. 13. AS 18.56.580(c) is amended to read:

14 (c) The principal amount of loans made for rental [NONOWNER  
15 OCCUPIED] housing under this section may not exceed 20 percent of the total  
16 principal amount of loans made for small community housing under AS 18.56.400 -  
17 18.56.600.

18 \* Sec. 14. AS 18.56.580(d) is amended to read:

19 (d) In this section,

20 (1) "development" means the construction of a new residence or the  
21 repair, remodeling, rehabilitation, or expansion of an existing residence;

22 (2) "rental [NONOWNER OCCUPIED] housing" means a  
23 single-family residence that is not occupied by the owner or a multi-family residence  
24 having up to 16 [EIGHT] dwelling units, one of which may be [AND THAT IS NOT]  
25 occupied by the owner; the corporation may modify this definition if it determines that  
26 there is a special need for rental [NONOWNER OCCUPIED] housing in small  
27 communities and that a change in the definition is necessary to enable the corporation  
28 to meet that need.

29 \* Sec. 15. AS 18.56.600 is amended to read:

30 Sec. 18.56.600. DEFINITIONS. In AS 18.56.400 - 18.56.600,

31 (1) "housing"

1 (A) means owner-occupied housing having four or fewer  
2 dwelling units [, SINGLE-FAMILY HOUSING AND OWNER-OCCUPIED  
3 DUPLEXES] in which not more than 25 percent of the gross floor area is or  
4 will be devoted to commercial use;

5 (B) does not include a multi-family residence that constitutes  
6 housing for which a loan is made under the rental housing loan program  
7 of AS 18.56.580 when one of the dwelling units in the multi-family  
8 residence is occupied by the residence owner;

9 (2) "small community" means a community with a population of 6,500  
10 [5,500] or less that is not connected by road or rail to Anchorage or Fairbanks, or with  
11 a population of 1,600 [1,400] or less that is connected by road or rail to Anchorage or  
12 Fairbanks; in this paragraph, "connected by road" does not include a connection by the  
13 Alaska marine highway system.

14 \* Sec. 16. AS 18.56.799(2) is amended to read:

15 (2) "senior housing"

16 (A) means construction or improvement undertaken primarily  
17 to provide dwelling accommodations for persons 55 [60] years of age or older,  
18 including conventional housing, housing for frail elderly, group homes,  
19 congregate housing, residential horizontal property regimes organized under  
20 AS 34.07, residential cooperatives organized under AS 10.15 or AS 34.08,  
21 residential condominiums organized under AS 34.08, and other housing that  
22 meets special needs of the elderly;

23 (B) includes acquisition, construction, or rehabilitation of land,  
24 buildings, improvements, and other nonhousing facilities that are incidental or  
25 appurtenant to the housing described in (A) of this paragraph.

26 \* Sec. 17. AS 18.56.800 is amended to read:

27 Sec. 18.56.800. DECLARATION OF PURPOSE. There exists in the state a  
28 serious shortage of decent, safe, and sanitary residential housing available at low or  
29 moderate prices or rentals to persons 55 [60] years of age or older. There also exists  
30 in the state organizations whose purposes are to provide the kinds of housing needed  
31 to alleviate this shortage. Development work to provide such housing involves

1

substantial expense that is often beyond the resources of the organizations. --

FISCAL NOTE

Revision Date: \_\_\_\_\_ Dept. Affected: Revenue  
 Title: AHFC Housing Loans BRU: AHFC  
 Component: AHFC Operations, AHFC Rural Housing  
 Sponsor: Rep. Foster  
 Requestor: (H) FIN COMPONENT SERIAL NO. 110.1937

Expenditures/Revenues: (Thousands of Dollars)

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

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1022 State Corporation Receipts	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

AHFC Operations: No affect on operating costs - language change only.

Prepared by: John Bitney Phone: 561-1900  
 Division: Alaska Housing Finance Corporation Date: March 15, 1996  
 Approved by Commissioner: Wilson L. Carlson *Ken A. Kenney* Date: March 15, 1996  
 Agency: Department of Revenue





520 East 34th Avenue  
Anchorage, AK 99503-4199  
(907) 561-1900

P.O. Box 101020  
Anchorage, AK 99510-1020

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April 18, 1996

The Honorable Richard Foster  
Alaska House of Representatives  
State Capitol Building, Rm. 410  
Juneau, Alaska 99801

Dear Representative Foster:

The following is an update to John Bitney's March 12, 1996 sectional analysis and discussion for CS for House Bill No. 192 (Work Draft 9-LS0463\D) an Act relating to housing assistance provided by the Alaska Housing Finance Corporation and to its rural housing programs, et. al.

#### Section 1

This section prohibits the corporation from discrimination based on sex, marital status, changes in marital status, pregnancy, parenthood, race religion, color, national origin, or status as a student as it relates to a grant, loan, investment or any other power with respect to housing under AS 18.55.010-18.55.960.

#### Section 2

This section will allow regional housing authorities to originate and service loans in small communities of the state for the purpose of the purchase or development of residential housing.

Also, in areas not meeting the definition of a small community, a regional housing authority may borrow funds from the corporation and make those funds available to borrowers who cannot obtain financing through traditional mortgage sources. These borrowers would generally be persons of low-income whose financing needs are not currently met through existing loan programs.

#### Section 3

Under the allowable uses of the supplemental housing development grant fund, infrastructure development for water and sewer could include both on-site and off-site facilities. For example, if a regional housing authority is constructing a water or sewer line to the site of a project, the cost of providing hook-ups for other homes located along the line could be included as part of the project cost paid by these grant funds.

CS for HB192() Sectional  
April 18, 1996  
page 2

#### **Section 4**

This language simply attempts to clarify the existing statute. It does not make any substantive change.

#### **Section 5**

The Alaska Housing Finance Corporation is required to establish a priority system for the allocation of supplemental housing development grant funds used to pay for off-site water and sewer facilities established by section 3.

#### **Section 6**

Similar to section 1, this section prohibits discrimination by the corporation or a grantee of the corporation.

#### **Section 7**

This section exempts projects constructed under the Building Material Loan Program from energy standards provided under AS 18.56.096(c).

While the Alaska Housing Finance Corporation will support and encourage all projects to adhere to energy standards, the costs of the inspections for these standards can represent an extraordinary percentage of the small loans envisioned for this program. These small loans are intended and designed to help people in rural Alaska finish or improve their homes, use local logs to build a home, or install wells or septic systems.

#### **Section 8**

This section exempts projects constructed under the Building Material Loan Program from construction standards provided under AS 18.56.300.

Again, AHFC will support and encourage all projects to adhere to solid building standards. However, the inspections that would be required to insure these standards are met would represent an extraordinary percentage of the small loans envisioned for this program.

#### **Section 9**

Section 9 amends the statute regarding the rural assistance loan program to allow for the refinancing (page 4, line 26) of rural mortgages in the same manner as AHFC's mortgage programs allow for refinancing of urban loans. Current statute simply does not provide for refinancing as an option under rural loans. Rural residents of Alaska have not had the opportunity to benefit from the lower interest rates by refinancing their loans, as have most other individuals in Alaska and elsewhere in the United States. Under the Housing Assistance Loan Fund a borrower would be required to do substantial improvements to their home to receive a new loan at a lower interest rate. This provision would allow for a refinance in which the borrower would not have to increase his loan amount to benefit from current low interest rates provided the borrower's refinance loan meets established eligibility criteria.

**CS for HB192() Sectional**

April 18, 1996

page 3

Additionally, section 9 allows a rural assistance loan to be used to pay for the cost of third-party labor for a building materials loan (page 4, lines 31). In other words, the loan could be taken out to not only cover the cost of the material for the improvements, but could also be used to cover the labor costs for the improvements. To restrict loan proceeds to materials only may serve to promote unqualified borrower's installation of materials, equipment, utilities, or appliances rather than installation by qualified professionals.

**Section 10**

The change made by section 10 is located on page 6, line 11. This would allow AHFC to make loans for rural non-owner occupied housing, to the extent feasible, to someone who already has an AHFC loan for an existing owner-occupied residence.

The language in section 10 would not change any current practice since AHFC already interprets this statute to allow a qualified borrower to have more than one non-owner occupied loan. Section 10 would clarify the statute to more clearly make this type of loan allowable.

**Section 11**

This expands the existing Building Materials Loan Program to allow for small (\$20,000 or less) unsecured loans for borrowers who have either restrictive deed lands or have no title to their HUD Mutual Help home. These borrowers have financing needs for repairs and/or improvements to their homes, but are unable to pledge their home as collateral or have native restricted deed land that is cost prohibitive in obtaining required BIA approval for encumbering the property.

**Section 12**

This is a conforming change to coordinate this statute with the change being made in the first part of section 14.

**Section 13**

This is a conforming change to coordinate this statute with the change being made in the first part of section 14.

**Section 14**

Beginning on page 7, line 22, the definition of non-owner occupied housing would be clarified as rental housing. On line 24, the definition of a multi-family rental house is changed from an eight to a 16 dwelling unit. Please note that the existing statute allows AHFC to modify this definition if AHFC determines there is spacial needs and qualified tenants that shows going beyond an eight unit project is warranted. Borrowers can save costs on projects with up to 16 units by avoiding having to do a special determinations as required by the current statute.

CS for HB192() Sectional  
April 18, 1996  
page 4

**Section 15**

The current definition in statute limits the term "housing" to either single-family and owner-occupied duplexes. Section 15 would bring this term into compliance with industry standards that view the term "housing" as owner-occupied housing with up to four units. This is the standard that is used by the VA, FHA, Fannie Mae, Freddie Mac, and AHFC conventional urban loans.

This section would also increase the population base for communities eligible to participate in the rural loan program from 5,500 to 6,500 for communities not connected to Anchorage or Fairbanks by road or rail OR from 1,400 to 1,600 for communities on the road system. Currently the population of Bethel is approaching 5,200 with a continuing pattern of growth. Haines' population exceeded 1,400 a year ago, and then dropped down to less than 1,400 this year. By increasing the population to 1,600, communities like Haines have an opportunity for growth and are still eligible to participate in our rural loan program. Alternative financing is generally not available from national secondary market sources.

**Section 16**

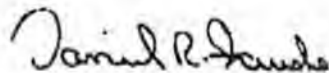
Amends the definitions of "senior" to persons 55 years of age or older. Under existing law, a senior must be at least 60 years old to participate in the corporation's grant or loan programs.

**Section 17**

Similar to section 16, amends the definition of senior to persons 55 years or older.

Again, thank you for your sponsorship of this legislation. I look forward to working with you and your staff toward the passage of this bill. Staff from the Alaska Housing Finance Corporation's mortgage office will be on hand to answer questions you or other legislators may have.

Sincerely,



Daniel R. Fauske  
Executive Director/CEO

TO: Brice Edgmon, Rep. Foster's office  
FROM: JB

#### HB 192 Draft Sponsor Statement

The purpose of HB 192 is to help meet home financing needs in rural Alaska. These changes are needed because, by and large, national conventional lending programs have criteria and requirements that make them of little use in rural Alaska.

The original version of HB 192 was an attempt to increase the state money that is provided from the Alaska Housing Finance Corporation to the regional housing authorities from 20 to 30%. It was felt that this increase was needed to cover the high cost of infrastructure development on rural housing projects since often times the federal HUD funds provided for projects does not cover infrastructure costs. Having said this....this was one provision that has been deleted from the new draft committee substitute before the committee.

Rather, the draft committee substitute now attempts to make changes to AHFC mortgage programs to make them more useful and effective for many Alaskans not presently being served.

The Housing Policy Committee of the AHFC Board of Directors has examined program impediments, and has made recommendations to better accommodate conditions in rural Alaska. These financing tools are an appropriate and key resource to improve housing in rural Alaska in a cost effective way.

Please note that the draft committee substitute before you attempts to do this through expanded loan programs -- not grants. In other words, this is not an attempt at "just another rural giveaway program" -- AHFC will expect any money loaned out under these programs to be paid back with interest. In doing so, however, we will clearly be expanding the opportunity for rural Alaskans to improve their housing conditions through approaches that currently are often too restrictive.

## House Bill No. 192

### Impact of Refinance provisions found in Section 7 of CS for House Bill No. 192:

1. AHFC's rural loan portfolio has 1,140 loans with interest rates over 8% totaling approximately \$115,973,000. The current rate for the rural program is 7 5/8%, subject to change monthly. Of these loans, 532 totaling approximately \$57,160,000, have a rate higher than 9%. The borrowers with interest rates higher than 9% could benefit from refinancing their loans, yet are unable to do so due to program restrictions.

2. Currently AHFC receives many calls from individuals in rural areas who have non-traditional mortgage debt, such as owner-financing. Some of them have interest rates ranging from 10-14%. Due to current statutory limitations, these individuals are unable to take advantage of the current interest rates through a rural refinance program.

The fiscal impact of allowing refinancing would be minimal as no additional staff or support systems would be necessary to manage increased lending activity. These loans are funded from AHFC's revolving Housing Assistance Loan Fund. There are many borrowers in rural areas who could benefit from the lower rates by reducing overall housing expense. Some of these borrowers are struggling due to decreases in pay or have seen a reduction of overtime or benefits.

**BERING STRAITS REGIONAL HOUSING AUTHORITY**

PO. Box 995  
Nome, Alaska 99762  
443-5256 or 5257  
FAX No. (907) 443-2160

April 11, 1996

Senator Bert Sharp, Chairman  
Senate State Affairs Committee  
Alaska State Capitol  
Juneau, AK 99801-1182

**Re: Testimony in Support of CS for HB 192 Before the Senate State Affairs  
Committee**

Dear Chairman Sharp,

My name is Bruce Kovarik, and I am the Executive Director of the Bering Straits Regional Housing Authority which serves 16 communities from our regional center here in Nome. I am offering testimony in support of HB 192 on behalf of our Housing Authority as well as the Association of Alaska Housing Authorities which represents Alaska's 14 Regional Housing Authorities and the Alaska Housing Finance Corporation.

First, I would like to thank Representative Richard Foster for his support and sponsorship of this Legislation and you, Mr. Chairman, for scheduling this hearing today before the Senate State Affairs Committee

**HB 192** has significant importance for Alaska's Regional Housing Authorities in our mission to provide decent, safe, sanitary, and affordable housing to families throughout Alaska and in the development of our rural communities.

**Section 1** expands the ability of the RHAs to originate and service AHFC loans for the purchase and development of residential housing. Despite progress in developing new housing in our rural and urban communities, its clear that we need to utilize every possible resource to meet Alaska's varied housing needs. Existing and future loan programs from AHFC will play an important role, and this provision of HB 192 will be a valuable tool in meeting that need.

Several of the housing programs now available from AHFC and others (e.g., Farmers Home Administration and the Veterans Administration) are severely under-utilized in rural Alaska. Part of the reason is certainly village economics, but another part is the

Testimony in Support of HB 192

April 11, 1996

Page 2

lack of rural access to information and the basic mechanics of loan programs. There are low and moderate income families in our region and throughout the State which can benefit from one or more of these programs and achieve their goals of homeownership. In most cases, a successful home loan will require much more effort than with more affluent families or in communities with better access to lending institutions. The Regional Housing Authorities are a logical choice for making the extra effort

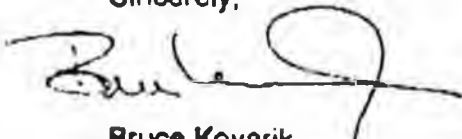
There is also virtually no tradition for conventional mortgage lending and housing development in rural Alaska. But there appears to be no alternative except to develop this tradition in some form to meet the enormous need for housing in Alaska. Expanding access to AHFC loans as this bill does, coordination with lending institutions, and the recent willingness of the secondary mortgage market (FHA, FNMA, FHLMC etc ) to participate in rural housing programs appear as the few bright spots on the horizon. The Regional Housing Authorities and AHFC have begun to demonstrate the effectiveness of these programs and we need to continue to take these first, small steps toward a tradition of mortgage lending

Section 2 expands the eligible activities of the Supplemental Housing Grant Program to include off-site sewer & water work which further recognizes the significant community infrastructure development which is a part of all of our housing projects. While the amount of effort necessary for infrastructure development (roads, power, water & sewer) varies from project to project, it is clear that the ability to use SHG funds will improve our ability to better coordinate with other federal, state and local resources. There is no change in the financial contribution of the program.

Sections 6-13 make meaningful improvements in AHFC programs which offer more practical relevance to rural loan programs and offer greater flexibility for housing development.

Thank you again for this opportunity to offer testimony today. On behalf of the Association of Alaska Housing Authorities and the Bering Straits Regional Housing Authority, I ask for your support for this legislation and urge you to pass HB192 from your committee today.

Sincerely,



Bruce Kovarik  
Executive Director

**HB**

**251**

**(File 1)**

## **HB251 (L&C)**

The version passed by the House eliminated most of the contentious language that was originally proposed.

The only section of the House version that appears to be controversial is section (n). If you decide to take up this measure, you may want to resolve this problem with one of the following conceptual solutions.

1. Much of the concerns being expressed is from village corporations; consequently, amending section (n) by exempting non-reporting corporations (499 shareholders or less) would eliminate their concerns.
2. The "removal for cause" language could be eliminated from section (n) and in its place a 25% petition standard for recalls could be included.
3. A combination of suggestions 1 and 2.
4. Delete section (n).

There are several other more complicated ways to deal with this section; however, these solutions are the most simplistic and easily understood/implemented.

9-LS066210

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

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

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

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

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

7 (1) the board;

8 (2) the chair of the board;

9 (3) the president;

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

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

1 or more shareholders; or

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

4 (m) In addition to the other requirements of this chapter, a written notice of  
5 a petition or other request for a special meeting of shareholders under (l) of this  
6 section shall be filed with the corporation before a person solicits support for the  
7 petition or request. The notice must state in detail the purpose of the special meeting  
8 and include a copy of the petition or request ~~and all materials to be used in connection~~  
9 ~~with the solicitation.~~ <sup>and consent with the other rights of the Shareholders</sup> A petition or request bearing the original signatures of the  
10 holders of the requisite number of shares supporting the petition or request shall be  
11 filed with the corporation ~~within 180 days after the filing.~~ <sup>new #4</sup> [If a petition or request  
12 covered by this section does not comply with this subsection, the petition or request  
13 is invalid.]

14 (n) The provisions of AS 10.06.460 do not apply to a corporation organized  
15 under the act, if the corporation has adopted articles that provide for classification of  
16 directors under AS 10.06.455, or if the corporation is allowed by sec. 57, ch. 82, SLA  
17 1989, to provide in its bylaws for the classification of directors.

18 (o) A corporation that is organized under the act is not required to consider or  
19 to submit to a vote of the shareholders a shareholder proposal that deals substantially  
20 with the same subject matter as a proposal that was submitted to a vote of the  
21 shareholders within the preceding <sup>one</sup> ~~two~~ years.

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

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

9-LS0662M  
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

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

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

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

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

8 (1) A director who votes for or assents to a distribution to the  
9 corporation's shareholders contrary to the provisions of AS 10.06.358, 10.06.360,  
10 10.06.363, or 10.06.365 or contrary to a restriction in the articles of incorporation, is  
11 liable to the corporation, jointly and severally with all other directors voting for or  
12 assenting to the distribution, for the amount of the distribution that is paid or the value  
13 of the assets that are distributed in excess of the amount of the distribution that could  
14 have been paid or distributed without violation of AS 10.06.405 - 10.06.438,

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

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

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

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

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

19                               (1) the board;

20                               (2) the chair of the board;

21                               (3) the president;

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

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

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

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

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

10 (n) The provisions of AS 10.06.460 do not apply to a corporation organized  
11 under the act, if the corporation has adopted articles that provide for classification of  
12 directors under AS 10.06.455, or if the corporation is allowed by sec. 57, ch. 82, SLA  
13 1989, to provide in its bylaws for the classification of directors.

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

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

19 (b) The administrator may issue an order against an applicant, registered  
20 person, or other person who knowingly or intentionally violates this chapter, [OR] a  
21 regulation or order of the administrator under this chapter, or AS 10.07.560(m),  
22 imposing a civil penalty of not more than \$2,500 for a single violation, or not more  
23 than \$25,000 for multiple violations, in a single proceeding or a series of related  
24 proceedings.

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

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

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

2 (e) If the administrator is informed that a person has engaged or is about to  
3 engage in an act or practice in violation of AS 10.06.960(m), AS 45.55.139, or  
4 45.55.160, and if the act or practice relates to a regular or special meeting of the  
5 shareholders of a Native corporation, the administrator shall

6 (1) issue an order

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

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

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

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

16 Sec. 45.55.933. CIVIL ACTION FOR CERTAIN VIOLATIONS. A Native  
17 corporation, a shareholder of a Native corporation, or both, may bring a civil action  
18 in superior court against a person who violates AS 10.06.960(m), AS 45.55.139, or  
19 45.55.160, if the violation relates to a regular or special meeting of the shareholders  
20 of the Native corporation. In the action, the Native corporation, shareholder, or both,  
21 may recover damages from the violator, void a proxy, or enjoin the violator from  
22 continuing the violation or committing additional violations. A shareholder may bring  
23 the action as a derivative action under AS 10.06.435.

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

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

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

9-LS0662AG ✓  
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

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

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

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

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

8 (1) A director who votes for or assents to a distribution to the  
9 corporation's shareholders contrary to the provisions of AS 10.06.358, 10.06.360,  
10 10.06.363, or 10.06.365 or contrary to a restriction in the articles of incorporation, is  
11 liable to the corporation, jointly and severally with all other directors voting for or  
12 assenting to the distribution, for the amount of the distribution that is paid or the value  
13 of the assets that are distributed in excess of the amount of the distribution that could  
14 have been paid or distributed without violation of AS 10.06.405 - 10.06.438,

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

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

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

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

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

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

1 petition or request is invalid.

2 (n) The provisions of AS 10.06.460 do not apply to a corporation organized  
3 under the act, if the corporation has adopted articles that provide for classification of  
4 directors under AS 10.06.455, or if the corporation is allowed by sec. 57, ch. 82, SLA  
5 1989, to provide in its bylaws for the classification of directors.

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

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

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

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

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

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

25 (e) If the administrator is informed that a person has engaged or is about to  
26 engage in an act or practice in violation of AS 10.06.960(m), AS 45.55.139, or  
27 45.55.160, and if the act or practice relates to a regular or special meeting of the  
28 shareholders of a Native corporation, the administrator shall

29 (1) issue an order

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

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

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

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

8 (a) In addition to the civil penalties assessed under AS 45.55.920, a person  
9 who wilfully violates a provision of this chapter except AS 45.55.160, [OR] who  
10 wilfully violates a regulation or order under this chapter, [OR] who wilfully violates  
11 AS 45.55.160 knowing the statement made to be false or misleading in a material  
12 respect or the omission to be misleading by any material respect, or who wilfully  
13 violates AS 10.06.960(m), upon conviction, is punishable by a fine of not more than  
14 \$5,000, or by imprisonment for not less than one year nor more than five years, or  
15 both. Upon conviction of an individual for a felony under this chapter, imprisonment  
16 for not less than one year is mandatory. However, an individual may not be  
17 imprisoned for the violation of a regulation or order if the individual proves that the  
18 individual had no knowledge of the regulation or order. An indictment or information  
19 may not be returned under this chapter more than five years after the alleged violation.

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

21 Sec. 45.55.933. CIVIL ACTION FOR CERTAIN VIOLATIONS. A Native  
22 corporation, a shareholder of a Native corporation, or both, may bring a civil action  
23 in superior court against a person who violates AS 10.06.960(m), AS 45.55.139, or  
24 45.55.160, if the violation relates to a regular or special meeting of the shareholders  
25 of the Native corporation. In the action, the Native corporation, shareholder, or both,  
26 may recover damages from the violator, void a proxy, or enjoin the violator from  
27 continuing the violation or committing additional violations. A shareholder may bring  
28 the action as a derivative action under AS 10.06.435.

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

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

1  
2  
3

(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.

Alaska State Legislature  
Representative Carl E. Moses

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CHAIRMAN  
HOUSE SPECIAL COMMITTEE FISHERIES

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FAX (907) 258-8468

M E M O R A N D U M

**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/lb/m16

# 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						
<b>TOTAL OPERATING</b>	<b>17.0</b>	<b>17.0</b>	<b>17.0</b>	<b>17.0</b>	<b>17.0</b>	<b>17.0</b>

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						
<b>TOTAL</b>	<b>17.0</b>	<b>17.0</b>	<b>17.0</b>	<b>17.0</b>	<b>17.0</b>	<b>17.0</b>

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: 3-24-75

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

Date: \_\_\_\_\_

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FISCAL NOTE

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

Approved By: \_\_\_\_\_ Date: \_\_\_\_\_  
 Agency: \_\_\_\_\_

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OFFICE OF MANAGEMENT AND BUDGET  
AGENCY(IES)

# 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
<b>TOTAL OPERATING</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

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
<b>TOTAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

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 *Willis F. Kirkpatrick*  
 Division: Banking, Securities and Corporations  
 Approved by Commissioner: William L. Hensley *William L. Hensley*  
 Agency: Commerce and Economic Development

Phone: 465-2521  
 Date: 4/28/95  
 Date: 4/28/95

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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 *TB*  
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.

Representative Carl Moses

March 16, 1995

Page 2

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 ON FISHERIES

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



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716 W 4TH AVE #630  
ANCHORAGE, AK 99501-2131  
PHONE (907) 258-6167  
FAX (907) 258-3468

### 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 (I) of Section 2 to the provisions of AS 10.06.405 regarding meetings of corporations.

Section 2 (I) 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.



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

HOUSE BILL NO. 501

1 "An Act relating to Native corporations; and providing for an effective  
date."

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

3 \* Section 1. AS 10.06 is amended by adding a new section to read:

4 Sec. 10.06.959. NATIVE CORPORATION SHAREHOLDER VOTES ON

5 PETITION OR DEMAND. (a) When this chapter or another law, including 43  
U.S.C.

6 1629b, entitles shareholders of a corporation to petition or otherwise  
demand to bring

7 a matter to the shareholders for a vote, the procedure for securing the  
approval of the

8 requisite number of shareholders to present the petition must comply with  
this section.

9 if the corporation is organized under 43 U.S.C. 1601 - 1629e (Alaska Native  
Claims

10 Settlement Act).

11 (b) Before undertaking to obtain shareholder signatures for a petition,  
the

12 sponsor of the petition shall first apply in writing to the secretary of  
the corporation

13 at the corporation's registered office for a petition form to begin the  
undertaking. The

14 application must identify the petition sought to be made to the  
corporation, the name

1 and address of every sponsor of the petition, the source of any actual,  
proposed, or

2 anticipated funding or contribution of goods or services to the petition  
solicitation

3 effort in excess of \$500 in the aggregate, and the name and address of a  
contact person

4 and an alternate contact person to whom all correspondence relating to the  
petition

5 may be sent.

6 (c) If the secretary determines that an application for a petition form  
meets the

7 requirements of (b) of this section, the secretary shall issue a petition  
form to the

8 contact person designated in the application and to each sponsor who  
appears in person

9 in the secretary's office or whose mailing address is provided to the  
secretary.

10 (d) The petition form issued by the secretary under (c) of this section  
must

11 contain

12 (1) the subject matter of the petition, including, in the case of a  
petition

13 to remove a director, the name of the director to be removed, the date the  
director's

14 current term expires, and the sponsor's nominee, if any, to serve the  
unexpired portion

15 of the director's term;

16 (2) a statement whether the subject matter of the petition is intended  
17 to be binding or nonbinding on the corporation and, if the subject matter  
involves

18 amending the articles or bylaws of the corporation, the proposed language  
of the

19 amendment;

20 (3) the date the petition form is issued by the secretary;

21 (4) a notice that the subject matter of the petition is to be voted on  
at

22 an annual or a special meeting of shareholders;

23 (5) spaces for each signature on the petition, the printed name of the  
24 signer, the number of shares held by the signer in the corporation, the  
date of the

25 signature, and the residence and mailing addresses of the signer;

26 (6) a statement, prepared by the secretary, of the total number of  
shares

27 that must be represented by signatures on the petition to entitle the  
subject matter of

28 the petition to be considered at a meeting of shareholders;

29 (7) a space for indicating the number of signatures on the petition;

30 (8) a statement, with spaces for the sponsor's sworn signature and date  
31 of signing, that the sponsor personally circulated the petition, that all  
signatures were

1 made in the presence of the sponsor, and that the sponsor believes the  
signatures to be

2 those of the persons whose names they propose to be.

3 (e) A petition containing the minimum number of signatures required by  
this

4 chapter, another law, or the corporation's articles or bylaws, to entitle  
the subject

5 matter of the petition to be considered at a meeting of shareholders may be  
filed with

6 the secretary within 60 days after the secretary mails a copy of the  
petition form to the

7 contact person designated for the sponsor, as provided in (c) of this  
section, or within

8 five business days after the sponsor has obtained signatures representing  
the minimum

9 number of shares specified by the secretary under (d)(6) of this section,  
whichever

10 event is later.

11 (f) The petition statement required by (d)(8) of this section shall be  
completed

12 and signed by a sponsor on each petition form. Signatures on a petition  
form must be

13 in ink or indelible pencil, and must be legible or accompanied by a legible  
printed

14 name. Copies of the signed petition forms shall be assembled and submitted  
to the

15 secretary as a single instrument. The signatures on the petition must be  
valid and

16 represent the minimum number of shares required by this chapter, another  
provision

17 of law, or the articles or bylaws of the corporation, to entitle the  
subject matter of the

18 petition to be presented to and voted upon at a meeting of shareholders.

19 (g) The petition forms shall be filed with the secretary within the time  
period,

20 if any, required by this chapter or by the articles or bylaws of the  
corporation before

21 the next shareholder meeting.

22 (h) Within 10 days after the date an executed petition form is submitted  
to the

23 secretary for verification, the secretary shall verify the validity of the  
signatures on the

24 petition. If the valid signatures do not meet the minimum number specified  
by (d)(6)

25 of this section, the secretary shall notify by certified mail the contact  
person designated

26 under (b) of this section of each signature that the secretary determines  
to be invalid.

27 The notification must specify the nature of the invalidity.

28 (i) The secretary shall determine that a signature is invalid if the  
signer has

29 withdrawn the signature by written notice filed with the secretary before  
the petition

30 is verified by the secretary, if the signature is illegible and not  
accompanied by a

31 legible printed name, if the signature consists of an "X" or similar  
designation and is

1 not accompanied by the signatures of two witnesses other than a sponsor of  
the

2 petition, and if the secretary determines on basis of substantial  
objective evidence

3 that the signature is not a legally authorized and binding signature.

4 (j) Petition forms that do not contain valid signatures representing the

5 minimum number of shares specified by (d)(6) of this section may be  
supplemented

6 with additional signatures obtained and submitted to the secretary before  
the 11th day

7 after the day when the secretary furnishes the notice of the invalidity of  
the signatures

8 to the contact person if

9 (1) the petition forms contain signatures representing the minimum

10 number of shares specified in (d)(6) of this section, including both valid  
and invalid

11 signatures; and

12 (2) the supplementary petition is filed within the minimum period of

13 time required by this chapter, another law, or the articles or bylaws of

the corporation.

- 14 (k) The secretary shall reject a petition that does not contain valid signatures
- 15 representing the minimum number of shares specified in (d)(6) of this section unless
- 16 supplemented under (j) of this section. Within 10 days after a supplementary submittal
- 17 under (j) of this section, the secretary shall verify the supplemental signatures if the
- 18 secretary determines that they are valid. If, after the petitions have been supplemented
- 19 once under (j) of this section, the petitions still do not contain valid signatures
- 20 representing the minimum number of shares specified by (d)(6) of this section, the
- 21 secretary shall reject the petition in writing and notify the contact person by certified
- 22 mail of the rejection.
- 23 (l) If the secretary rejects the petition, the sponsors of the petition may file a
- 24 protest with the commissioner within seven days after receipt of the notice of rejection.
- 25 The commissioner shall hold a hearing and decide the protest. If the commissioner
- 26 upholds the protest, the subject matter of the petition shall be considered at the next
- 27 shareholders' meeting of the corporation, if a shareholders' meeting is to be held more
- 28 than 60 days following the commissioner's upholding the protest. If the next
- 29 shareholders' meeting is to be held within 60 days of the action of the commissioner,
- 30 the corporation may, instead of considering the subject matter at the meeting, call a
- 31 special meeting of the shareholders to be held within 120 days of the date of action
- 1 of the commissioner, and the subject matter shall be considered at the meeting.
- 2 (m) It, within 60 days after the secretary makes the petition form available

3 under (c) of this section, the sponsor of the petition does not present to  
the corporation

4 signatures representing the minimum number of shares required by this  
chapter,

5 another law, or the articles or bylaws of the corporation, to entitle the  
subject matter

6 to be presented to the shareholders for a vote, a person may not undertake  
to secure

7 signatures for a petition with respect to the same subject matter until a  
year has

8 elapsed from the date the application is filed with the corporation under  
(b) of this

9 section.

10 (n) If the petition is verified under (h) or (k) of this section, or if  
the

11 commissioner sustains a protest under (l) of this section, the corporation  
shall place the

12 subject matter of the petition on the agenda of the next succeeding annual  
meeting of

13 shareholders, or call and conduct a special meeting of shareholders, as  
required under

14 this chapter, another law, or the articles or bylaws of the corporation.  
If the

15 corporation fails or refuses to call a special meeting as required by this  
subsection, the

16 sponsors of the petition may call the special meeting or petition the  
superior court

17 under AS 10.06.407\_\_ to order the corporation to call the special meeting,  
and unless

18 otherwise ordered by the superior court, the special meeting shall be  
conducted by the

19 corporation.

20 (o) If the subject matter of a petition is presented to and voted on at  
an annual

21 or special meeting and is rejected, and if the proponents of the petition  
do not receive

22 votes representing a majority of the outstanding voting shares of the  
corporation, a

23 person may not undertake to secure signatures for a petition for

consideration of the

24 same subject matter at an annual or special meeting of shareholders until  
after the

25 second annual meeting that follows the meeting that voted on and rejected  
the subject

26 matter.

27 (p) A petition under this section for a shareholder vote is a proxy  
solicitation

28 under AS 45.55.139(b). Every document or statement that is distributed to a

29 shareholder with the intention of influencing the shareholder's vote on the  
matter that

30 is the subject of the petition is a proxy solicitation and must be filed  
with the secretary

31 and with the commissioner under AS 45.55.139(b).

1 (q) A sponsor of a petition under this section shall disclose to the  
secretary and

2 the commissioner a change in the information disclosed under (d) of this  
section within

3 five business days of the change. A sponsor shall also disclose to the  
secretary and

4 the commissioner, within five business days of receipt, a contribution of  
money, goods,

5 or services with a value of more than \$500 in the aggregate from a single  
source.

6 (r) A sponsor of a petition under this chapter may not knowingly  
misrepresent

7 the number of signatures obtained. A knowing misrepresentation is an untrue

8 statement of a material fact under AS 45.55.160.

9 (s) This section does not limit the ability of a corporation to provide  
in its

10 articles or bylaws that in order for a petition to be considered at an  
annual or special

11 meeting of shareholders, the petition or proposal must be filed with the  
corporation

12 within a minimum period of time, not exceeding 90 days, before the date of  
the

13 meeting.

14 (t) In this section,

15 (1) "corporation" means a corporation organized under 43 U.S.C. 1601  
16 - 1629e (Alaska Native Claims Settlement Act);

17 (2) "petition" means a petition or other demand by shareholders to  
18 bring a matter to the shareholders for a vote;

19 (3) "secretary" means the secretary of the corporation.

20 \* Sec. 2. AS 10.06.950 is amended by adding new subsections to read:

21 (j) Notwithstanding AS 10.06.228, a corporation organized under the act  
may

22 not amend or repeal a bylaw that is properly adopted or amended by the  
shareholders

23 unless the amendment or repeal is approved by the shareholders.

24 (k) Notwithstanding AS 10.06.230(c), if a corporation was organized  
under the

25 act before July 1, 1989, the board of the corporation may adopt a bylaw  
that specifies

26 or changes a fixed number of directors or the maximum or minimum number of

27 directors, or that changes the board from a fixed to a variable board or  
from a variable

28 to a fixed board.

29 (1) Notwithstanding AS 10.06.405(c) and 10.06.465(c), a corporation that  
is

30 organized under the act may not hold a special meeting of shareholders  
unless

31 (1) the meeting is called by the board of directors or by a person

1 authorized by the corporation's articles or bylaws to call the meeting; or

2 (2) the holders of at least 10 percent of all the votes entitled to be  
cast

3 on an issue proposed to be considered at the proposed special meeting sign,  
date, and

4 deliver to the corporation's secretary a written demand for the meeting;  
the demand

5 must describe a lawful purpose for holding the meeting; if not otherwise  
established

6 by this chapter, the record date for determining the shareholders entitled  
to demand a

7 special meeting is the date when the demand is delivered to the

corporation's secretary;

8 in this paragraph, "lawful purpose" does not include presenting for a  
shareholder vote

9 an issue that is improper or that the shareholders may not decide under  
this chapter.

10 (m) Notwithstanding AS 10.06.460(a), if a corporation is organized under  
the

11 act, the shareholders may not demand the removal of a director without  
reason unless

12 the secretary of the corporation verifies a petition for the removal under

13 AS 10.06.959(h) or (k) for shareholders representing at least 25 percent of  
the number

14 of votes cast at the last regular election of directors held before the  
issuance date of

15 the petition, or the commissioner upholds a protest for the petition under

16 AS 10.06.959(l), and written or printed notice of intention to seek removal  
under this

17 subsection is delivered either personally or by mail to each shareholder of  
record

18 entitled to vote at the meeting. If notice of intention to seek removal  
under this

19 subsection is

20 (1) delivered to the president or secretary of the corporation at least  
75

21 days before the date of the annual meeting, it must be included on the  
notice stating

22 the place, day, and hour of the annual meeting without cost to the  
shareholder seeking

23 removal; or

24 (2) not timely under (1) of this subsection, the shareholders seeking

25 removal may, at the expense of those shareholders, deliver either  
personally or by mail

26 the notice required by this subsection at any time up to 20 days before the  
date set for

27 the annual meeting at which the shareholders seek removal under this  
subsection; if

28 mailed, notice is considered delivered when deposited with postage prepaid  
in the

29 United States mail addressed to the shareholder at the address appearing on  
the stock

30 transfer books of the corporation.

31 (n) In addition to the causes for removal stated under AS 10.06.463, if  
the

1 corporation is organized under the act, the superior court may remove a  
director from

2 office under AS 10.06.463 if the director fails to meet the qualifications  
to serve as a

3 director of the corporation, as those qualifications may be established  
under

4 AS 10.06.230(e) (4) by the corporation's bylaws, and may bar the removed  
director

5 from reelection for period established by the court.

6 (o) Notwithstanding AS 10.06.470(a), if a corporation is organized under  
the

7 act, a regular or special meeting of the corporation's board or a committee  
of the board

8 may not be called unless it is called by the chair of the board, the  
president, a

9 vice-president, the secretary, or one-quarter of the directors.

10 \* Sec. 3. AS 10.06 is amended by adding a new section to read:

11 Sec. 10.06.962. COURT ORDERED MEETING OF NATIVE

12 CORPORATION. (a) If a corporation is organized under 43 U.S.C. 1601 -  
1629e

13 (Alaska Native Claims Settlement Act), the superior court of the judicial  
district where

14 a corporation's registered office is located may order the corporation to  
hold a meeting

15 if an application for the meeting is made to the court by a shareholder of  
the

16 corporation who

17 (1) is entitled to participate in an annual meeting if an annual meeting

18 is not held within the earlier of six months after the end of the  
corporation's fiscal year

19 or 15 months after its last annual meeting; or

20 (2) signed a special meeting demand that is valid under this chapter if

21 (A) notice of the special meeting is not given within 30 days  
22 after the date the demand is delivered to the secretary of the corporation;  
23 or

24 (B) the special meeting is not held in accordance with the  
25 notice.

26 (b) In an order under (a) of this section, the court may fix the time  
27 and place

28 of the meeting, determine the shares entitled to participate in the  
29 meeting, set a record

30 date for determining the shareholders who are entitled to notice of and to  
31 vote at the

meeting, establish the form and content of the meeting notice, fix the  
quorum required

for specific matters to be considered at the meeting, direct that the votes  
represented

at the meeting constitute a quorum for action on the matters to be  
considered at the

meeting, and enter other orders necessary to accomplish the purpose of the  
meeting.

1 \* Sec. 4. AS 45.55.139 is amended to read:

2 Sec. 45.55.139. REPORTS OF CORPORATIONS. \_Except as provided under

3 (b) of this section, a\_ A copy of all annual reports, proxies, consents or  
4 authorizations, proxy statements\_,\_ and other materials relating to proxy  
solicitations

5 distributed, published\_,\_ or made available by any person to at least 30  
Alaska resident

6 shareholders of a corporation \_that\_ WHICH has total assets exceeding  
\_ \$1,000,000 and

7 a class of equity security held of record by 500 or more persons and \_that\_  
WHICH

8 is exempted from the registration requirements of AS 45.55.070 by AS  
45.55.138, shall

9 be filed with the administrator concurrently with its distribution to  
shareholders.

10 \* Sec. 5. AS 45.55.139 is amended by adding a new subsection to read:

11 (b) If the proxy solicitation is for a corporation that is organized  
under 43

12 U.S.C. 1601 - 1629e (Alaska Native Claims Settlement Act), a copy of all

annual

- 13 reports, proxies, consents or authorizations, proxy statements, and other materials
- 14 relating to proxy solicitations distributed, published, or made available by any person
- 15 to at least 150 Alaska resident shareholders of a corporation that has total assets
- 16 exceeding \$5,000,000 or a class of equity security held of record by 500 or more
- 17 persons and that is exempted from the registration requirements of AS 45.55.070 by
- 18 AS 45.55.138, shall be filed with the administrator concurrently with its distribution
- 19 to shareholders. A filing under this subsection shall be supplemented as often as the
- 20 contents of the filing change materially.
- 21 \* Sec. 6. This Act takes effect immediately under AS 01.10.070(c).

of this chapter and the violation falls within the provisions of AS 45.55.060, 45.55.120, 45.55.920 and 45.55.925. (§ 16 ch 86 SLA 1972)

Revisor's notes. — Formerly AS 45.55.195. Renumbered in 1994.

**Sec. 45.55.920. Orders, injunctions, and civil penalties.** (a) If it appears to the administrator that a person has engaged or is about to engage in an act or practice in violation of a provision of this chapter or regulation or order under this chapter, the administrator may

(1) in the public interest or for the protection of investors, issue an order

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

(B) directing the person, for a period not to exceed three years, to file the annual reports, proxies, consents or authorizations, proxy statements, or other materials relating to proxy solicitations required under AS 45.55.139 with the administrator for examination and review 10 working days before a distribution to shareholders; and

(C) voiding the proxies obtained by a person required to file under AS 45.55.139, including their future exercise or actions resulting from their past exercise, if the proxies were solicited by means of an untrue or misleading statement prohibited under AS 45.55.160; or

(2) bring an action in the superior court to enjoin the acts or practices and to enforce compliance with this chapter or regulation or order under this chapter, and upon a proper showing, the appropriate remedy must be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets; the court may not require the administrator to post a bond.

(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, 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.

(c) For violations not covered by (b) of this section, the administrator may issue an order against an applicant, registered person, or other person who violates this chapter or a regulation or order of the

administrator under this chapter, imposing a civil penalty of not more than \$500 for a single violation, or not more than \$5,000 for multiple violations, in a single proceeding or a series of related proceedings.

(d) Before issuing an order under (a)(1), (b), or (c) 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) 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. (§ 308 ch 193 SLA 1959; am § 1 ch 126 SLA 1968; am § 1 ch 65 SLA 1981; am § 107 ch 16 SLA 1982; am § 2 ch 87 SLA 1988)

*Sec. 45.55.130. [Renumbered as AS 45.55.990.]*

**Sec. 45.55.138. Application to Alaska Native Claims Settlement Act corporations.** The initial issue of stock of a corporation organized under Alaska law pursuant to 43 U.S.C. 1601 — 1628 (Alaska Native Claims Settlement Act) is not a sale of a security under AS 45.55.070 and 45.55.130(10). (§ 6 ch 70 SLA 1972)

**Cross references.** — For purpose of 70, SLA 1972 in the Temporary and Special Acts. — For purpose of 70, SLA 1972 in the Temporary and Special Acts. — For purpose of 70, SLA 1972 in the Temporary and Special Acts.

**Sec. 45.55.139. Reports of corporations.** A copy of all annual reports, proxies, consents or authorizations, proxy statements and other materials relating to proxy solicitations distributed, published or made available by any person to at least 30 Alaska resident shareholders of a corporation that has total assets exceeding \$1,000,000 and a class of equity security held of record by 500 or more persons and which is exempted from the registration requirements of AS 45.55.070 by AS 45.55.158, shall be filed with the administrator concurrently with its distribution to shareholders. (§ 1 ch 58 SLA 1977)

#### NOTES TO DECISIONS

**Construction of common law prohibition of materially false and misleading statements.** — For case construing common law prohibition of materially false and misleading statements in proxy solicitations. See *Brown v. Ward*, 593 P.2d 247 (Alaska 1979).

*Sec. 45.55.140. [Renumbered as AS 45.55.900.]*

**Sec. 45.55.150. Filing of sales and advertising literature.** The administrator may by regulation or order require the filing of a prospectus, pamphlet, circular, form letter, advertisement, or other sales literature, or advertising communication addressed or intended for distribution to prospective investors, including clients or prospective clients of an investment adviser. (§ 303 ch 198 SLA 1959; am § 12 ch 105 SLA 1961; am § 14 ch 86 SLA 1972)

**Sec. 45.55.160. Misleading filings.** A person may not, in a document filed with the administrator or in a proceeding under this chapter, make or cause to be made an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading. (§ 304 ch 198 SLA 1959; am § 15 ch 86 SLA 1972)

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: 4/28/95  
Referred: Rules

Sponsor(s): REPRESENTATIVES MOSES, MacLean, Williams, Kott

A BILL

FOR AN ACT ENTITLED

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

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

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

*Meeting & Shareholder  
file  
Shareholder*

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

7 (1) the board;

8 (2) the chair of the board;

9 (3) the president;

*currently  
10%*

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

*currently  
10%*

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

1 or more shareholders; or

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

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

*Required as  
by circumstances*

13 (n) The provisions of AS 10.06.460 do not apply to a corporation organized  
14 under the act, if the corporation has adopted articles that provide for classification of  
15 directors under AS 10.06.455, or if the corporation is allowed by sec. 57, ch. 82, SLA  
16 1989, to provide in its bylaws for the classification of directors.

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

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

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

SENATE BILL NO. 337

1 "An Act relating to the voting of shares in Native corporations."

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

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

4 (j) Notwithstanding AS 10.06.420(d), 10.06.453(e), 10.06.455(b), and

5 10.06.460(a)(2), if a corporation was organized under the act and under  
former

6 AS 10.05 before July 1, 1989, and if the corporation's bylaws, as the  
bylaws existed

7 on June 30, 1989, provided for noncumulative voting by its shareholders, the

8 corporation may continue to operate without cumulative voting.

9 (k) Notwithstanding other provisions of this chapter to the contrary, a

10 governmental agency or entity may not exercise the voting privileges of the  
stock of

11 a corporation organized under the act.

12 \* Sec. 2. Section 10, ch. 166, SLA 1988, is amended by adding a new  
subsection to read:

13 (d) Notwithstanding (a) of this section and AS 10.06.420(d),  
10.06.453(e),

14 10.06.455(b), and 10.06.460(a)(2), an amendment to the articles of  
incorporation of a

1 corporation organized under 43 U.S.C. 1601 - 1629e (Alaska Native Claims  
Settlement

2 Act) and incorporated under former AS 10.05.005 to add a provision  
prohibiting

3 cumulative voting may be adopted by the affirmative vote of a majority of  
the shares

4 represented at a regular or special meeting at which a quorum is present in  
person or

5 by proxy.

6 \* Sec. 3. Section 58, ch. 82, SLA 1989, is amended to read:

7 Sec. 58. APPLICABILITY OF CUMULATIVE VOTING PROVISIONS TO

8 CERTAIN CORPORATIONS. Notwithstanding AS 10.06.420(d) and  
10.06.460(a)(2),

9 and except as provided in AS 10.06.960(j), if a corporation is organized  
under former

10 AS 10.05 and if the corporation's bylaws, as the bylaws exist immediately before

11 July 1, 1989, contain a provision that complies with former AS 10.05 and prohibits

12 cumulative voting, the corporation may continue to operate without cumulative voting

13 until July 1, 1994.

**CSHB 251 (L&C): "An act relating to the meetings, shareholder proposals, and removal of directors of Native Corporations"**

The department supports the primary intent of the proposed legislation as expressed by the bill's sponsors. Both the curtailment of disruptive, frivolous, and repetitive petition practices and the preservation of basic redress rights of 70,000 Alaska Native Settlement Act (ANCSA) shareholders are the paramount issues. While the department supports the overall concept of reducing disruptive repetitive petitioning practices, the provisions of section (n) need to be revisited as the ultimate bar to petition removal of directors by a majority of shareholders appears to be an unintended result and one that the department does not support.

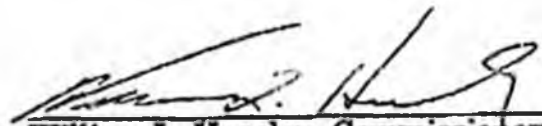
CSHB 251 requires that a meaningful number of shareholders be sought in any petition effort, either proposing advisory resolutions or seeking special meetings. Petitioners in corporations having 500 or more shareholders will need the support of 15% of the shareholders, and for those entities having less than 500 shareholders, 25% will be required. Establishment of these thresholds will help to eliminate frivolous petitions and will ensure that the issues presented are important to a fair number of shareholders. The corporation must be put on notice as to the particulars of the petition effort at the onset of the campaign, and solicitation materials must be filed with the corporation concurrent with their distribution to shareholders. This enables the corporation to monitor the activity and respond to allegations while also minimizing the risk of misinformation to shareholders. An overall time limit of 180 days is imposed to gather the requisite signatures so that the process does not drag on ad infinitum. For corporations having one million in assets and a class of shareholders of 500 or more, these materials will likewise be filed with the division under the terms and conditions of AS 45.55.139. Corporations under these size specifications are not required to file with the division, and CSHB 251 will impose a new requirement with respect to filing petitions and solicitation material with corporate offices which will not be duplicated by state filings.

A further provision of the bill designed to curb repetitive petitions will enable the corporation to decline to consider a shareholder proposal if substantially the same issue has been brought before the shareholders within the preceding year. Disputes arising with respect to the requisite signatures, time frames, or repetitive issues on filings with corporate offices will be subject to judicial resolution under private rights of action. The department, therefore, has submitted a zero fiscal note, believing that we will not be involved in any dispute resolution on these issues. It is expected that one party or the other will have to initiate litigation to effect enforcement of its relative position.

Section (n) of the bill which excuses corporations having adopted classification of directors (staggered terms) from the provisions of the existing corporate code allowing for "removal without cause" continues to be a concern to the department. This provision (which was not included in our suggested amendments) will result in what may be an unintended burden on shareholders. The Alaska Corporate Code has no provision for removal

**POSITION PAPER  
CSHB 251 (L&C)  
PAGE 2**

of directors for cause through a petition or special meeting process. In the absence of the "without cause" provision of the code, the remedy is "for cause" only and is statutorily limited to court action. Thus, shareholders will not be able to petition the removal of directors by vote for cause, but rather will need to establish cause under judicial standards. The department believes that the imposition of this standard solely may not have been intended, but the resultant court implications are a concern in that shareholders facing these costs may be effectively barred from initiating a removal action.

  
\_\_\_\_\_  
William L. Hensley, Commissioner  
Date: 4/28/95

**DRAFT**

CSHB 251 (L&C) "An act relating to the meetings, shareholder proposals, and removal of directors of Native Corporations"

SUPPLEMENT TO POSITION PAPER DATED APRIL 28, 1995

The Department of Commerce and Economic Development, (department), has been asked to review and express its position on CSHB 251 (L&C) in the event that Section (n) of the bill is amended out. Section (n) exempts native corporation from the Alaska Corporation Code, AS 10.06 460, providing for removal of directors without cause. This exemption from Section 460 would result in a requirement that a court act to determine the existence of "cause" for the removal of any directors. 460 is also the section providing that a shareholder may request a recall resolution be placed on the ballot of an annual meeting. Both of these rights are of significant importance to shareholders.

There is a strong basis that congress, in forming native corporations under Alaska law, intended shareholders should have a strong voice in their corporation. At inception each registered native was issued 100 shares of stock evidencing their individual equity ownership. No director, employee or officer of a corporation was issued any more or less stock than any other shareholder nor was their equity value any different than that of any other shareholder. It is also clear that congress did not intend to establish a trust type structure where an isolated sheltered board would solely determine the destiny of all shareholders. It therefore must be concluded that if a majority percentage of the shareholders want a change in the board of directors it should occur. It is and should be the shareholders who determine who sits on these ANCSA boards. It is interesting to note that while Section AS 10.06.605(a) (current law) provides that 2/3 of the shares entitled to vote can voluntarily dissolve their entire corporation, with section "n", in place, no percentage, not even 100 percent could recall their directors without a substantial finding of cause.

If Section (n) becomes law, not only would native shareholders be unable to sell his or her inalienable shares but would also be severely restrained in the only redress remaining to them, the board removal processes assured under 10.06.460.

It is the opinion of the department that absent Section 10.06.960 (n), there exists sufficient alternate standards in CSHB 251 to reduce frivolous repetitive recall efforts that have been represented to cause a burden on corporate activity.

1. Section (l) provides that petitions for special meetings and/or recalls requires 15 percent of all shares entitled to vote for corporations of 500 or more shareholders and 25 percent for those under 500 shareholders. While the increase is not punitive it still compels a greater effort in time and expense to garner the minimum numbers and is indicative of meaningful concern.

*Draft*  
*Page 1*

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2. Section (m) not only requires a notice to be filed with the corporation, disclosing "all materials to be used" but also sets a time limit of 180 day for completion of the overall effort.

3. Section (o) limits shareholder proposals to once a year and precludes repetitive petitions on the same issues.

These three refinements will act to curtail disruptive, frivolous and repetitive petition practices and yet provide the essential element of representation for the shareholders, who are after all the actual owners of these corporations.

There is concern by some about allowing shareholders to request that a recall resolution be placed on the annual meeting agenda. In the past twenty years this provision in the corporate code has not presented a problem and the present sol? incidence at Sealaska Corporation does not establish a problem trend. As in any agenda item, management will have a statement in the proxy expressing its position. This may be a minor expense and unless there are widely known reasons for board recall the event will certainly be academic. If the subject of recall begs to be aired at a shareholder meeting, this would undoubtedly be the least threatening avenue to allow the minority to have a voice in the proceedings. Moreover, even if dissident shareholders require a recall resolution be presented yearly at the annual meeting that in itself will insure that the question will not arise again until at least the next annual meeting.

It is therefore the position of the department that the intent of the legislation to reduce disruptive, frivolous and repetitive recall practice would be accomplished without the provisions of Section "n" of CSHB 251 (L&B).

Attached is a table of comparison of ANCSA corporation, and Alaska corporations highlighting the variances.

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Page 2

**DRAFT****ALASKA CORPORATION CODE****AS 10.06**

SUBJECT	ANCSA CORPORATIONS	ALL OTHER CORPORATIONS
Number of shareholders required to petition for a special meeting.	500 or more shareholders 15% Less than 500 shareholders 25%	10%
Amount of time required to secure signatures and present petitions.	180 days	NO TIME LIMIT
Prefile petition & material with corporation.	Prefile, with corporation, petition and all materials to be used in a solicitation	NO FILING OF ANY KIND REQUIRED
Provisions of <u>AS 10.06.460</u>  (1) Removal of directors.  (2) Inclusion of recall resolution at annual meeting	(1) Shareholders could <u>NOT</u> remove directors without a finding of <b>CAUSE</b>  (2) Shareholder could <u>NOT</u> submit a recall resolution to be considered at the annual meeting.  <u>[It is the position of the department that these provision are excessive and must be eliminated.]</u>	(1) DIRECTORS CAN BE REMOVED WITHOUT CAUSE  (2) A shareholder can submit a recall resolution to be considered at the annual meeting.
Limit on subject matter to be submitted to a vote.	Corporation is not required to consider a subject that has been submitted to a vote within the preceding year.	NO LIMITATION
Another major difference with ANCSA stock but not part of CSHB 251		
Character of shareholder's stock.	ANCSA stock is inalienable and can not be sold, pledged, or otherwise encumbered.	NO STATUTORY RESTRICTIONS

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MAY 12 1995

Ans'd.....

**CSHB 251 (L&C)**  
**TABLE OF CORPORATE VARIANCES**

**ALASKA CORPORATION CODE**  
**AS 10.06**

SUBJECT	ANCSA CORPORATIONS	ALL OTHER CORPORATIONS
Number of shareholders required to petition for a special meeting.	500 or more shareholders 15% Less than 500 shareholders 25%	10%
Amount of time required to secure signatures and present petitions.	180 days	NO TIME LIMIT
Prefile petition & material with corporation.	Prefile, with corporation, petition and all materials to be used in a solicitation	NO FILING OF ANY KIND REQUIRED
Provisions of AS 10.06.460  (1) Removal of directors.  (2) Inclusion of recall resolution at annual meeting	(1) Shareholders could <u>NOT</u> remove directors without a finding of CAUSE  (2) Shareholder could <u>NOT</u> submit a recall resolution to be considered at the annual meeting.  <u>[It is the position of the department that these provision are excessive and must be eliminated.]</u>	(1) DIRECTORS CAN BE REMOVED WITHOUT CAUSE  (2) A shareholder can submit a recall resolution to be considered at the annual meeting.
Limit on subject matter to be submitted to a vote.	Corporation is not required to consider a subject that has been submitted to a vote within the preceding year.	NO LIMITATION
<b>Another major difference with ANCSA stock but not part of CSHB 251</b>		
Character of shareholder's stock.	ANCSA stock is inalienable and can not be sold, pledged, or otherwise encumbered.	NO STATUTORY RESTRICTIONS

Prepared by the DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT May 10, 1995

Post-It™ brand fax transmittal memo 7671 # of pages >

To <i>Re HB 251</i>	From <i>Kirkpatrick</i>
Co.	Co.
Dept.	Phone #
Fax #	Fax #

# ALASKA

DEPARTMENT OF COMMERCE  
AND ECONOMIC DEVELOPMENT

TONY KNOWLES, GOVERNOR

RECEIVED  
MAY 12 1995  
Ans'd.....

## TELECOPIER TRANSMITTAL SHEET

Division of Banking, Securities and Corporations  
P.O. Box 110807 (9th Floor State Office Bldg.)  
Juneau, Alaska 99811-0807

Sharp FO-6100  
(Automatic)  
(907) 465-2549

DELIVER TO: Sandy N FROM: Willis K.

Our division has been a regulator over Native proxy  
 matters for about 20 years - As such don't be surprised  
 if both Shareholders and Management don't like  
 us very much. (some what like police and domestic violence)

Number of pages INCLUDING transmittal sheet: \_\_\_\_\_ DATE: \_\_\_\_\_

OPERATOR: Willis TIME: \_\_\_\_\_

IF TELECOPY DOES NOT TRANSMIT PROPERLY, PLEASE CALL (907) 465-2521 IMMEDIATELY.

STATE OF ALASKA  
DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT  
DIVISION OF BANKING, SECURITIES AND CORPORATIONS  
P.O. BOX 110807  
JUNEAU, ALASKA 99811-0807  
(907) 465-2521

**ALASKA NATIVE CLAIMS SETTLEMENT ACT  
STATUTES AND REGULATIONS**

AS 45.55.138.139 - ANCSA CORPORATIONS.

3 AAC 08.305 - 3 AAC 08.365. Proxy Regulations.

Microfiche annual reports through 1987 for the 13 regional corporations are available from the University of Alaska, Anchorage, Arctic Environmental Information and Data Center, 707 A Street, Anchorage, Alaska 99501, 907/279-4523. Single corporation, \$35.00; all corporations, \$300.00.

Bahr, et al. v. Ward, 3AN-78-3037, Superior Court, Anchorage, 8/24/79 (unpublished). Non-Board proxy solicitations were false and misleading and failure to disclose source of funding for solicitation mailings was material.

Beasley v. Goldbelt, Inc., 1JU-91-587 (Consolidated Case), Superior Court, Juneau, 3-14-91. Re: AS 10.06.450(d). The question as to whether directors, shareholders, or candidates for board of directors have a right prior to election to obtain specific information from the management proxy, including the number of his/her "directed" votes was not ripe for review. Shareholders and directors are entitled to review corporate financial information which is in books and records of corporation and are entitled to review employment contracts and proposed land trade records.

Brown, et al. v. Ward, 593 P.2d 247 (Ak. 1979), [78-'81 T.B.] Blue Sky L. Rep. (CCH) ¶71,495; 20 ALR 4th 1272 (Annotation, pg. 1287). Court adopted materiality standard of T.S.C. Industries, Inc. v. Northway, Inc., 426 U.S. 438, 499, 48 L.Ed. 757, 766 (1976) for proxy solicitations.

Nooy v. Ukpeavik Inupiat Corp., 683 P.2d 260 (AK 1984). An ANCSA shareholder may be challenged for cause from sitting on a jury hearing a contract dispute between the corporation and an outside contractor.

Olsen, et al. v. Afomak Native Corporation, et al., [82-'84 T.B.] Blue Sky L. Rep. (CCH) ¶71,807 (1983). Superior Court, Third Judicial District. Proxy solicitation by management in connection with merger required timber asset valuation. Cited as to "materiality" Long, Blue Sky Law, 8.04[2](b) n. 8, pg. 8.37 (10-91).

Shareholders of Cook Inlet Region, et al. In the Matter of [78-'81 T.B.] Blue Sky L. Rep. (CCH) ¶71,451 (1978). Administrative Opinion. Respondents ordered to cease and desist from using a particular proxy solicitation and to submit proxy solicitations to the administrator for review prior to use.

Shareholders of Cook Inlet Region, et al. In the Matter of [78-'81 T.B.] Blue Sky L. Rep. (CCH) ¶71,455 (1978). Administrative Opinion. Parties agreed that proxy solicitation material would be submitted prior to use and its suitability would be ruled on within three days.

The Alaska Native Claims Settlement Act: An Illusion in the Quest for Native Self-Determination, 66 Or. L.R. 195 (1987), 23 pgs.

Price, A Moment in History: The Alaska Native Claims Settlement Act, 8 U.C.L.A. - Alaska Law Review 89 (Spring 1979)

Branson, Square Pegs in Round Holes: Alaska Native Claims Settlement Corporations Under Corporate Law, 8 U.C.L.A. - Alaska Law Review 103 (Spring 1979).

Waggaman, State Regulation of Proxies in Alaska Native Corporations, 12 UCLA-Alaska Law Review 69 (1982-1983).

<u>TOPIC</u>	<u>REGULATIONS/STATUTES</u>	<u>PAGE</u>	<u>PAGE/CCH#</u>
Board Solicitations	3 AAC 08.345		
Definitions	3 AAC 08.365		
Non-Board Solicitations	3 AAC 08.355		

# STATE OF ALASKA

## DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

DIVISION OF BANKING, SECURITIES AND CORPORATIONS

TONY KNOWLES, GOVERNOR

P.O. BOX 110807  
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Corporation Section (907) 465-2530

ANCHORAGE  
Corporation Information (907) 563-2161  
TDD: (907) 465-5437

April 19, 1995

The Honorable Pete Kott  
House of Representatives  
State Capitol  
Juneau, AK 99801-1182

Dear Representative Kott:

Re: Division Draft Revisions to CS for  
HB 251 as Requested

Willis Kirkpatrick, Director of the Division of Banking, Securities and Corporations, has reviewed proposed CSHB 251 with the staff and has asked that we prepare this correspondence and the enclosed proposed draft amended CSHB 251 for consideration by you and members of the Committee.

We have made an effort to digest the concerns and practical considerations expressed by the sponsors of HB 251. Both the curtailment of disruptive, frivolous, and repetitive petition practices and preservation of basic redress rights of 70,000 plus Alaska Native Settlement Act (ANCSA) shareholders are paramount. We recognize the considerable testimony already presented on the proposed legislation, and have attempted to identify and condense the language to some basic elements that will impact the problem without impeding legitimate shareholder curative processes.

Our proposed Committee Substitute focuses primarily on the threshold requirements for signatures on petitions and distinguishes between corporate entities having fewer than 500 shareholders and those having 500 or more shareholders. The required percentage of outstanding shares required to call special meetings in the former would be 25 percent, and be reduced to 15 percent in the latter. The threshold would be raised for ANCSA Corporate entities, and would require more meaningful effort and participation by shareholders seeking special meetings for whatever purpose.

The only other amendment that we would suggest is to adopt the proposed language that allows a corporation to reject a particular proposal if offered more than once annually. In such a manner, the Corporations are protected from addressing issues repeatedly in any given year while shareholders are guaranteed the right to petition for any particular issue at least once annually as they see fit under the existing Corporate code. We would not seek any other amendments to either the Alaska Corporate Code, Alaska Statute (AS) 10.06 (ACC), or the Alaska Securities Act AS 45.55 (ASA).

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To CH 251	From Kirkpatrick	
Co.	Co.	
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The Honorable Pete Kott

-2-

April 19, 1995

We believe that these two elements are central to the issue of limiting frivolous petitions and curtailing disruptive processes while providing for essential Corporate governance. Elimination of all other amendments will simplify the administrative process, and avoid the necessity of submitting a fiscal note with the proposed legislation.

The division remains at the Committee's disposal to discuss these suggestions or any other recommendations effecting proposed HB 251, and we appreciate the opportunity to be heard on this matter.

Sincerely yours,



Lawrence P. Carroll  
Acting Director  
Division of Banking, Securities  
and Corporations

LPC/go329.bsc

041795a

Enclosure

cc: William L. Hensley, Commissioner  
Department of Commerce and  
Economic Development

The Honorable Eileen MacLean  
House of Representatives

The Honorable Carl E. Moses  
House of Representatives

The Honorable Bill Williams  
House of Representatives

CIRI  
Sealaska

**CSHB 251 ( )**  
**Section Analysis**

### Section 1

This section amends AS 10.06.480(a)(1) which holds directors liable for voting for or assenting to distributions to shareholders in excess of the amounts that could be made without violating sections of the Alaska Corporations Code (ACC) dealing with shareholders. This amendment adds reference to special meetings called pursuant to the new subsections added by Section 2 of this bill.

### Section 2

This section amends AS 10.06.960 (Corporations organized under Alaska Native Claims Settlement Act) by adding two new subsections. The first subsection requires petitions for special meetings to contain signatures of 15% of all shares entitled to vote at the meeting if the corporation has 500 or more shareholders. Petitions for corporations with 499 or fewer shareholders would have to contain 25% of all shares entitled to vote at the meeting. The reasons for requiring a smaller percentage of shares for larger corporations are: (1) it would be prohibitively expensive to conduct a petition solicitation for large corporations with many shareholders, often including those living outside of Alaska, (2) a smaller percentage of a much larger number of shareholders equals a larger actual number of shareholders of the larger corporation signing petitions, and (3) the shareholders of small corporations often are geographically nearby, making it relatively easier to obtain signatures on a petition.

The second subsection limits to once within a 12-month period the requirement of corporations to submit to a vote shareholder proposals which deal with substantially the same subject matter. This prevents the disruption and expense of calling special meetings or otherwise voting on proposals which have already been dealt with during the previous 12 months. This subsection also addresses the time frame for solicitation of petitions for a special meeting, which was proposed in an earlier version of this bill. Specifically, this subsection makes moot any need to place additional restrictions on the time frame for solicitation, since the question can only come up once in a 12-month period. With the limitation on the ability to bring the same question before the shareholders, there is no further need to place a time limitation on the solicitation itself.

### Section 3

This section adds two new paragraphs to the definition section of the Alaska Securities Act (ASA), AS 45.55.990. The first paragraph adds the definition of proxy, which conforms to the definition of proxy currently in related regulations, with the addition of defining the word "signed."

The second paragraph adds the definition of "consents or authorizations" found at AS 45.55.139, to include petitions and related materials. While we have always required petitions to be filed with us for corporations with more than 500 shareholders, this definition will clarify current practice for everyone.