

ALASKA LEGISLATURE COMMITTEE FILES 1995-1996 8672

8925 SENATE JUDICIARY

9-L.S1881A
Ford
5/2/96

HOUSE CONCURRENT RESOLUTION NO.
IN THE LEGISLATURE OF THE STATE OF ALASKA
NINETEENTH LEGISLATURE - SECOND SESSION

BY

Introduced:

Referred:

A RESOLUTION

1 **Suspending Uniform Rules 24(c), 35, 41(b), and 42(c) of the Alaska State**
2 **Legislature concerning House Bill No. 372, relating to liquor licenses.**

3 **BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 That under Rule 54 of the Uniform Rules of the Alaska State Legislature, the
5 provisions of Rules 24(c), 35, 41(b), and 42(c) of the Uniform Rules, regarding changes to the
6 title of a bill, are suspended in consideration of House Bill No. 372, relating to liquor licenses.

Via Facsimile

From: Mark Wilson Ph(907) 276-4115, Fx(907) 276-5859
re: HB-372

The current Alaska statutes require and limit Exempt Licensing for Restaurant and Eating Places by :

1) **Local Approval**

Local approval by each community council, municipal assembly, public hearing and of the Alaska Alcoholic Control Board for license issuance and renewals. Another regulation like HB-372 is not needed.

2) **Limits Entertainment in the Evening**

Entertainment is not permitted during certain periods thereby prevents Karaoke Bars and other "Tavern type" entertainment. Current Alaska statutes are not pro-Tavern --- HB-372 is not needed. But, HB-372 speaks to special interests and does restrict reasonable competition.

3) **Current Statutes Respond to the Practical Issues Business of the Industry --HB-372 does not!**

Current statute recognizes that restaurants in the normal course of business sell beer and wine in excess of 50% of the per check amount. HB-372 does not recognize this circumstance. As an example, the newly opened Restaurant and Brewery combinations in Anchorage, Alaska are large full scale restaurants that sell higher priced fresh beer. In this case, HB-372 will cause these restaurant operations to violate state law.

Example: A restaurant patron buying a hamburger with fries and two micro beers would exceed the 50% limit. The current Alaska statutes reflect the practicality of this situation -- HB-372 does not.

4) **Excludes Transferability --**

HB-372 does not allow transferability. As proposed, HB-372 does not allow for new a partner to be taken into a restaurant business or allow the licensed business to expand into another or even an adjoining building space. HB-372 makes licensed business unsaleable and prevents economic growth. HB-372 is unfair.

5) **Current Statutes Allows Local Government and Public Process to Control the Approval of Exempt License**

At the very least, let the ABC Board make a clarifications and statutory recommendation for each license applicant --Allow the public process to take place. Let communities determine execute the public process.

6) **Current Statutes Comply with Federal Alcohol Tobacco and Firearms Code of Regulations. HB-372 is not needed.**

VOTE NO on HB-372

Snow Goose Restaurant

Sleeping Lady Brewery

Correspondence Address:

PO BOX 220569
Anchorage, Alaska
99522-0569
PH: (907) 276-4115
Fax: (907) 276-5859
e-mail: Wilson@alaska.net

Facsimile Transmission

May 3, 1996

From: Mark Wilson
re: HB-372

The proposed HB-372 will eliminate the exemption designation for Restaurants and Eating Places. The apparent justification for this change is to eliminate the prospect of the creation of additional liquor licenses in the form of "Taverns".

State of Alaska statutes provides for an "exemption" license. This exemption statute allows for the ratio of revenue derived from the sale of alcohol products to exceed 50% as compared to sales of food products by restaurants. As an example, the current exemption statute allows an applicant that has been granted a license for a pizza restaurant to sell pizzas equaling \$50.00 and, at the same time, to sell \$55.00 of beer or wine. The sale of micro-brewed beers or wine in a pizza parlor can exceed 50% of the total dinner price. Appropriately, the current statute takes into consideration that some beer and wine products are very expensive.

I believe that you can appreciate that in Alaska it is possible for the cost of the fine wine served during dinner to exceed the purchase price of the meal itself. The current statutes respond to this

occurrence and reasonably allow fine dining to occur in conjunction with expensive beverages.

Also, the current statutes take into consideration that before an applicant is granted approval for licensing by the Alcoholic Beverage Control Board the applicant must first obtain approval by the community, municipality or borough where the business is to be located. This review procedure enforces upon the applicant the will and required acceptance by the individual community and local government where the applicant intends to operate the business. The applicant is required to renew state licensing biennially, including the exemption license. All state liquor licenses may be revoked by the ABC Board if protested by the community or the applicant is found to be in violation of the intent or specific limitations of the license.

The creation of HB-372 is the result of the desires of other license holders and competitors in the restaurant and bar industry. It is counterproductive legislation that has no basis in any other aspect of the alcoholic beverage industry except the special interests of a few.

I urge you not to pass HB-372.

But, if HB-372 is moved out of committee I urge you to amend the current bill as follows:

- A) Allow Exemption licenses to be transferred -- Delete the non transferability clause.

Explanation:

- 1) It is one of the nuances of the liquor statutes that any change in ownership of the licensed business cancels the current licensing.

Each and every time a new partner is taken into the company the old license becomes invalid and a new license must be approved --- this is called a transfer.

Because of the price of micro-brewed beer verse the price of restaurant food in a brewery restaurant it is likely that the 50% revenue ratio will be exceeded. The new brewery restaurants in Anchorage are aware of this situation and have, in part, based their operating plan on the approval of the exemption licenses.

In the case of the Railway Restaurant and Brewery (under construction in the railway terminal building of Anchorage), the company is a Limited Liability Company. The Railway Restaurant Brewery (RRB) has an approved Restaurant and Eating Place License with an exemption. The owners of RRB can sell their individual units. If one or more of the RRB owners sell their units the license must be transferred to the new owner.

If HB-372 is passes, the Railway Restaurant and Brewery License cannot be transferred. Also, because HB-372 disallows new exemption licenses the RRB will not be able to obtain a new exemption license. I ask you: Who would buy the owners shares or buy a business that cannot legally operate or properly comply with Alaska law? It is a trap for the restaurant brewery operations that has huge financial implications for the investor owners.

2) The exemption licensed business cannot move to a new premise or even expand into an adjoining space.

Again, it is one of the complicated issues related to Alaska liquor statutes. Upon application to the ABC Board, each exempt license holder must provide a specific dimensional drawing of the licensed space, showing the location of all tables, kitchen, storage areas and areas where any alcohol is to be consumed. This is called the licensed premises. If the licensee changes the licensed premise --- such as expanding or moving next door or adding new square footage to their business their current exempt license becomes invalid and they must apply for a transfer.

Certainly, you can appreciate how unfair this is to the exempt license holder. Especially, if the exempt licensed holder cannot transfer or even apply for a new replacement exempt license -- HB-372 prevents new licenses.

B) Prevent the new statute from taking effect until 90 days after the effective day of the Act.

The Snow Goose Restaurant and Brewery is currently transferring licenses. The Snow Goose originally applied for a exemption licensing as did Railway Restaurant and Brewing. Railway Restaurant and Brewing exempt license has been approved. Because the ABC Board meets approximately every other month all pending license applications and approvals are on hold by the Municipality Assembly. It is important to our business that we are permitted a license parallel to our competitor. Further, it is likely that our license application, posting period and public process will take at least 90 days to transpire.

Please contact the Alaska Alcoholic Control Board, Mr. Bill Roach, 277-8638 or myself if you require further clarification.

I recommend that you please do not allow HB-372 to pass as it currently is proposed.

Very truly yours,

Mark Wilson

Urgent News !!

State of Alaska Karaoke Kops!!

State of Alaska debates creating new music POLICE for Alaska

Today, Senate Judiciary hears that HB-372 creates new occupation for the employees of the state of Alaska Department of Alcoholic Beverage Control -- *Music police.*

HB-372 creates a whole new and absurd occupational category of employment. The passage of HB-372 will actually legislate that the enforcement officers of the state of Alaska Department of Revenue Alcoholic Beverage Control Board become Karaoke Cops.

Implementation of HB-372 will require that the officers of the ABC Board inspect and enforce music limits upon restaurants and eating places in the evening. Incredibly, HB-372 will legislate that restaurants cannot play live music after 9pm.

HB-372 will require that the ABC officers will be forced to fine restaurants and eating places for playing a banjo or chamber music or solo guitarist after 9pm.

The ABC officers must turn in their official badges to be replaced by little golden clef music symbols for their lapels. Hopefully, the Senate Judiciary will put a stop to this madness.

It's true -- House Bill 372 is ill conceived.

Vote No on HB-372

ALASKA STATE LEGISLATURE

House of Representatives

COMMITTEE ASSIGNMENTS

OIL & GAS CHAIR
LABOR & COMMERCE VICE CHAIR
ADMINISTRATIVE REGULATION REVIEW VICE CHAIR
HEALTH, EDUCATION & SOCIAL SERVICES MEMBER
ECONOMIC DEVELOPMENT MEMBER



INTERIM
716 WEST 4TH AVENUE SUITE 200
ANCHORAGE, AK 99501
PHONE (907) 258 8101

SESSION
STATE CAPITOL
JUNEAU, AK 99801 1147
PHONE (907) 465 4568
FAX (907) 465 2949

Representative Norman Rokeberg

Sponsor Statement CSHB 372(L&C) am

"An Act relating to liquor licenses issued to a restaurant or eating place; and providing for an effective date"

A bill passed last session allows for ten percent of restaurant or eating place licenses to be exempt from the fifty percent food provision of license requirements. Thus, this bill creates a tavern industry in Alaska.

HB 372 repeals that section of the law authorizing such establishments and "grandfathers" in those businesses that have received a license exemption.

In Alaska, liquor licenses have been issued based on population. Inside an established village, incorporated or unified municipality, one full service liquor license is allowed for every 3,000 people and one restaurant license allowed for every 1,500. In Anchorage, there are 117 liquor licenses -- 27% are in Spenard, which only has 6% of the population. Our neighborhoods don't need additional establishments that offer alcohol.

Exemptions to the restaurant statutes allow licensees who have paid \$600 to now be in direct competition with a full-service beverage dispensary licensees, who paid \$150,000 to \$300,000 for their licensee and also biennial renewal fee of \$2,500. The exemption gives ten percent of restaurant owners an economic advantage over the other 90 percent, in addition to allowing this special class of compete against bars.

I believe this exemption allows for taverns in Alaska, whereby beer and wine can be sold with a limited or token food menu. The exemption that passed the legislature last year does not require 50 percent of their revenues be derived from the sale of food items. This is a policy call with far-reaching impacts that I believe was not intended by many of the supporters of the omnibus legislation last year.

Bottom line-- this bill repeals the exemption and makes taverns function more like a restaurant rather than a bar.

I urge your support on HB 372.

SPONSOR STATEMENT

**RESOLUTION
OF THE
SPENARD COMMUNITY COUNCIL**
SCCR ____-95

A RESOLUTION ESTABLISHING SUPPORT FOR REPEAL OF A PORTION OF HCS CSSB 87(JUD) RELATING TO ALCOHOLIC BEVERAGE CONTROL.

WHEREAS, the Anchorage Municipal Charter Article VIII grants unto a duly recognized Community Council the basic right of self-determination, and

WHEREAS, the Spenard Community Council being a duly organized community council under Section 2.40.010 of the Municipal Code, and

WHEREAS, the Spenard Community Council area has one hundred and seventeen liquor licences within it's boundaries, and

WHEREAS, Spenard has twenty seven percent of all Anchorage liquor licenses within it's boundaries, and

WHEREAS, Spenard has only six percent of the population of Anchorage within it's boundaries, and

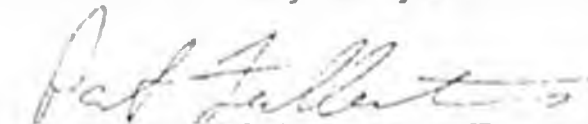
WHEREAS, the Spenard Community Council has experienced a long and ongoing negative effect from the ravages of alcohol, and

WHEREAS, because of our ongoing experiences with the alcohol industry, and

WHEREAS, alcohol influences eighty percent of all convicted criminals in the state of Alaska, and

WHEREAS, the availability of alcohol increases consumption, and

BE IT THEREFORE RESOLVED, that the Spenard Community Council requests and supports the repeal of that section of HCS CSSB 87(JUD) which allows ten percent of Restuarant or eating place licenses to be exempt from the fifty percent food provision of license requirements. We further ask that no exempt licenses approved subsequent to this act be given grandfather rights.



Chairman, Pat Fullerton

SUPPORTING DOCUMENTS

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Submitted by: Assemblymember Bell
Prepared by: Assembly Policy and Budget Office
For reading: February 27, 1996

CLERK'S OFFICE

APPROVED

Date: 2-27-96

ANCHORAGE, ALASKA

AR NO. 96-45

**A RESOLUTION OF THE ANCHORAGE MUNICIPAL ASSEMBLY SUPPORTING
STATE HOUSE BILL 372 RELATING TO LIQUOR LICENSES ISSUED TO A
RESTAURANT OR EATING PLACE**

WHEREAS, Senate Bill 87, passed during the last legislative session, allows for ten (10) percent of restaurant or eating place licenses to be exempt from the fifty (50) percent food provision of license requirements; and

WHEREAS, in Alaska, the statutory authority to sell beer and wine in restaurants has historically been limited, allowing eating establishments the ability to compliment their food menu with alcohol, but not provide a full bar service; and

WHEREAS, Senate Bill 87 creates a tavern industry in Alaska, where beer and wine can be sold with a limited or token food menu; and

WHEREAS, House Bill 372, introduced this session and sponsored by State Representative Norman Rokeberg, repeals the specific section [AS 04.11.100(F)] allowing such a tavern industry (see attached copy of bill and current statute language), and

WHEREAS, House Bill 372 is scheduled to be heard by the State Affairs Committee, possibly next week.

NOW, THEREFORE, the Anchorage Municipal Assembly resolves:

Section 1: That the Assembly supports House Bill 372 and encourages the State Legislature to pass this legislation.

Section 2: That this resolution is effective upon passage and approval

PASSED AND APPROVED by the Anchorage Municipal Assembly this
day of _____, 1996.

ATTEST

Chair

Municipal Clerk

FEB 08 1996



*Alaska Cabaret, Hotel,
Restaurant & Retailers Association*

321 E. 5th, Suite 200 • Anchorage, Alaska 99501
(907) 563-8133 • Fax (907) 563-8640
Toll Free in Alaska (800) 478-2221

February 2, 1996

Representative Norman Rokeberg
Alaska State Legislature
Juneau, Alaska

Dear Representative Rokeberg,

At the January 30, 1996 CHARR Board of Directors meeting, House Bill No. 372 which you have sponsored was discussed at great length. The Board has directed me to communicate our position to you. CHARR supported the adoption of Senate Bill 87 last year which was introduced to correct problems in existing ABC statutes. CHARR historically has opposed the concept of increasing the number of any type of retail beverage alcohol license available and we continue to oppose any expansion of this number. We support this intent of your legislation but we do feel that the title of House Bill No. 372 is unnecessarily broad.

We appreciate the opportunity to comment on the legislation and the consideration you have shown us.

Yours truly,

Carol Wilson
Executive Director

1207 West 36th Avenue
Anchorage, Ak 99503

March 27, 1996

Representative Norman Rokeberg
Alaska State Legislature
State Capitol (MS 3100)
Juneau, Alaska 99801-1182

Dear Representative Rokeberg:

As the maker of the notion at the Spenard Community Council to support Representative Rokeberg's Bill concerning exempt liquor licenses I urge you to support House Bill 372 when it comes to the floor of the house. As you know, Anchorage and Alaska has serious problems with alcohol abuse. Exempt liquor licenses add another venue for people to abuse alcohol when, by State of Alaska statute, we have far more liquor outlets than the population can support.

I feel that exemptions proposed by Representative Brown as in order to grandfather those license exemptions already in existence but I feel that we should not exacerbate the problem by adding more. Because of my involvement with the liquor license problem I have come to know many people in the liquor industry and the responsible owners generally agree that the exempt license category is not a good idea.

An important item to me is to protect those businesses that have the exempt licenses already and that is to be accomplished per conversations with Representative Rokeberg and Brown's staff. I am equally concerned that no additional exempt licenses be allowed and that too will be accomplished by this bill.

The Anchorage Assembly passed the attached Resolution Tuesday night to insure there would be no more exempt licenses passed pending your and the Senates action.

Thank you for your consideration.

Sincerely,


Thomas J. McGrath
(907) 562-8730

1207 West 36th Avenue
Anchorage, Ak 99503

September 13, 1995

Ms. Debra Bonito
3601 'C' Street, Suite 758
Anchorage, Ak 99503

Dear Ms. Bonito:

I am following up on our meeting with Marla Huss on August 23, 1995 concerning HCS CSSB 87(JUD) during which we discussed exempt restaurant or eating place licenses which were enabled by the Act.

In Anchorage we are allowed by law 77 package, 77 dispensary and 77 club licenses and 154 restaurant or eating place licenses. That works out to one restaurant or eating place license for 1500 residents and one each of package, dispensary or club license for 3000 residents. Anchorage currently has 108 package licenses, 147 dispensary licenses and 24 club licenses. Overages are due to grandfather rights. We have 146 restaurant or eating place licenses with 6 licenses applied for. Very close to the limit.

HCS CSSB 87(JUD) or Senate Bill 87 was approved by the Governor on June 29, 1995 which was an act to change some of the rules we have previously dealt with. This act allows ten percent of Restaurant licenses to be exempt from the fifty per cent rule for food. In the past fifty per cent of gross receipts had to be from food and this stipulation had to be proven to the ABC Board. Although an exempt license cannot be transferred it does allow a new kind of establishment. What is envisioned by me is a tavern like business which potentially makes these fifteen licenses substantially more valuable than the usual Restaurant licenses.

At the present time two businesses in Spenard, one business in Campbell Park, and one in downtown are applying for exempt licenses. Two of the four have recently been denied conditional uses by the Anchorage Assembly. They have reapplied even though one year has not elapsed as has been the requirement in the past after a denial.

The law says no more than ten percent but it does not mandate the first one. I am of the opinion that we currently have enough liquor being served in Anchorage and issuance of even one more business where the principle business is serving alcohol would be a mistake. No, I am not asking that any current business be closed. I am saying, however, that since in gross numbers we are way over what lawmakers deemed was adequate, we should not enable any more.

This issue came up at the Anchorage Assembly meeting of September 12, 1995 and it became obvious that most assemblymen did not know of the new law nor what the application was. Currently there are

no regulations forthcoming from the ABC Board office nor have they indicated that there will be any regulations.

You, Marla Huss, nor anyone else outside of the ABC Board office knew of this provision before I brought it to their attention. There were no public hearings on this matter that I can determine. I request that the administration order regulations be written concerning this matter and that no exempt licenses be issued until the public and the Anchorage Assembly can give input.

I would also request that the Governor forward legislation to the Legislature nullifying the applicable portions of Senate Bill 87.

Tom McGrath
Tom McGrath
(907) 562-8730

cc: Marla Huss, P.O. Box 110001, Juneau, Ak 99811-0001
Anchorage Assembly Persons

MAR 12 1996

STATE OF ALASKA

Tony Knowles, Governor

ADVISORY BOARD
ON
ALCOHOLISM AND DRUG ABUSE

P.O. Box 110608
Juneau, Alaska 99811-0608
Phone: (907) 465-8920
Fax: (907) 465-4410

March 11, 1996

Representative Norman Rokeberg
Alaska State House of Representatives
Room 110
State Capitol
Juneau, Alaska 99801-1182

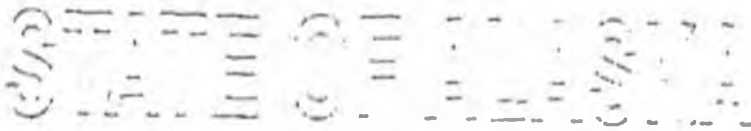
Dear Representative Rokeberg:

The Advisory Board on Alcoholism and Drug Abuse, Legislative Committee supports the provisions of House Bill 372 which you introduced this session. We recognize that without repeal of AS 04.11.100(f), a Tavern industry is formed that increases consumption of alcohol and subverts the intent of the statute that created limited sales of alcoholic beverages in food establishments. Passage of this legislation will result in the reduction of per capita consumption of alcoholic beverages in our state which is among the highest in the nation. Reducing per capita consumption of alcohol especially in two target groups, younger Alaskans and problem drinkers is a goal described in Alaska's Strategic Plan, "Meeting the Challenge"

House Bill 372, if enacted, helps us in this effort. Please call on us for any assistance that we may offer in passage of this legislation.

Sincerely,


Don Dapcevich
Executive Director



DEPARTMENT OF REVENUE

ALCOHOLIC BEVERAGE CONTROL BOARD

TONY KNOWLES, GOVERNOR

300 W. 7TH AVE
ANCHORAGE, ALASKA 99501-6658

February 9, 1996

Representative Norman Rokeberg
Alaska State House of Representatives
State Capitol
Juneau, Alaska 99801-1182
FAX: 907-465-2040

RE: HB 372 - Liquor licenses issued to a restaurant or eating place

Dear Representative Rokeberg:

This letter is drafted in response to our telephone conversation on February 8, 1996. We discussed HB 372, a bill you have introduced to repeal AS 04.11.100(f). This provision, passed last year as part of SB 87, allows a restaurant or eating place licensee (commonly referred to as a beer and wine license) to become "exempt" from some requirements normally placed on a bona fide restaurant.

An exempt licensee would need to provide food items, but would not need to necessarily meet the requirement of AS 04.11.100(e) that 50 percent of gross receipts of a licensed premises come from the sale of food. Under the "exempt" status the establishment could also be exempt from the constraint of 15 AAC 104.305 that live entertainment be provided only from 6 p.m. to 9 p.m.

Based on my research of the history of SB 87, the "exempt" provision was a compromise designed to address a request from some restaurant owners that wished to provide entertainment later into the evening and entertainment purveyors who wanted the ability to serve beer and wine. There was discussion of creating a new type of license or additional licenses like those allowed for the promotion of tourism (AS 04.11.400(d)) or public convenience (AS 04.11.400(g)). However, this alternative would have created additional licenses in a market that is already saturated based on population quotas contained in the statute.

The "exempt" approach to restaurant and eating place licenses was decided to best meet the expressed need because it would:

- 1) not create additional licenses, but merely allow existing licensees within the population quota to expand entertainment offerings;
- 2) require approval of the local governing body to exempt the licensee;
- 3) limit the number of exempt licensees to 10% of the restaurant or eating place licensee (the calculation based on general population limitations of one restaurant license for each 1,500 population or fraction of the adjusted population would be as follows for the Municipality of Anchorage: $229,775 \div 1,500 = 154 \times 10\% = 15$; Based on the same formula the City of Fairbanks: 2 exempt licenses and the City and Borough of Juneau: 2 exempt license;
- 4) require the sale of food items as shown on a menu approved by the ABC Board;
- 5) prohibit issuance of an eating place exemption to establishments licensed under public convenience provisions (AS 04.11.400(g)) and (15 AAC 104.335), and
- 6) prohibit transfer of an exempt license to another person.

These controls are important and valuable. However, it is clear, as noted in the testimony before the Senate Finance Committee last year (see enclosed minutes), the intent and result of the exempt provision is to allow the application of a beer and wine license beyond a setting where dining is the preeminent activity. This allows for a limited number of beer and wine licensees to operate, at times, as a tavern or, to use the words of Mr. Sharrock in explaining Section 4 of SB 87 to the Senate Finance Committee, a "semi-tavern."

To date, the ABC Board has approved "exempt" status for Legal Pizza and Railway Brewing Company in Anchorage and the ABC Board will consider the request from Chandalar Inn in the Matanuska-Susitna Borough at its board meeting of February 14 to 16. China Express, Ichiban Japanese Restaurant, Sushi Gardens, and Fiori D'Italia of Anchorage are in the process of requesting exempt designations and will be considered at a subsequent ABC Board meeting.

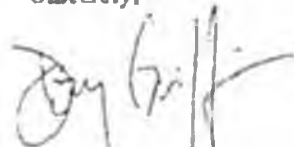
SB 87 contained a number of provisions important to the hospitality industry. The ABC Board and its staff acted to assist the Legislature and the industry in drafting legislation that would strike the proper balance between adequately regulating the alcoholic beverage trade and allowing freedom for entrepreneurs to meet public demand for expanded entertainment and recreation options.

I stand by the considered and informed consent demonstrated by the Nineteenth Legislature during its first session last year and Governor Knowles' general agreement with SB 87 when he signed it into law as Chapter 3, SLA 1995. The ABC Board is proceeding in implementing the provisions of this new law. I and the Board stand ready to work with you on HB 372 or any other legislation you wish to offer to find the proper balance in regulation of the alcoholic beverage industry for the welfare of all Alaskans.

The ABC board will be in Juneau February 15 and 16 and will be available to discuss your bill further. The Board meetings will be held at the Juneau Assembly Chambers and the board is staying at the Westmark the evening of February 15, 1996.

Feel free to contact me further regarding HB 372 or any other matter related to alcoholic beverage regulations.

Sincerely,



Douglas B. Griffin
Director

Enclosures: Senate Finance Committee Minutes

cc: ABC Board Members
Bob Bartholomew, Legislative Liaison

AUG 30 1995

neighbor to neighbor

COMMUNITY COUNCILS: AT THE ROOT OF GOOD GOVERNMENT

ANCHORAGE, ALASKA

SEPTEMBER 1995

From the Chair

Headaches, hangovers: New liquor licenses

From time to time a liquor license issue comes up that necessitates a trip to the Alcoholic Beverage Control Board. The person I usually deal with is Donna who is extremely knowledgeable of Title 4 of Alaska Statutes, which is entitled Alcoholic Beverage Control. Liquor licenses are controlled and the legislature has even decided how many of each type of license can exist. They did grandfather all existing licenses upon establishment of the Act.

There are 20 types of licenses but we generally only deal with four. They are package store, restaurant or eating place, beverage dispensary and club licenses. From time to time we see a brewpub license request appear, but they are the new kid on the block. Several beverage dispensary licenses also have duplicate beverage dispensary license for additional rooms.

In Anchorage we are allowed by law 77 package, 77 dispensary and 77 club licenses and 154 restaurant or eating place licenses. That works out to one restaurant or eating place license for 1,500 residents and one each of package, dispensary or club

See Liquor, Page 2

Awards will cite beautification

The Mayor's Beautification Task Force and the Urban Design Commission will present the newly dubbed "Celebration of Anchorage Awards" for Beautification and Urban Design at a special awards luncheon at the Egan Center on Dec. 6.

Award categories will recognize excellence in building design, northern design principles, landscape design, maintenance, flowers, lighting, and contribution of the quality of life in Anchorage. Nominations are requested for private, commercial, residential, military and public projects.

Submission deadline is Oct. 6. Four color slides must accompany the Award entry form.

Contact: Pantena Redwood, Community Planning and Development, 343-4298 or Kathy Kingston, 343-4527.



See Related Article, Pages 7-8

FCC bylaws reviewed again; in mail soon

A conflict between the Federation of Community Councils Articles of Incorporation and the bylaws forced the Board of Directors to revamp its plans to send the changed governing rules out to the 37 Community Councils for ratification.

At the August meeting, the FCC Board made the two documents compatible. The key change is that the Board of Directors has been changed to a Board of Delegates.

And under the new rules, five at-large delegates can be selected to the FCC Board, but each Community Council will be limited to one vote. George Guguzis, representative from the Northeast Area Community Council, proposed the limitation.

The bylaws now will be distributed to the 37 Community Councils which are being urged to address the FCC bylaw changes during their September or October meetings. All responses need to be in the Community Councils Center by Oct. 18, the day the FCC Board holds its regular monthly meeting. Two-thirds approval of the changes must come from those Councils who consider the proposals.

Liquor licenses

Continued from Page 1

of package, dispensary or club license for 3,000 residents. Anchorage currently has 108 package licenses, 147 dispensary licenses and 24 club licenses. We have 146 restaurant or eating place licenses with six licenses applied for. Very close to the limit.

Anchorage also has a whole host of rules for alcoholic beverages control. These are contained in Title 10 of the Anchorage Municipal Code. Where alcoholic beverages may be sold from is a land-use question and the rules are contained in Title 21 of the Code. The land use part of the code was substantially revised starting in 1993 and finished in 1994. These changes tightened up the application for conditional use process and caused a significant awareness.

HCS CSSB 87(JUD) or Senate Bill 87 was approved by the governor on June 29, changing some of the rules we have previously dealt with. This act allows 10 percent of restaurant licenses to be exempt from the 50 percent rule for food. In the past 50 percent of gross receipts had to be from food and this stipulation had to be proven to the ABC Board. Although an exempt license can not be transferred it does allow a new kind of establishment. What is envisioned by me is a tavern like business which potentially makes these ten licenses substantially more valuable than the usual restaurant licenses.

At the present time two businesses in Spenard and one business in Campbell Park are applying for exempt licenses. Two of the three have recently been denied conditional uses by the Anchorage Assembly. They have reapplied even though one year has not elapsed as has been the requirement in the past after a denial.

It will be interesting to see how the Anchorage Assembly deals with this exempt license provision and whether they allow any at all.

The law says no more than 10 percent but it does not mandate the first one. I am of the opinion that we currently have enough liquor being served in Anchorage and issuance of even one more license where the principle business is serving alcohol would be a mistake. No, I am not asking that any current business be closed. I am saying, however, that since in gross numbers we are way over what lawmakers deemed adequate, we should not enable any more.

Tom McGrath
Chair

Federation of Community Councils

Federation of Community Councils



Chair: Tom McGrath
Vice-Chair: Seth Eames
Secretary: Deanna Murray
Treasurer: Eileen Zaiser
Past Chair: Jim Putman

Councils Center Manager:
Harry McFarland

Community Councils

Community Councils in Anchorage are neighborhood associations authorized by Municipal Charter. They provide local citizens with a voice that is heard and usually heeded by members of boards and commissions, agency staff, Assembly members and state legislators.

Contact the Community Councils Center to learn how to join your neighborhood's Community Council.

Councils Center

The Federation of Community Councils is an organization made up of the 37 Community Councils within the Municipality of Anchorage. The Federation operates the Community Councils Center at 301 E. Fireweed Lane, Suite 101.

The Center provides a work area for Councils and other non-profit groups to produce informational flyers and newsletters to communicate with their members and the public. If you have any questions about the Federation or the Councils Center, call 277-1977.

Neighbor to Neighbor

"Neighbor to Neighbor" is a monthly newsletter written and published by the Federation of Community Councils staff to help provide communication within Community Councils and within the community as a whole.

If you would like to receive "Neighbor to Neighbor" free each month, call the Center at 277-1977.

**Deadline
for October
is Sept. 20**

BASIS 12 PAGES SELECTED Committee Minutes

Mr. Scharrock responded that there was nothing in the legislation that would detract from the Board's ability to pursue enforcement activity. He stated that he was in disagreement because he is the one to enforce the law and initiating enforcement actions against licensees. Mr. Scharrock said that the budget is part of the problem. In response to Senator Donley's inquiry to page 4, line 4, he stated that 75,000 gallons is what is needed to establish a brew pub.

Co-chair Halford requested a section by section explanation of the legislation.

Mr. Scharrock began with Section 1. He stated that a current licensee could NOT solicit or have someone in the area receive orders on his or her behalf. He said that this bill removes the name community license. Discussion was had on this section.

Section 3, eliminates the name of the community liquor

Selection=>		PF3	PF4	PF5	PF6	PF7	PF8	PF9	PF10	PF11	PF12
PF1	PF2	EXIT	MENU		PRINT	HWD	FWD		FIRST	LAST	QUIT
HELP											
SNA	02	A01C117				NUM IPT1					A

BASIS 12 PAGES SELECTED Committee Minutes

*San F.W.
4/6/95*

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HELP											
SNA	02	A01C117				NUM IPT1					A

BASIS 12 PAGES SELECTED Committee Minutes

license because that has been changed in the local option provisions.

Section 4, is a suggestion by the Board itself. It is new, and a result of restaurants holding a beer and wine license instituting entertainment on their premises, where at times.

the primary activity of patrons is not dining, but rather entertainment. The law and the class of license did not intend for that to happen. Even the regulations by the Board, state that primary activity must be dining. The Board tried to address it through regulation saying that restaurants could have entertainment between the hours of 6 and 9 p.m. That was unsatisfactory to most licensees. What this amendment does is allow one license for each 10, to come under this except provision that says all they have to have is food available. It addresses the issue of either changing times or the desire of licensees to do different things. The Board has referred to it at times as a semi-tavern license. It does not create an additional class of license. The Board did not want to do that. In essence,

Selection=>

PF1	PF2	PF3	PF4	PF5	PF6	PF7	PF8	PF9	PF10	PF11	PF12
HELP		EXIT	MENU		PRINT	BWD	FWD		FIRST	LAST	QUIT
SNA 02	A01C117					NUM LPT1					

BASIS 12 PAGES SELECTED

Committee Minutes

for eating or restaurants offering beer and/or wine, they cannot have more than 50% of gross revenues from the sale of alcohol removed for the license.

Joe Ambrose, Legislative Aid from Senator Taylor's office. He pointed out a provision that would make the licenses non-transferable to another person. Eventually, there would be a reduction in the number of licenses, because as people went out of business, that license would cease to exist. Additionally, it requests the Board to take action, and must be approved by the local governing body who has authority and responsibility over the area in which the premises exists. Additional discussion regarding the particulars of this section continued.

Teresa Williams, Dept. of Law, Anchorage interjected that the semicolon on line 18 means or.

Section 6 relates to a number change related to another

Selection=>	PF1	PF2	PF3	PF4	PF5	PF6	PF7	PF8	PF9	PF10	PF11	PF12
	HELP		EXIT	MENU		PRINT	BWD	FWD		FIRST	LAST	QUIT
SNA 02 A01C117							NUM	LEFT				A

BASIS 24 PAGES SELECTED Committee Minutes
language would prohibit those purchases.

*See file
4/17/95*

Mr. Farleigh next directed attention to Sec. 4 and advised that it poses a more immediate concern. He advised that while he was generally in support of the language, he did not need provisions (b) and (c). He explained that the problem is that he cannot have live music in his pizza parlor after 10:00 p.m.

Mr. Farleigh further objected to prohibitions within subsection (J) of Sec. 4, which would disallow transfer of an exempt license to another person. He asked what would happen in the event of the death or retirement of the license holder. Noting that it is difficult to sell pizza without beer, Mr. Farleigh stressed his desire to maintain the value of his business and pass it along to his heirs.

Mr. Farleigh reiterated his wish to provide entertainment beyond the 9:00 p.m. deadline and asked if there could be another way to achieve that goal.

Selection=>											
PF1	PF2	PF3	PF4	PF5	PF6	PF7	PF8	PF9	PF10	PF11	PF12
HELP		EXIT	MENU		PRINT	BWD	FWD		FIRST	LAST	QUIT
SNA 02	A01C117					NUM	IPT1				A

Cross references. — For legislative findings and purpose in connection with the 1995 enactment of subsection (g), see 1 L. ch. 3, SLA 1995 in the Temporary and Special Acts.

Effect of amendments. — The first

1995 amendment, effective July 9, 1995, added subsection (g).

The second 1995 amendment, effective July 1, 1995, repealed subsection (c), relating to filing of a \$2,500 cash bond or surety bond with the application.

Sec. 04.11.100. Restaurant or eating place license. (a) A restaurant or eating place license authorizes a restaurant or eating place to sell beer and wine for consumption only on the licensed premises.

(b) A license may be issued under this section only if the board determines that the premises to be licensed are a bona fide restaurant or eating place.

(c) A license may be issued under this section only if the sale and service of food and alcoholic beverages and any other business conducted on the licensed premises of the restaurant or eating place is under the sole control of the licensee.

(d) The biennial fee for a restaurant or eating place license is \$600.

(e) A license may be renewed under this section only if the licensee provides evidence to the board's satisfaction that gross receipts from the sale of food upon the licensed premises constitute no less than 50 percent of the gross receipts of the licensed premises for each of the two preceding calendar years.

(f) Notwithstanding the provisions of (b) and (e) of this section, upon written application and approval of the local governing body, the board may issue or reissue a restaurant or eating place license and exempt the licensee from the requirements of (b) and (e) of this section. A licensee exempt as provided in this subsection shall provide food items for sale on the premises as shown on a menu approved by the board and available to patrons. The board may not

(1) issue or reissue a license as provided under this subsection if

(A) the issuance or reissuance would result in more than one exempt restaurant or eating place license for every 10 restaurant or eating place licenses allowed under the provisions of AS 04 11 400(a)(2) or (3);

(B) the premises would be located in a building having a public entrance within 200 feet of the boundary line of a school or a church building in which religious services are being regularly conducted; for purposes of this subparagraph, the 200-foot prohibition is measured from the outer boundary line of the school or the public entrance of the church building by the shortest pedestrian route to the nearest public entrance of the restaurant or eating place;

(2) reissue a restaurant or eating place license as exempt as provided under the provisions of this subsection if the license was issued under the provisions of AS 04 11 400(g); or

(3) transfer an exempt license issued under this subsection to another person. (1995 2 ch 131 SLA 1980, am 4 ch 93 SLA 1985, am 11 2, 3 ch 63 SLA 1993, am 5 ch 101 SLA 1995)

HB

379

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. HB 379

Revision Date: _____
 Title: An Act authorizing establishment of alternative
dispute resolution centers....
 Sponsor: Rep. Porter
 Requestor: (H) Jud

Dept. Affected: Administration
 BRU: Public Defender Agency
 Component: Public Defender Agency
 COMPONENT SERIAL NO. 1631

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

CAPITAL EXPENDITURES	0	0	0	0	0	0
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CHANGE IN REVENUES ()	0	0	0	0	0	0
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FUND SOURCE: (Thousands of Dollars)

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

Estimate of any current year (FY 96) cost: \$ 0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

There is no fiscal impact to the Public Defender Agency.

Prepared by John Salemi, Director
 Division: Public Defender Agency

Phone: 268-264-4400
 Date: _____

Approved by Commissioner: Mark Boyer
 Agency: Department of Administration

Date: _____

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FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. HB379

Revision Date: _____
 Title: Establish Alternate Dispute Resolution
Centers for Juvenile Offenders
 Sponsor: Representative Porter
 Requestor: House (JUD)

Dept. Affected: Health and Social Services
 BRU: Family and Youth Services
 Component: DFYS Central Office
 COMPONENT SERIAL NO. 259
 See also (SN#): _____

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY97	FY98	FY99	FY00	FY01	FY02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

CHANGES IN REVENUES						
---------------------	--	--	--	--	--	--

FUND SOURCE

(Thousands of Dollars)

FUND SOURCE	FY97	FY98	FY99	FY00	FY01	FY02
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF Program Receipts						
1006 GF MHTIA						
Other (please specify)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

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

Estimate of any current year (FY96) cost: 30.0

ANALYSIS: (Attach a separate page if necessary)

This bill has no fiscal impact on the Division of Family & Youth Services.

Prepared by: L. Diane Worley
 Division: Family & Youth Services
 Approved by Commissioner: Karen Pedrotti, Commissioner
 Agency: Department of Health & Social Services

Phone: _____
 Date: 01/16/96
 Date: 1/11/96

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FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. CSHB 379 (JUD)

Revision Date: _____ Dept. Affected: Alaska Court System
 Title: An Act authorizing establishment of BRU: Trial Courts
community dispute resolution centers ... juvenile offender Component: _____
 Sponsor: Rep. Porter
 Requestor: House Judiciary COMPONENT SERIAL NO. 768

Expenditures/Revenues (Thousands of Dollars)

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

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

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

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

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact

Prepared by: C. S. Christensen III, Staff Counsel *CS* Phone: 264-8228
 Agency: Alaska Court System Date: 01/16/96

Approved by: Arthur H. Snowden, II, Administrative Director *AS* Date: 01/16/96
 Agency: Alaska Court System

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FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. HB 379

Revision Date: _____
Title: "An Act authorizing establishment of alternative dispute resolution centers..."
Sponsor: Rep. Porter
Requestor: (H) Judiciary

Department Affected: Administration
BRU: Office of Public Advocacy
Component: Office of Public Advocacy
COMPONENT SERIAL NO. 43

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE: (Thousands of Dollars)

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

Estimate of any current year (FY 96) cost: \$ 0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

There is no fiscal impact on the Office of Public Advocacy.

Prepared by: Brant McGee, Public Advocate
Division: Office of Public Advocacy

Phone: 274-1684
Date: _____

Approved by Commissioner: Mark Boyer
Agency: Administration

Date: _____

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FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. HB 379

Revision Date: _____ Dept. Affected: Department of Law
 Title: "...authorizing...alternate dispute resolution centers BRU: Civil Division
...disputes between juvenile offenders and their victims." Component: General Legal Services
 Sponsor: Representative Porter
 Requester: Representative Porter COMPONENT SERIAL NO. 2087

Expenditures/Revenues

(Thousands of Dollars)

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

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

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

FUND SOURCE

(Thousands of Dollars)

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

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

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary)

This bill amends AS 47.10 to authorize municipalities or nonprofit corporations organized exclusively for the resolution of disputes between minors who are alleged to have committed offenses and the victim of these offenses, to establish and operate alternative dispute resolution centers. The bill also provides that disposition of a juvenile court matter may include use of the services of an alternate dispute resolution center. Use of a center would be voluntary for both juvenile offenders and victims. The bill will not have a fiscal impact for the Department of Law, because alternate dispute resolution centers would be operated by municipalities and nonprofit organizations, and because of the voluntary nature of the bill's dispute resolution process. The bill should have a positive impact on the state's overburdened juvenile justice system.

Richard I. Pegues

Prepared by: Richard I. Pegues, Director
 Division: Administrative Services Division
 Approved by Commissioner: Bruce M. Botelho, Attorney General
 Agency: Department of Law

Phone: 465-3672
 Date: 1/16/96
 Date: 1/16/96

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11. Impact of Mediation on Recidivism

- *Juvenile offenders in victim offender mediation programs committed considerably fewer crimes than a matched sample of similar offenders not in mediation.*
- *This finding of lower recidivism, however, was not statistically significant.*

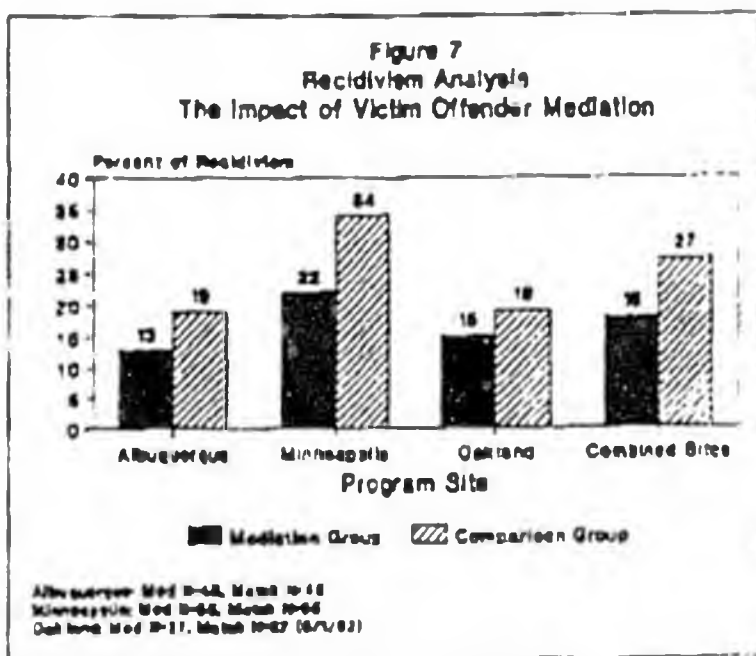
The issue of whether or not the victim offender mediation process has an impact upon reducing further criminal behavior (recidivism) by those offenders participating in mediation was examined at each of the three initial sites. The comparison group at each site consisted of similar offenders from the same jurisdiction who were matched with offenders in mediation, along the variables of age, sex, race, offense and restitution amount.

As Figure 7 indicates, juvenile offenders in the three mediation programs committed considerably fewer additional crimes, within a one year period following the mediation, than similar offenders in the court administered restitution program. They also tended to commit crimes that were less serious than the offense of referral to the mediation program. The largest reduction in recidivism occurred at the Minneapolis program site (post adjudication cases in Hennepin County), with a recidivism rate of 22 % for the mediation sample and a rate of 34 % for the comparison group sample.

While it is important to know that the victim offender mediation process appears to have had an effect on suppressing further criminal behavior, the finding is not, however, statistically significant. The possibility that this apparent effect of mediation upon reducing recidivism occurred by chance cannot be ruled out. This marginal but non-significant reduction of recidivism is consistent with two English studies of victim offender mediation (Dignan, 1990, Marshall and Merry, 1990). Only one study in the U.S. is known (Schneider, 1986) to have found a significant impact of mediation upon offender recidivism. The program in that study, however, did not employ the same type of procedures

used by the programs described in this cross-site analysis of victim offender mediation.

For some, a finding of a marginal but non-significant impact of the mediation process upon reducing offender recidivism may come as a disappointment. For others, including the authors, it comes as no surprise. Rather, such a finding is consistent with recidivism studies related to other community justice alternative programs. It could be argued that it is



rather naïve to think that a time-limited intervention such as mediation by itself (perhaps 4-8 hours per case) would be likely to have a dramatic effect on altering criminal and delinquent behavior in which many other factors related to family life, education, chemical abuse and available opportunities for treatment and growth are known to be major contributing factors.

SENATE CS FOR CS FOR HOUSE BILL NO. 379(JUD)
IN THE LEGISLATURE OF THE STATE OF ALASKA
NINETEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVES PORTER, Green, Kelly, Bunde, Toohey, Therriault

A BILL

FOR AN ACT ENTITLED

1 "An Act authorizing establishment of community dispute resolution centers to
2 foster the resolution of disputes between juvenile offenders and their victims."

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

4 * Section 1. AS 22.35 is amended by adding a new section to read:

5 Sec. 22.35.020. RECOGNITION OF COMMUNITY DISPUTE RESOLUTION
6 CENTERS FOR MATTERS INVOLVING MINORS. The administrative director may
7 recognize an entity described in AS 47.10.267(a) as a community dispute resolution
8 center to serve as a center to resolve disputes between minors and victims. Before
9 extending recognition under this section, the administrative director shall determine that
10 the bylaws of the entity set out standards and procedures that meet the requirements of
11 AS 47.10.267(b).

12 * Sec. 2. AS 47.10.020(a) is amended to read:

13 (a) Whenever circumstances subject a minor to the jurisdiction of
14 AS 47.10.010 - 47.10.142, the court shall

1 (1) provide, under procedures adopted by court rule, that, for a minor
2 who is alleged to be a delinquent minor under AS 47.10.010(a)(1), a state agency shall
3 make a preliminary inquiry to determine if any action is appropriate and may take
4 appropriate action to adjust or dispose of the matter without a court hearing; if, under
5 this paragraph,

6 (A) the state agency makes a preliminary inquiry and takes
7 appropriate action to adjust or dispose of the matter without a court hearing,
8 the minor may not be detained or taken into custody as a condition of the
9 adjustment or disposition and, subject to (d) of this section, the matter shall be
10 closed by the agency if the minor successfully completes all that is required of
11 the minor by the agency in the adjustment or disposition; in a municipality or
12 municipalities in which a youth court has been established under AS 47.10.265,
13 adjustment or disposition of the matter under this paragraph may include
14 referral to the youth court; if a community dispute resolution center has
15 been established under AS 47.10.267(a) and has obtained recognition under
16 AS 22.35.020 or AS 47.10.267(b), adjustment or disposition of the matter
17 under this paragraph may include use of the services of the community
18 dispute resolution center;

19 (B) the agency concludes that the matter may not be adjusted
20 or disposed of without a court hearing, the agency may file a petition under (2)
21 of this subsection setting out the facts; or

22 (2) appoint a competent person or agency to make a preliminary inquiry
23 and report for the information of the court to determine whether the interests of the
24 public or of the minor require that further action be taken; if, under this paragraph, the
25 court appoints a person or agency to make a preliminary inquiry and to report to it,
26 then upon the receipt of the report, the court may informally adjust or dispose of the
27 matter without a hearing, or it may authorize the person having knowledge of the facts
28 of the case to file with the court a petition setting out the facts; if the court informally
29 adjusts or disposes of the matter, the minor may not be detained or taken into the
30 custody of the court as a condition of the adjustment or disposition, and the matter
31 shall be closed by the court upon adjustment or disposition.

1 * Sec. 3. AS 47.10.080(b) is amended to read:

2 (b) If the court finds that the minor is delinquent, it shall

3 (1) order the minor committed to the department for a period of time
4 not to exceed two years or in any event extend past the day the minor becomes 19,
5 except that the department may petition for and the court may grant in a hearing (A)
6 two-year extensions of commitment that do not extend beyond the child's 19th
7 birthday if the extension is in the best interests of the minor and the public; and (B)
8 an additional one-year period of supervision past age 19 if continued supervision is in
9 the best interests of the person and the person consents to it; the department shall place
10 the minor in the juvenile facility that the department considers appropriate and that
11 may include a juvenile correctional school, juvenile work camp, treatment facility,
12 detention home, or detention facility; the minor may be released from placement or
13 detention and placed on probation on order of the court and may also be released by
14 the department, in its discretion, under AS 47.10.200;

15 (2) order the minor placed on probation, to be supervised by the
16 department, and released to the minor's parents, guardian, or a suitable person; if the
17 court orders the minor placed on probation, it may specify the terms and conditions
18 of probation; the probation may be for a period of time, not to exceed two years and
19 in no event extend past the day the minor becomes 19, except that the department may
20 petition for and the court may grant in a hearing

21 (A) two-year extensions of supervision that do not extend
22 beyond the child's 19th birthday if the extension is in the best interests of the
23 minor and the public; and

24 (B) an additional one-year period of supervision past age 19 if
25 the continued supervision is in the best interests of the person and the person
26 consents to it;

27 (3) order the minor committed to the department and placed on
28 probation, to be supervised by the department, and released to the minor's parents,
29 guardian, other suitable person, or suitable nondetention setting such as a family home,
30 group care facility, or child care facility, whichever the department considers
31 appropriate to implement the treatment plan of the predisposition report; if the court

1 orders the minor placed on probation, it may specify the terms and conditions of
2 probation; the department may transfer the minor, in the minor's best interests, from
3 one of the probationary placement settings listed in this paragraph to another, and the
4 minor, the minor's parents or guardian, and the minor's attorney are entitled to
5 reasonable notice of the transfer; the probation may be for a period of time, not to
6 exceed two years and in no event extend past the day the minor becomes 19, except
7 that the department may petition for and the court may grant in a hearing

8 (A) two-year extensions of commitment that do not extend
9 beyond the child's 19th birthday if the extension is in the best interests of the
10 minor and the public; and

11 (B) an additional one-year period of supervision past age 19 if
12 the continued supervision is in the best interests of the person and the person
13 consents to it;

14 (4) order the minor to make suitable restitution in lieu of or in addition
15 to the court's order under ~~(1) - (3)~~ [(1), (2), OR (3)] of this subsection; the court may
16 not refuse to make an order of restitution under this paragraph to benefit the victim of
17 the act of the minor that is the basis of the delinquency adjudication, the court may
18 require the minor to use the services of a community dispute resolution center
19 that has been recognized by the administrative director of the Alaska Court
20 System under AS 22.35.020 or by the commissioner under AS 47.10.267(b) to
21 resolve any dispute between the minor and the victim of the minor's offense as
22 to the amount of or manner of payment of restitution;

23 (5) order the minor committed to the department for placement in an
24 adventure based education program established under AS 47.21.020 with conditions
25 the court considers appropriate concerning release upon satisfactory completion of the
26 program or commitment under (1) of this subsection if the program is not satisfactorily
27 completed; or

28 (6) in addition to an order under (1) - (5) of this subsection if the
29 delinquency finding is based on the minor's violation of AS 11.71.030(a)(3) or
30 11.71.030(a)(4), order the minor to perform 50 hours of community service, for
31 purposes of this paragraph, "community service" includes work

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(A) defined as community service under AS 33.30.901; or

(B) that, on the recommendation of the city council or traditional village council, would benefit persons within the city or village who are elderly or disabled.

• Sec. 4. AS 47.10 is amended by adding a new section to read:

Sec. 47.10.267. COMMUNITY DISPUTE RESOLUTION CENTERS FOR MATTERS INVOLVING MINORS. (a) An entity organized for the purpose of providing community mediation services may establish and operate a community dispute resolution center to resolve disputes between minors who are alleged to have committed offenses and the victims of those offenses.

(b) The commissioner may recognize an entity organized for the purpose of providing community mediation services as a community dispute resolution center to serve as a center to resolve disputes between minors and victims. Before extending recognition under this subsection, the commissioner shall determine that the bylaws of the entity set out standards and procedures

(1) for filing requests for dispute resolution services with the center and for scheduling mediation sessions participated in by the parties to the dispute;

(2) to ensure that each dispute mediated meets the criteria for appropriateness for mediation and for rejecting disputes that do not meet the criteria;

(3) for giving notice of time, place, and nature of the mediation session to the parties, and for conducting mediation sessions that comply with the provisions of this section;

(4) to ensure that participation by all parties is voluntary;

(5) for obtaining referrals from public and private bodies;

(6) for providing mediators who, during the dispute resolution process, may not make decisions or determinations of the issues involved, but who shall facilitate negotiations by the participants themselves to achieve a voluntary resolution of the issues;

(7) for communicating to the agency making a referral under AS 47.10.020(a)(1)(A) or the court making a referral under AS 47.10.080(b)(4), as appropriate, the following

1 (A) notice that the minor and victim have been unable to enter
2 into a written agreement under (d)(2) of this section or that the minor or victim
3 has withdrawn from mediation as authorized by (f) of this section;

4 (B) notice that the minor and victim have entered into a written
5 agreement under (d)(2) of this section; the center shall transmit a copy of the
6 agreement to the agency or the court, as appropriate;

7 (C) notice that the minor has failed to perform fully the minor's
8 obligations under the written agreement under (d)(2) of this section;

9 (D) notice that the minor has successfully completed all that is
10 required of the minor under the provisions of the written agreement under
11 (d)(2) of this section; and

12 (8) for informing and educating the community about the community
13 dispute resolution center and encouraging the use of the center's services in appropriate
14 cases.

15 (c) A center established under this section shall provide dispute resolution
16 services between a minor who has committed an offense and who, because of the
17 commission of the offense, may be alleged to be a delinquent minor under
18 AS 47.10.010(a)(1), and a person who was a victim of that offense. The center shall
19 provide dispute resolution services either without charge to a participant or for a fee
20 that is based on the participant's ability to pay.

21 (d) In conducting a dispute resolution process under this section, a center shall
22 require that

23 (1) the minor and the victim enter into a written agreement that
24 expresses the method by which they shall attempt to resolve the issues in dispute; and

25 (2) at the conclusion of the dispute resolution process, the minor and
26 the victim enter into a written agreement that sets out the settlement of the issues and
27 the future responsibilities, if any, of each party.

28 (e) Except for a notice or a communication described in (b)(7) of this section,
29 all memoranda, work notes or products, or case files of centers established under this
30 section are confidential and privileged and are not subject to disclosure in any judicial
31 or administrative proceeding unless the court or administrative tribunal determines that

1 the materials were submitted by a participant to the center for the purpose of avoiding
2 discovery of the material in a subsequent proceeding. Any communication relating to
3 the subject matter of the resolution made during the resolution process by a participant,
4 mediator, or another person is a privileged communication and is not subject to
5 disclosure in a judicial or administrative proceeding unless all parties to the
6 communication waive the privilege. However, privilege and limitation on evidentiary
7 use set out in this subsection do not apply to a communication of a threat that injury
8 or damage may be inflicted on a person or on the property of a party to the dispute
9 to the extent the communication may be relevant evidence in a criminal matter.

10 (f) A minor or a victim who voluntarily enters a dispute resolution process at
11 a center established under this chapter may revoke consent, withdraw from dispute
12 resolution, and seek judicial or administrative redress before reaching a written
13 resolution agreement. The withdrawal shall be in writing. If a minor or a victim
14 withdraws from dispute resolution, a legal penalty, sanction, or restraint may not be
15 imposed upon the person for that withdrawal.

16 (g) A center established under this section may seek and accept contributions
17 and any other available money and may expend the money to carry out the purposes
18 of this section.

19 (h) A member of the board of directors of a community dispute resolution
20 center is immune from suit in a civil action based upon a proceeding or other official
21 act performed in good faith as a member of the board. Employees and volunteers of
22 a community dispute resolution center are immune from suit in a civil action based on
23 a proceeding or other official act performed in their capacity as employees or
24 volunteers, except in cases of wilful or wanton misconduct. A center is immune from
25 suit in a civil action based on a proceeding or other official act performed by its
26 employees, volunteers, or members or its board of directors, except in cases of wilful
27 or wanton misconduct by its employees or volunteers or in cases of official acts
28 performed in bad faith by members of the board.

29 (i) In this section, "center" means a community dispute resolution center.

30 * Sec. 5. REVISOR'S INSTRUCTION. In the event SCS CSSH B 387(JUD), passed by
31 the Nineteenth Alaska State Legislature, becomes law, the amendment to AS 47.10.020(a)

1 made in sec. 2 of this Act shall be treated as an amendment to AS 47.12.040; the amendment
2 to AS 47.10.080(b) made in sec. 3 of this Act shall be treated as an amendment to
3 AS 47.12.120; and AS 47.10.267, enacted by sec. 4 of this Act, shall be renumbered by the
4 revisor to place it in AS 47.12, with conforming changes made to AS 22.35.020, enacted by
5 sec. 1 of this Act.

Alaska State Legislature

Representative Brian S. Porter

CHAIRMAN
HOUSE JUDICIARY COMMITTEE

MEMBER
HOUSE LABOR & COMMERCE COMMITTEE
HOUSE STATE AFFAIRS COMMITTEE
INTERNATIONAL TRADE & TOURISM
COMMITTEE

MEMBER
FINANCE SUBCOMMITTEES
DEPARTMENT OF LAW
DEPARTMENT OF EDUCATION
COURTS



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FAX 907-463-1811

INTERIM
710 W 4TH AVE SUITE 610
ANCHORAGE AK 99501-2111
PHONE 907-278-4107
FAX 907-258-5310

DISTRICT 20

SPONSOR STATEMENT

For

HB 379 COMMUNITY DISPUTE RESOLUTION CENTERS

Victim offender mediation is a process in which trained volunteer mediators bring victims and juvenile offenders face to face to discuss the property loss and emotional damage caused by the crime. The goal of this meeting is for the victim and the offender to agree on a restitution contract.

Victim offender mediation is part of the larger concept of restorative justice. With this approach offenders take personal responsibility for repairing the damage they have caused.

WHAT ARE THE BENEFITS?

FOR VICTIMS:

- Victims report great satisfaction with the mediation process. It allows them to confront the offender with the very real personal impact of their crime.
- Victims report satisfaction with the restitution agreements due to the fact that they are tailor made to repair their specific loss and their needs for restitution.
- Victims appreciate having their case resolved in a timely and efficient manner with their maximum involvement.

FOR OFFENDERS:

- Offenders have the chance to talk with a victim and to make amends of the crime.
- Offenders are more willing to fulfill the restitution agreements that they helped create.
- Offenders' parents get involved.

FOR THE COMMUNITY:

- The public sees timely and more meaningful responses to juvenile crime.
- Volunteer community mediators have a direct impact on youth.
- National studies of offenders in victim offender mediation programs found that they committed considerably fewer future crimes.

Alaska State Legislature

Representative Brian S. Porter



CHAIRMAN
HOUSE JUDICIARY COMMITTEE

MEMBER
HOUSE LABOR & COMMERCE COMMITTEE
HOUSE STATE AFFAIRS COMMITTEE
INTERNATIONAL TRADE & TOURISM
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DISTRICT 20

Memorandum

Date: January 17, 1995
To: Representative Brian Porter, Chair
House Judiciary Committee Members
From: Daniella Loper, Leg. Aide to Representative Porter
RE: HB 379 Community Dispute Resolution Centers

The bill establishes community dispute resolution centers as an alternative for informal resolution and disposition for certain offenses committed by minors. Further, this bill allows judges to use these resolution centers in conjunction with restitution orders made when a minor is adjudicated a delinquent.

Bill section 1, adding a new bill section, to permit the administrative director of the court system to recognize an entity as a community dispute resolution center.

Bill section 2 amends AS 47.10.020(a)(1)(A) to authorize referral of a minor to a community dispute resolution center for purposes of informal adjustment or disposition of a matter by the Department of Health & Social Services following preliminary inquiry.

Bill section 3 amends AS 47.10.080(b)(4) to permit a judge who has adjudicated a minor to be a delinquent and ordered the minor to pay restitution to require the minor and victim of the minor's offense to use the services of a community dispute resolution center to resolve a dispute involving the amount or manner of payment of the restitution.

Bill section 4, adding a new bill section, AS 47.10.267, spells out the procedures by which an entity organized for the purpose of providing community mediation services may operate a community dispute resolution center qualifying under this Act to provide services for minors and the victims of their offenses. Moreover, establishes that all communication within the mediation process is confidential and privileged. Withdrawal from the dispute resolution process either by the offender or the victim is allowed and they may seek judicial or administrative

redress. Employees, volunteers and the board of directors for the dispute resolution center are immune from suit in a civil action except in cases of willful or wanton misconduct.



alaska judicial council

1029 W. Third Avenue, Suite 201, Anchorage, Alaska 99501-1981 (907) 279-2526 FAX (907) 276-5046

EXECUTIVE DIRECTOR
William T. Cotton

January 18, 1996

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Janice Lennhart
Victor A. Ooba

Representative Al Vezey
Alaska Legislature
Juneau, AK

ATTORNEY MEMBERS
Mark E. Ashburn
Thomas G. Nave
Christopher E. Zimmerman

Via FAX: 907/465-3258

CHAIRMAN, EX OFFICIO
Allen T. Compton
Chief Justice
Supreme Court

Dear Representative Vezey:

I am sorry that the Anchorage LIO office disconnected us before the end of yesterday's hearing on CSHB 339. I understand you had some concern about the necessity of this legislation, since mediation already is occurring. In fact, the bill is necessary for a number of reasons:

- The bill formally establishes the confidentiality procedures under which VOMP now operates informally. As long as these procedures remain informal, community mediation programs will continue to be vulnerable to expensive and damaging legal challenges;
- The bill formally establishes reasonable protection from suit for citizens who volunteer their time to these worthwhile programs. Without this measure of protection, volunteers will continue to be vulnerable to expensive and damaging lawsuits;
- The bill creates a mechanism for the court system to refer offenders to mediate restitution contracts. No other law of which I am aware explicitly gives the court this valuable option;
- The bill encourages creation of mediation programs statewide by clearly establishing the necessary process and standards. I can tell you from experience that creating the VOMP pilot project involved an enormous amount of volunteer work and coordination between a dozen state agencies and other entities. This bill gives other groups a "running start" which might well make the difference between creating a community mediation program or not.

These are just a few of the reasons that this legislation is so important. I note for comparison that the legislature last session passed a statute formally establishing the use of youth courts, despite the fact that the Anchorage Youth Court already was operating. If you have questions please do not hesitate to call. Thank you for your time.

Sincerely,

Suzanne Di Pietro
Suzanne Di Pietro
Staff Attorney

cc: Representative Brian Porter (FAX 907/465-3834)

4770 Mills Drive
Anchorage, Alaska 99508-4733

April 22, 1996

Senator Robin Taylor
Capital Room 30

Dear Senator Taylor:

RE: HB370

This Bill originated in Anchorage but has implications for the state, including your district. Restorative justice is anti-crime, cost effective, and engages the community in an active response. I encourage you to wage your disagreement with Representative Porter in a different way and not hold this bill hostage. Community Dispute Resolution is not restricted to geographic communities. It can be equally effective with the legislative community.

House Bill 379, authorizing the establishment of community dispute resolution centers to foster restorative justice has successfully passed the House and is in the Senate Judiciary Committee. In your capacity as a Chair of this Committee, I will be most appreciative for any help you can muster to move this Bill through the Senate before adjournment. The Anchorage Community Dispute Resolution Center is doing a marvelous job mediating restitution contracts between victims and juvenile offenders and this legislation is necessary to its continued growth and the development of similar programs throughout the state. A long term goal is to institutionalize this intervention in the adult and juvenile criminal justice system.

Restorative justice places accountability expectations on offenders creating an awareness of the harmful consequences of their actions, requiring that they take action to "make amends" to victims and the community, and involves victims directly in the justice process, wherever possible. These are low-cost community-based programs utilizing trained volunteers to effect restorative justice outcomes. It would be most unfortunate if the development of this proactive response to crime is delayed in receiving the necessary legislative support during this session.

Sincerely yours,



Patrick M. Cunningham



alaska judicial council

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EXECUTIVE DIRECTOR
William T. Cotton

January 19, 1996

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CHAIRMAN, EX OFFICIO
Allen T. Compton
Chief Justice
Supreme Court

Representative Mark Hanley,
Representative Richard Foster
Co-Chairs, House Finance Committee
Alaska Legislature
Juneau, AK

Via FAX: 907/465-2418
907/465-3242

Dear Representatives Hanley and Foster:

I am writing to support Representative Porter's request that you waive CSHB 379 (juvenile victim-offender mediation) out of the House Finance Committee. The bill has no fiscal notes and will not negatively impact the state's budget.¹ Second, the agencies affected by the bill have warmly supported it, and no opposition is anticipated. Finally, waiving the bill out of the House Finance Committee puts it that much closer to a hearing and vote on the House floor. With time at such a premium during this busy second session, every little bit helps.

We who have worked on the bill are extremely pleased with the efficiency with which it has progressed through the legislative process. Whatever your decision in this matter, we appreciate your willingness to consider our request and hope that CSHB 379 will receive your favorable consideration.

If you have questions or wish more information about the juvenile victim offender mediation project, please do not hesitate to call. Thank you for your time.

Sincerely,

Susanne Di Pietro
Staff Attorney

cc: Representative Brian Porter

¹ In fact, it is our hope that the bill will save the state money by helping overburdened juvenile intake officers handle their caseloads

CORRECTION

THE FOLLOWING DOCUMENT(S)
HAVE BEEN REFILMED TO
ASSURE LEGIBILITY OR PAGINATION



Rev. 6 98

Central Microfilm Services
Department of Education
State of Alaska



alaska judicial council

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EXECUTIVE DIRECTOR
William T. Cotton

January 19, 1996

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Thomas G. Nave
Christopher E. Zimmerman

CHAIRMAN, EX OFFICIO
Allen T. Compton
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Supreme Court

Representative Mark Hanley,
Representative Richard Foster
Co-Chairs, House Finance Committee
Alaska Legislature
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Sincerely,

Susanne Di Pietro
Staff Attorney

cc: Representative Brian Porter

¹ In fact, it is our hope that the bill will save the state money by helping overburdened juvenile intake officers handle their caseloads.

DREW PETERSON
ATTORNEY AT LAW, MEDIATOR AND DISPUTE RESOLUTION CONSULTANT

4325 LAUREL STREET, SUITE 220
ANCHORAGE, ALASKA 99508

(907) 561-1510 • FAX (907) 502-0700

January 16, 1996

TO WHOM IT MAY CONCERN:

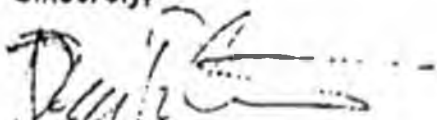
This letter is written in support of the Anchorage Community Dispute Resolution Center (CDRC), and specifically to encourage the favorable consideration of HB 379.

I have been a practicing attorney in Anchorage since 1979, and a practicing mediator since 1987. I am an active member of the Anchorage mediation community, involved with both the Alaska Dispute Settlement Association and the Alternative Dispute Resolution Section of the Alaska Bar Association. I sit on the Mediation Committee of the Alaska Supreme Court. I am also one of the CDRC volunteer mediators, so I have first hand experience with the program.

During the years that I have been involved with mediation in Anchorage, I believe that CDRC has generated the most immediate positive response to the use of mediation by people who were previously uninformed about the mediation process. CDRC has done a tremendous job in a short time of demonstrating that real community benefit can be provided by mediation services, notably in mediating disputes between juvenile criminal offenders and the victims of their crimes. The CDRC program is an example of the kind of innovative, proactive programs which are needed for society to do a better job than it has in the past in effectively dealing with juvenile crime.

I cannot say enough nice things about the CDRC program. It is doing a wonderful job, and as I believe supported wholeheartedly by the Anchorage mediation community. I would urge the favorable support of HB 379 as a method of further strengthening this great service.

Sincerely,



DREW PETERSON
DHP/dp

FAX to 274-0332



UNIVERSITY OF ALASKA ANCHORAGE

3211 Prudence Drive
Anchorage, Alaska 99506

COLLEGE OF ARTS AND SCIENCES
DEPARTMENT OF SOCIAL WORK

January 16, 1995

Representative Brian Porter
Chair, House Judiciary Committee
Juneau, Alaska

RE. HB 379, Community Dispute Resolution Centers

Dear Representative Porter:

I wish to offer my support to your efforts to obtain passage of HB 397, which you recently introduced, as the primary sponsor. I am writing to you in my dual roles as a faculty member of the University of Alaska Anchorage with a long history of work in juvenile justice, and as the Chair of the McLaughlin Youth Center's Citizen Advisory Board.

In my opinion, establishing community dispute resolution centers to promote the active participation of victims and juvenile offenders in obtaining restorative justice, will have a positive and profound impact upon reducing crime and its deleterious effects. It engages both the victim and offender in a more active participation in the justice process. Direct confrontation, restitution, accountability, socialization, healing, empowerment, and achieving justice are all possible within this model. These centers will provide the opportunity for community members to actively participate in this process as volunteers and have a direct impact upon reducing crime, where they live. The dollar cost is minimal the savings enormous.

I recognize that this is not the final solution to one of our major social problem but it is definitely a program that has proven effectiveness. It is particularly useful in recognizing the need for victims to be major participants in responding to crimes against them and also in diverting youth from escalating their criminal activity. The idea of presenting a problem solving model in which the resolving of disputes can occur, without violence, has the potential of not only impacting juvenile offenders and their victims but anyone who chooses violence to solve dilemmas.

Thank you for creating this piece of legislation and if I can be of any assistance, please call upon me.

Sincerely yours,

A handwritten signature in cursive script that reads "Patrick M. Cunningham".

Dr. Patrick M. Cunningham, DSW
Associate Professor

Victims for Justice

619 East Fifth Avenue, Anchorage, AK 99501

Phone: (907)278-0977 FAX: (907)258-0740

January 17, 1996

Dear Representative Brian Porter,

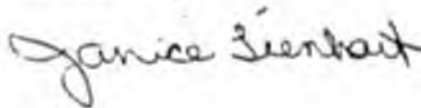
As a founder of Victims for Justice and the Victim-Offender mediation project. I strongly support HB 379 Community Dispute Resolution Centers.

The main purpose of this legislation is to replace the nonparticipative courtroom with a new environment. Crime is viewed as a conflict between two people. Mediation, as process for mutual resolution of conflict, is more likely than a courtroom to allow for participation and reconciliation.

Mediation offers other benefits over and above reaching an agreement on restitution. The victim may feel some healing from the crime. The juvenile may feel more accountable and as a result may be more likely to comply with the restitution agreement. By intervening early, the first-time offender might be less likely to commit future violent acts.

It is anticipated that the Alaska Victim Offender Mediation Project will have a profound impact on future juvenile crime in Alaska and on the victims of crime. Mediation may succeed where juvenile justice has failed in reducing the number of violent youths in our society.

Sincerely,



Janice Lienhart, Executive Director
Victims for Justice

Crisis Intervention

Short and Long Term
Emotional Support

Grief Education

Victim Advocacy

Assault Support
Group

Homicide Survivors
Support Group

Court Accompaniment

CourtWatch Program

Annual Victims Rights
Week Observance

Member - National
Association of Victim
Advocacy

Member - National
Organization Victim
Assistance

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ALASKA JUSTICE FORUM

A Publication of the
Justice Center

Alaska Justice
Statistical Analysis Unit

Summer 1994

UNIVERSITY OF ALASKA ANCHORAGE

Vol. 11, No. 2

Victim-Offender Mediation in Anchorage

Patricia Cunningham
and Lawrence C. Tritle

A pilot victim-offender mediation program, which involves mediation sessions of certain offenses and the victims thereof, has recently been established in Anchorage. Mediation is offered as a diversion from the courts, with the hope that offenders may accept responsibility and rehabilitation.

Mediation between a victim and offender is in the goal of reconciling relations and reconciliation and supplementing the formal adjudication process. Under mediation, both victim and offender are active participants in the restorative process. The victim has the opportunity to confront the offender to seek a resolution of the offense, and the offender is given the opportunity to make amends for the crime. Such restorative programs intend to restore both parties to more positive social functioning in the larger community and to compensate the victim of the crime and incarcerated in the criminal justice system. Mediation programs often are used as an alternative to a trial in which the victim is often a plaintiff and the offender is a defendant.

The western world is turning to the restorative system of criminal justice. This system is a response to an offense against the state even though a victim may also be involved in the state that prosecutes and

brings a case to disposition. Neither the victim nor the offender have much to say in the process, with the involvement of both being quite passive. Since until recently, in ordinary court proceedings, victims were seldom more than observers, feelings of marginalization, helplessness, and further victimization were common.

Victim-Offender Mediation

Victim-offender mediation programs provide an opportunity for victims to meet the offender face-to-face in the presence of a trained mediator for the purpose of reaching a resolution which intends to resolve the injury of the crime in some way. Under the mediation model, is viewed as a conflict between people rather than as an offense against the state. Through mediation the victim has the opportunity for involvement in the process of negotiating restitution, expressing feelings, and seeking answers from the offender. For the offender, mediation provides an opportunity for involving accountability for the act, personalizing the crime, and providing a corrective intervention. The idea of the offender making restitution to the wronged person has precedent in many cultures, although it has not commonly been used as a criminal sanction under modern Western systems.

Development

An early incarnation of a modern Western model providing mediation between a victim and offender occurred in 1974 in Kitchener, Ontario, Canada—the Victim-Offender Reconciliation Program or VORP. This was followed in 1976 in the United States by a program with the same name, which was started in Elkhart County, Indiana through the participation of PACIFIC Prisoners and Community Employees and the Marquette Center. The program continued until 1981

program sites had been established primarily in the Midwest and Canada. By 1994, 25 victim-offender mediation programs were operating in Canada, over 100 in the United States, and 165 in Western Europe.

According to Sam Galaway in a 1993 article in *Social Service Review*, of 14,000 cases referred by the courts to VORP programs, 86 percent were reported to have resulted in successfully completed restitution contracts. The study indicated that victims, for the most part, were not vindictive in negotiating with the offender and that there was a high level of willingness to meet among victim and offender. While long-term research regarding the effectiveness of the mediation model has been limited, such preliminary findings have been consistent in demonstrating that mediation is an effective way to resolve conflict between some crime victims and their offenders.

The Development of Victim-Offender Mediation in Anchorage

To date, the criminal justice system in Alaska has used formal mediation primarily with juvenile offenders. In 1991, Janice Lienhart, one of the founders of Victims for Justice, a private, nonprofit agency, which provides services to victims of crimes sought assistance from staff at the McLaughlin Youth Center for a family whose son had been killed by a juvenile who at that time was being held at the Center. What resulted was a victim-offender mediation involving the family and the juvenile. As a result of that mediation and several subsequent ones at McLaughlin, a core group of professionals formed an organizational base to explore the idea of implementing a victim-offender mediation program in Anchorage. Four organizations were represented in this effort: Victims for Justice, the McLaughlin Youth Center, the

HIGHLIGHTS INSIDE THIS ISSUE

- The Bureau of Justice Statistics describes federal and state prison populations. page 7
- Cook Inlet Region Inc. awards \$100,000 grant to the Justice Center. page 9
- The Bureau of Justice Statistics analyzes the incidence of violent crime and the victimization of the work force. page 11

SUPPORTING DOCUMENTS

For more information, see page 12



Michael Carey, Editor
 Patrick Dougherty, Managing Editor

Volume 1, Number 1, 1984-1985
 Katherine Fanning, Editor
 Lawrence Fanning, Editor
 Founded in 1981

Crime control

Here's an idea with great potential

What would you say about a program that sends a thoughtful letter to a victim, reduces the chances they will be offended and gives victims more say in the outcome of a case — all for a fraction of the cost of dispensing conventional justice?

You'd probably say it sounds too good to be true.

Mediation could prove better than the current justice system.

But it's not. Such a program is being started in Anchorage, perhaps as early as next month. Known as a "victim-offender mediation project," it's being spearheaded by two University of Alaska

professors, Pat Cunningham and Larry Trostle. The effort targets juveniles who are nabbed for first- or second-time property crimes. If both the offender and victim agree, they will meet face-to-face with a mediator and work out a restitution agreement. Options will include repayment, community service or perhaps just a letter of apology — whatever the two parties can agree to.

Mediation could prove better than the current justice system in several ways. Conventional proceedings relegate both offender and victim to passive roles. Judges, prosecutors, lawyers, police officers and other officials dominate action on the case. Criminals are tempted to beat the rap by contesting the evidence, instead of doing it clean.

For victims, the crime often leaves them feeling hurt and powerless. The justice system treats them as complete strangers. Victims may not even learn the youthful offender's identity. Mediation can encourage the offender to take responsibility for his crimes while helping victims restore some feeling of control over their lives.

Perhaps the most amazing thing about this pilot program is that it costs a mere \$100 for six months, funded by the University of Alaska faculty development grants. Volunteer help from many quarters makes the obnoxious operation possible. Victims for Justice will help find victims to participate. Mediators will volunteer their services. Alaska Youth and Parent Foundation will supply office space. The Alaska Judicial Council will track the program's performance.

Similar approaches have worked well elsewhere. Pennsylvania's state courts found 120 such programs across the country and scores more in Canada and Europe. In a study of 14,000 cases, recidivism rates fell and offenders honored 96 percent of the restitution agreements.

Cunningham hopes the approach will merit expanding to juveniles outside Anchorage and to selected violent offenders. Eventually it may offer a useful alternative for certain crimes and offenders in the adult system as well. Widespread mediation might someday revolutionize American-style justice.

Throughout history, other cultures have emphasized restitution and reintegrating offenders into the community. Their values were — got lost in the shuffle of adversarial-style American justice. Making amends and healing victims are essential to deciding whether the accused is guilty or innocent. Mediation could produce a criminal justice system that delivers less crime and more justice.

FORUM / LETTERS

Mediation offers hope where juvenile justice fails

By MARY ANN DEARBORN

Youth violence is on the increase. There seems to be no easy fix. Too often people blame the individual. Perhaps if we develop a better understanding of how the individual relates to his or her environment, we can take steps to improve how our children cope with their world and how the world copes with them. By creating the right environment, successful interventions may be developed to correct or avoid violent behavior. The juvenile justice system might be the



confidential, under current children's court rules, the victim may never find out the juvenile's identity.

Because the juvenile's role is to passively be or the frequently does not feel remorse and is reluctant to comply with the ordered restitution. Due to an overburdened legal system, compliance with restitution may not be enforced. As a result, the victim may feel further harmed by the offender's failure to comply with the court's order. This is true before and after the offender's release.

Another problem is that the juvenile court system is often overwhelmed by the number of cases. This can result in a backlog of cases, which can lead to a delay in the juvenile's release. This delay can be a problem for the victim, who may be waiting for restitution. The juvenile justice system might be the

venues targeted are first and second time property offenders. The pilot project is now in the second stage and is funded through June. This program represents a dramatically different approach to the current juvenile justice system and is supported by 15 groups, including state agencies and the Alaska Court System.

The main purpose of the program is to replace the nonparticipative courtroom with a new environment. Crime is viewed as a conflict between two people. Mediation as a process for mutual resolution of conflict is more likely than a court trial to allow the offender to take responsibility for the crime. An impartial mediator guides the two disputable individuals and, together they develop a mutually acceptable restitution agreement. The agreement

Mediation, as a process for mutual resolution of conflict, is more likely than a courtroom to allow for participation and reconciliation.



Dearborn

reached might be as simple as a sincere letter of apology or a community service contract.

Mediation offers a better teaching environment on restitution. The victim may feel some healing from the crime. The perpetrator may feel more responsible and a result may be more likely to comply with the restitution agreement. It is interesting to note that the juvenile offender might be more likely to comply with the restitution agreement.

Dr. Pat Cunningham, Department of Social Work, and Dr. Larry Trustle, Department of Justice, coordinated the UAA grant and are working with other members of the community to get the project rolling.

Juvenile probation officers will be making referrals and will follow up to make certain the restitution agreements are fulfilled by the juveniles. Victims for free will contact and screen potential participants. The Alaska Judicial Council will

monitor the project to run from the intervention has merit. Alaska Youth and Parent Foundation has offered office space, and Niki Stewart, former AYPF coordinator, has been hired to coordinate the program.

It is anticipated that the Alaska Victim Offender Mediation Project will have a profound impact on future juvenile crime in Alaska and on the victims of crime. Crowded correctional institutions and growing doubts as to their effectiveness in deterring crime make victim-offender mediation a highly cost-effective alternative to incarceration for some offenders. Mediation may succeed where juvenile justice has failed in reducing the number of violent youths in our society.

Mary Ann Dearborn is a professional mediator in Anchorage.

Alaska groups target juvenile - victim mediation

By Mary Ann Dearborn
For the Journal of Commerce

Mediation is not just for settling civil disputes. Crime is viewed as a conflict between people and mediation offers an environment which is more likely than a courtroom to lead to a mutually acceptable resolution of that conflict.

A University of Alaska Anchorage faculty development grant awarded in 1993 is exploring the feasibility of establishing a victim juvenile offender mediation program in Anchorage, Alaska. The pilot project is now in the second stage and is funded through June, 1994.

Dr. Pat Cunningham, Department of Social Work, and Dr. Larry Trostle, Department of Justice, co-authored the grant, and 15 Alaska groups are supporting the program, including state agencies and the Alaska Court system.

A mediated settlement approach to settling crimes pre dates the idea of imprisonment. Restitution to persons wronged, intended to heal the injury of the crime, has precedence in many cultures. However restitution as a criminal sanction has played an insignificant role in the history of our criminal justice system. Instead of making individuals act responsibly, it locks people up in ever increasing



Dr. Larry Trostle

numbers and don't see much deterrence from criminal behavior after release.

First and second time juvenile property offenders are being targeted for a special project that will allow the juvenile offender and victim to meet face to face, using an impartial mediator, for the purpose of developing a restitution agreement. Some believe this will be a positive improvement to the current juvenile justice system.

Our current system dictates restitution in a courtroom setting where both offender and victim play passive



Dr. Pat Cunningham

roles. Due to confidentiality under children's court rules, the victim may never find out the juvenile's identity. Because of lack of participation, the juvenile frequently does not feel remorse, is reluctant to comply with the ordered restitution, and due to an overburdened legal system compliance with restitution may not be enforced. As a result the victim may feel further victimized this time by the system, and the juvenile may not think twice before pursuing future criminal activity.

The program calls for juvenile pro

bation officers to make referrals to the program and follow up to ensure restitution agreements are fulfilled by the juveniles. Victims for Justice would contact and screen victim participants. The Alaska Judicial Council would monitor the project to confirm the intervention has merit. Alaska Youth and Parent Foundation has offered office space and Niki Stewart, former AYPF coordinator, has been hired to coordinate the project. Professional and volunteer mediators are offering their services and will be trained to work with the program.

Mediation, as an intervention alternative to the current juvenile justice system, offers a hope for other benefits over and above reaching an agreement on restitution. The victim may feel some healing from the crime. The juvenile may feel more accountable and as a result may be more likely to comply with the restitution agreement. By intervening early, the young offender may be less likely to commit future criminal acts.

It is anticipated that the Alaska Victim Offender Mediation project will have a profound impact on future juvenile crime in Alaska and on the victims of crime. The long range plan is to implement this program statewide and in both the juvenile and

Continued on Page 28

Alternative Dispute Resolution

NEWS & INFORMATION

ALASKA BAR
ASSOCIATION
ADR SECTION



Victim-offender mediation: Restorative alternative

By Nikishka Stewart

In January 1994 a pilot project funded through the University of Alaska Anchorage implementing a Victim-Offender Mediation Project. This project addresses juvenile crime and its effects on individuals and the community as a whole.

In our society, crime is viewed as an offense against the state and not as injury to a person. Victim-Offender Mediation seeks to personalize the experience and humanize the parties involved while seeking a resolution agreement that effectively resolves the damage done.

The Anchorage mediation project has adopted five goals that help it accomplish this mission: 1.) To encourage accountability on the part of the juvenile offender. 2.) To provide an opportunity for the victim to work directly with the offender in discussing restitution. 3.) To provide an op-

portunity for parties to feel restored from or reconciled to the event. 4.) To provide a referral option for the juve-



Nikishka Stewart

nil corrections system to help handle their caseload. 5.) To maintain a high level of community investment and support.

This project utilizes trained volunteer mediators from the community and has a dynamic advisory committee which includes Master Bill Hitchcock (children's court), Donis Morris (McLaughlin Youth Center), Janice Lienhart (Victims for Justice), Suzanne Cole (Public Defender), Bob Buttene (Juvenile Intake), Patrick Cunningham (UAA), Sig Murphy (District Court Judge), Jay Page (First National Bank) and approximately 15 other community members who volunteer their time to provide direction and support.

To date the project has handled 60 cases. All referrals come from the intake officers at the Juvenile Intake Department housed at McLaughlin Youth Center. Of these 60 cases, 23 are ongoing and being developed for

mediation, 22 were closed without going to mediation and, so far, 15 were successfully mediated with restitution contracts in place.

In the 22 cases that were closed without mediation, 18 of those were due to victims declining to participate and four were screened out by program staff. Typically, when a party refuses it is the victim who declines.

There are more than 200 programs such as this throughout the U.S. and Canada. It is a community-based approach to a problem that affects us as individuals and as a community. How many of us have had the experience of being the victim of a crime? We know the ripple effect it has. We wonder, "Who did it?", "Why me?", "Are they going to do it again?" Without information and answers to these questions, we find that our minds tend to work to fill the void. We suppose all sorts of things and can often paint a picture of some horrible, threatening person who seeks only to prey on the unsuspecting. We can lose faith in our surroundings, in others. We wonder, what is safe any more? Who can you trust?

If the case is not resolved to the point where our questions are answered and to the point we feel justice is done our aggravation and frustration can be compounded. We end up fed up with the system and b-

Mead

1 1 1 1 1 1 1 1 1 1

Restorative alternative works for victim-offender mediation

Continued from Page 20

that crime is out of control. The Anchorage-based project brings victim and juvenile offender face to face in a safe and constructive setting to discuss the crime and the impacts it has had. The offenders hear how their actions have affected another person, the victims hear the juveniles' side of the story, and both parties work out an agreement that "makes it right." The offender takes

responsibility and shows he or she is willing to work it out. The victim is heard, in control, and gets to deal with reality rather than fearful suppositions. The end result is that both parties get to put the crime behind them. The victim feels restored and the offender has had a reality check that makes him or her think twice about breaking the law again. For further information or to volunteer, contact Nikishka (Niki) Stewart, the Project Coordinator at 274-1542.

Reformers tout ADR programs

Continued from Page 18

ments sooner than the typical eve-of-trial agreements. Within 30 days of the filing of a responsive pleading, an administrator holds a meeting with the attorneys and their clients, including someone from both sides with the authority to settle. Each side discusses facts, issues and possible solutions.

If no settlement is reached, the administrator and the parties agree on the limited discovery that will be needed for ADR, which is scheduled within 90 days of the meeting. Litigants can choose from a number of options, but most pick mediation overseen by the program's administrator, probably because his services are free.

According to Donna Stienstra, a senior research associate for the Federal Judicial Center, the emphasis on getting cases into ADR quickly in Missouri's program is unusual. "There is an expectation that ADR works better later," she said. "One of the surprises of the program may be that

it works well early."

Indeed statistics kept by the district show some success. The cases are divided into three groups: those that are required to go through the early assessment program, those that may opt for it, and a control group of those that may not opt for it.

The median time from filing to disposition of the cases was 232 days for those required to participate, 310 days for those that could opt in, and 317 days for the control group. The cases studied were filed between Jan. 1, 1992, and April 30, 1993.

The 404 attorneys surveyed gave the program a thumbs up. Ninety-two percent said it should be continued and 67 percent said it was very or somewhat helpful in reducing the cost of resolving cases.

Wolf says the program "has been very effective in a district (without) significant problems" with case backlogs. "Can you imagine how effective it would be in a district where many cases are taking three years or more to go to trial?" he asked.

Inspiration for Windows program outlines

Continued from Page 19

Inspiration doesn't have the graphics features of programs like Power Point or Persuasion. But we do like the program both as an outliner, and for the ease in which we could prepare good looking graphics.

Inspiration for Windows, Version 4. Inspiration Software Inc., 2920 N. Dolph Court, Portland, OR 97219. Phone (600) 677-4292 ex 14 or (503) 247-5011. Fax: (503) 247-4272.

writes about computers from his office in Homewood, Ill. Benjamin H. Cohen is based in Chicago, Ill. These columns are available electronically on NewsNet, Predicasts Newsletter file, Westlaw in the LawPrac file, and on Counsel Connect. For further information you can contact Law Office Technology Review by writing to P.O. Box 2577, Homewood, IL 60430, or sending e-mail to bbayer@bx.com, bbayer@MCI Mail, bbayer@ASA or Net or Barry Bayer on Counsel

corpus or a petition for post-conviction relief) because, over this five-year period, the accumulated loss of good time has come to equal the number of days remaining in his sentence.

ALASKA SUPREME COURT
NOTE: INCLUDES TWO OPINIONS RELEASED BY THE ALASKA SUPREME COURT
THE WEEK OF July 1, 1994

- Collateral estoppel
- Full Faith and Credit Clause

Denis McCampion v. State of Alaska, Department of Community & Regional Affairs, Housing Assistance Division, Op. No. 4096 (Alaska July 1, 1994) (14 pages)

OPINION: Moore, C.J.
ATTORNEYS: Kevin M. Morford, Jensen, Harris & Roth, Anchorage, for Appellant. Richard H. Ustrom, Routh & Crabtree, P.C., Anchorage, for Appellee.

TRIAL COURT: J. Justin Ripley, Superior Court, Third Judicial District, Anchorage.

PRINCIPAL ISSUE ON APPEAL: Under collateral estoppel and the Full Faith and Credit Clause, is a federal judgment interpreting an Alaska statute binding between the parties in later litigation in Alaska?

HOLDING: The superior court judgment was reversed. The doctrine of collateral estoppel, also referred to as issue preclusion, bars re-litigation, even in an action on a different claim, of all issues of fact or law that were actually litigated and necessarily decided in a prior proceeding.

- Rebuttal of presumption of compensability in Worker Compensation cases
- Necessity of expert medical evidence in Worker Compensation cases
- Substantial evidence needed to support Board conclusions

Norcon, Inc. and Eagle Pacific Insurance Co. v. Alaska Workers' Compensation Board and Ellen Siebert, Op. No. 4097 (Alaska July 1, 1994) (17 pages)

OPINION: Compton, J.
ATTORNEYS: Karen L. Russell and Joseph M. Cooper, Russell, Tescho & Wagg, Anchorage, for Appellants. Joseph A. Kalamarides, Kalamarides & Associates, Anchorage, for Appellees.

**"I'd rather have a root canal!"
notes from a mediation**

Donny B.* Broke into the home of Mr. and Mrs. S*. He used a garden shovel to break into their front porch when neither of them were home. Substantial and costly damage was done to the home. The estimate for repair was beyond Mr. and Mrs. S's means.

In a mediation facilitated by two trained volunteer mediators, Mr. and Mrs. S, an older couple, confronted the offender with what his crime had done to them.

Mrs. S. told Donny and the mediators she was out of state at the time caring for her father who was very ill. She spoke of receiving the phone call from her husband and feeling great stress at being unable to return home to support him. She was surprised when tears came to her eyes and had to pause several times as she told of her feelings of helplessness and anger about the crime and not being able to share the burden with her husband.

Mr. S went next and said that the break-in had been the last in a string of misfortunes for the couple. He had suffered a stroke that year and had incurred much debt that was not covered by insurance. The doctor had ordered him to avoid stress to protect his health but it had been very difficult due to the bills his father-in-law's illness, and now the break-in.

Donny, his voice often shaky and strained, told Mr. and Mrs. S. that he now felt he was stupid and wrong for having broken in to their home. He told them that it had been an exciting spur of the moment crime, his first, and he had never thought about the real people who lived there. After much discussion of the impacts on Mr. and Mrs. S and of his own loss of parental trust, friends, and loss of feelings of self-worth, Donny agreed to do what he could to make it up to them. He also wanted to rebuild his relationship with his parents and hoped the efforts he made toward the couple would help.

Before the mediation, Mr. and Mrs. S talked about how they were fearful to confront the individual who had done the crime. Some thoughts they were having were: Why me? What were you thinking when you did this? Don't you know how devastating this is for us? How do you feel about hurting people this way? What did we do to make you do this to us? As much as they wanted answers they feared retribution. After talking with Donny in the mediation, Mr. and Mrs. S. realized that he was just a kid who had done a dumb thing. They could see him becoming more aware of the impact of his crime. They felt safe again and also reassured by Donny's honest and thorough answers to all of their questions.

The mediators moved the discussion on to restitution. The victims and the offender talked about how to make things right. Donny explained he didn't have the money for permanent repairs. At this point, Mr. and Mrs. S decided to give Donny a chance to personally make it up to them. They explained that neither of them could do yard work anymore and had to pay someone to do that. Mrs. S. proposed that Donny do the yard jobs to work off the costs. Mr. and Mrs. S could then take the yard work money from their budget and apply it to fixing the porch. Startled and grateful, Donny accepted. Together, they collaborated on the details of the agreement, including alternative plans to continue the yard work into the next spring if winter closed in before the total debt was paid.

Mediation had certainly turned things around for the victims and the offender. All the apprehension and stress was relieved. Everyone was feeling better. Mr. S finished up the mediation by offering that if Donny did a good job on their yard and he wanted some money they would consider hiring him in the future to more yard work. Donny, feeling proud and grateful, shook hand with Mr. and Mrs. S. and assured them he would be at work bright and early the following Saturday. Mrs. S. said as she left, "You know, when I was approached to do this mediation I thought I would rather have had a root canal. But now that I've been through it I realize it is the best thing I could have done."

* This case synopsis is based on a real mediation. The names of clients and certain details have been changed to protect the participant's identities and confidentiality.

Victim Offender Mediation Project Program Standards and Policies

The juvenile Victim Offender Mediation Project (VOMP) recruits, trains, and assigns community, volunteer mediators to facilitate face-to-face meetings between certain juvenile offenders and their victims. Participation is entirely voluntary. VOMP's long-term goals are to implement its services statewide and in both juvenile and adult systems.

I. Administration

Structure. The VOMP project is administered by a private, nonprofit corporation, the Community Dispute Resolution Center, Inc. The CDRC's mission is to provide community dispute resolution and related services in Alaska. The VOMP program is one way in which the CDRC fulfills this mission. The Board of Directors of the CDRC hires and supervises VOMP's executive director, who serves as staff to VOMP and who in turn trains and supervises all VOMP volunteers.

Standards and Policies. The CDRC Board reviews and adopts all standards and policies relating to programs that it administers, including these standards. These standards and policies govern operation of the juvenile Victim Offender Mediation Project. They are separate from but consistent with the CDRC's administrative and personnel policies. The CDRC Board can change these policies as it sees fit to best administer the VOMP program.

Community Advisory Committee. A committee of volunteers from the community advises the CDRC Board of Directors on policy and technical issues relating to VOMP. The Community Advisory Committee meets monthly and includes representatives from Victims for Justice (a private, nonprofit victim counseling and advocacy entity), McLaughlin Youth Center, the University of Alaska (Departments of Social Work and the Justice Center), the Alaska Court System, the Public Defender Agency, the Office of Public Advocacy, the Alaska Judicial Council, the local mediation

REPORT

The first victim-offender mediation/dialogue program was established in Canada in 1974. Since then, victim-offender mediation/dialogue programs have spread to the United States as well as to other countries throughout the world. Over one hundred programs are now in existence in the United States, alone.

Victim-offender mediation/dialogue programs, as their name suggests, are programs in which a criminal offender and the victim of the crime meet together in the presence of a trained mediator-facilitator. During the meeting or meetings, the victim is afforded the opportunity to seek answers to questions about the crime that may have been troubling the victim, such as why the offender chose the victim's home to burglarize. The victim is also given the chance to tell the offender about how the crime has affected the victim. It is during this portion of the meeting that the offender will often, for the first time, realize the level of emotional trauma caused by his or her criminal conduct. During the meeting, the offender also discusses his or her views about the crime, and this discussion will often culminate in an expression of remorse for the harm that the offender has caused.

The victim and offender then attempt to reach an agreement to redress the harm caused by the offender's criminal conduct. The agreement may require the offender to pay restitution to the victim, to perform work for the victim, to perform community service work, and/or to participate in programs, such as a substance abuse treatment program. Through the implementation of the agreement, which holds an offender accountable for the harm caused by his or her criminal behavior, a victim-offender mediation/dialogue program can serve as an integral component in a comprehensive corrections system, helping to avoid the high human and economic costs of unnecessary incarceration.

One of the chief benefits of victim-offender mediation/dialogue programs is that they humanize the criminal justice process. By bringing criminal offenders together face-to-face with their victims, it becomes more difficult for the offenders to rationalize their criminal behavior. As they face the individual that they have victimized, the harm caused by their crime is also no longer an abstraction but very real.

Mediation/dialogue sessions also bring a human face to the person who is otherwise abstractly and impersonally known as "the criminal." During such sessions, victims may gain a better understanding of who the offenders are and of the circumstances that may have contributed to their criminal behavior.

Research results have confirmed the many benefits of victim-offender mediation/dialogue programs. See, e.g., Mark S. Umbreit & Robert B. Coates, Victim Offender Mediation: An Analysis of Programs in Four States of the U.S. (1992); Jim Dignan, Reaching the Damage: An Evaluation of an Experimental Adult Reformation Scheme in Leicestershire, Northamptonshire (1990); Tony F. Marshall & Susan Merry, Crime and

HB

392

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. HB 392

Revision Date: _____
 Title: Native Corp Director Classification
 Sponsor: Representative Ivan
 Requestor: _____

Department: 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 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	00	00	00	00	00	00
CAPITAL EXPENDITURES	00	00	00	00	00	00
CHANGE IN REVENUES	00	00	00	00	00	00

FUND SOURCE	(Thousands of Dollars)					
1002 Federal Receipts						
1003 GF Match						
1004 General Fund						
1005 GF Program Receipts						
1006 GF MHTIA						
Other						
TOTAL	00	00	00	00	00	00

Estimate of any current year (FY 96) cost: \$ 00

POSITIONS

FULL-TIME	
PART-TIME	
TEMPORARY	

ANALYSIS: (Attach a separate page if necessary)

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

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FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO: H 092

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

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

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

FUNDING: (Thousands of Dollars)

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

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

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)

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

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Akiak, Alaska 99552
Phone: (907) 765-7526

Representative Ivan M. Ivan

SPONSOR STATEMENT - HOUSE BILL 392 am

I sponsored House Bill 392 to amend the Alaska Corporations Code to allow ANCSA village corporations to amend their articles of incorporation to authorize a classified or staggered term board of directors by a majority vote of the shares represented at a meeting of shareholders.

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

An amendment to House Bill 392 was presented and accepted, to include a provision for ANCSA village corporations that have been involuntarily dissolved by the State an opportunity to reinstate. A similar provision was provided by the Eighteenth Alaska Legislature in 1994, under HB 71.

Amended House Bill 392 allows Native village corporations that have been involuntarily dissolved by the State, the ability to be reinstated under the law, one year after the effective date of this act. According to the Division of Banking, Securities and Corporations, there remain five Native village corporations that did not take advantage of the 1994 reinstatement. Those corporations are Oscarville Native Corporation (Oscarville - Senate District T), Tulkisarmute, Inc. (Tuluksak - Senate District R), Cully Corporation (Point Lay - Senate District S), Ohog Incorporated (Russian Mission - Senate District R), and The Grouse Creek Corporation (Seward - Senate District D).

SPONSOR STATEMENT

Ahteahik • Akiak • Aleknagik • Almatuuk • Bethel • Chetanaik • Clark • Point • Dillingham • Eek • Ekwik • Ekwik • Gendreau Bay •
Kasigluk • Kupuk • Koliganek • Kungiganak • Kwethluk • Kwiglingok • Manokotak • Napakiak • Napakiak • New Stuyahok • Nonapitchuk •
Oscarville • Pitmeun • Portage Creek • Quinhagak • Toqak • Tuntutuliak • Twin Hills

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Representative Ivan M. Ivan

SPONSOR STATEMENT - HOUSE BILL 392

This bill amends the Alaska Corporations Code to allow ANCSA village corporations to amend their articles of incorporation to authorize a classified or staggered term board of directors by a majority vote of the shares represented at a meeting of shareholders.

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

HOUSE BILL NO. 392
IN THE LEGISLATURE OF THE STATE OF ALASKA
NINETEENTH LEGISLATURE - SECOND SESSION

BY REPRESENTATIVE IVAN

Introduced:
Referred:

A BILL
FOR AN ACT ENTITLED

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

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

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

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

FOSTER PEPPER & SHEFELMAN

A LAW PARTNERSHIP INCLUDING
PROFESSIONAL SERVICE CORPORATIONS

January 12, 1996

VIA FACSIMILE

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

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

Dear Tom:

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

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

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

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

601 WEST 5TH AVENUE, SUITE 500
ANCHORAGE, ALASKA 99501-2249
TEL 907-578-8411 FAX 907-578-4400

BELLEVUE, WASHINGTON PORTLAND, OREGON SEATTLE, WASHINGTON

SUPPORTING DOCUMENTS

Mr. Tom Wright
January 12, 1996
Page 2

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

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

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

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

Very truly yours,

FOSTER PEPPER & SHEFFELMAN


Glen Price

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

Calista Corporation

601 W. 5th Avenue, Suite 200 • Anchorage, AK 99501-2225 • (907) 279-5516 Facsimile (907) 272-5060

January 25, 1996

Office of the President

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

Dear Representative Ivan:

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

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

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

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

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

Sincerely,

CALISTA CORPORATION



Matthew Nicolai
President



2-596

February 1, 1996

House Finance Committee
Co-chair Rep. Mark Hanley
Co-chair Rep. Richard Foster
State Capitol
Juneau, AK 99801-1182

via fax: 465-2418
via fax: 465-3242

Dear Committee Members:

I understand that your committee is considering legislation relating to the Alaska corporations code, Chapter 10.06, that may be able to address a problem faced by one of the village corporations within our region. A proposed addition to HB 392 is attached.

The Village Corporation for Point Lay, Cully Corporation, had been involuntarily dissolved by the State and they sought to be reinstated under the provision added to AS 10.06.960(i) last year. Unfortunately, they were unable to meet the deadline in that provision. Arctic Slope Regional Corporation (ASRC) has been working with Cully Corporation representatives to solve this problem and establish a system to ensure they are kept current with biannual reporting requirements to the State. We are seeking to have the benefit provided by 960(i) extended again to permit Cully Corporation to gain its active status and good standing with the State. Language to allow this could be added to HB 392 presently before you.

Many small village corporations have difficulty with the corporate reporting requirements. Our region is not the only one with corporations that have been involuntarily dissolved. A random sampling of eight villages with corporations provided for under ANCSA found four with no record, one dissolved, and only three in good standing.

This provision would allow village corporations which have been dissolved due to their failure to meet corporate compliance requirements to be reinstated under the law. Your support for this amendment on behalf of our region and many others is appreciated.

Sincerely,

Conrad N. Bagne, House Counsel and
Chief Administrative Officer

CNB/ngk

Attachment

cc: Sen. Al Adams
Rep. Don Long

Swan Lake Corporation
Board of Directors
Resolution 95-17

A resolution to amend the Alaska Corporation Code (AS 10.26.455 (a)) ANCSA village corporations Articles of Incorporation and By Laws - Classified Boards

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

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

WHEREAS, under the Alaska Corporation's Code (AS 10.26.455 (a)), a classified board must be authorized in a corporation's Articles of Incorporation; and

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

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

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

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

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

NOW THEREFORE BE IT IS RESOLVED by the delegates to the 1995 Annual Convention of the Alaska Federation of Natives, Inc., that Aurelia Brown, as Chairperson and President of the Corporation, be and hereby is authorized and directed to contact and work in conjunction with Calista, the Alaska Federation of Natives, and the Corporation's attorney to attempt to amend the Alaska Corporations Code to provide for either (1) a lower voting percentage to amend

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

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

Aurika Brown
Aurika Brown
Chairperson

ATTEST: *Justin Ignatius Sr.*
Justin Ignatius, Sr.
Secretary

NAPASKIAK INCORPORATED

BOARD OF DIRECTORS

RESOLUTION NO. 95-05

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

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

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

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

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

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

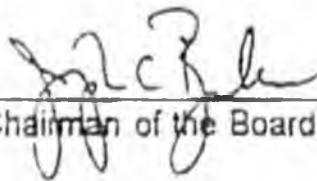
WHEREAS, it is very common for ANCSA village corporations to be unable to obtain a two-thirds attendance, in person or by proxy, at a shareholder's meeting; and

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

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

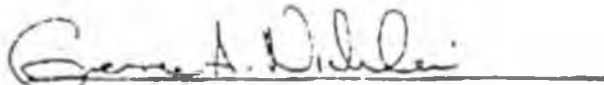
for either (i) a lower voting percentage to amend ANCSA village corporations' Articles with respect to authority for classified boards; (ii) the authority in a Board of Director's to amend a corporation's Bylaws to provide for a classified board; or (iii) some similar amendment that would assist ANCSA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

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



Chairman of the Board

ATTESTED TO:



Secretary

Sec. 10.06.960. CORPORATIONS ORGANIZED UNDER ALASKA NATIVE CLAIMS SETTLEMENT ACT.

(a) A corporation organized under 43 U.S.C. 1601 - 1629e as amended (Alaska Native Claims Settlement Act) shall be incorporated under and is subject to this chapter except

(1) each corporation shall issue without further consideration the number of shares of common stock that may be necessary to comply with the requirements of the act and all stock so issued is considered fully paid and nonassessable when issued;

(2) unless otherwise provided in the articles of incorporation, the capital

(A) is considered the consideration for the initial issuance of shares; and

(B) of a corporation organized under the act includes the

(i) land or interests in it conveyed to the corporation by the United States under the act, except that which is required to be conveyed under 43 U.S.C. 1613(c)(1), (3), and (4), entered at its fair value to the corporation upon receiving the conveyance of it, and

(ii) money, when received under 43 U.S.C. 1605 and 43 U.S.C. 1608, that is retained by the corporation and that is not immediately distributed or required to be distributed under 43 U.S.C. 1606(j).

(b) Notwithstanding the provision of AS 10.06.305 - 10.06.390, payment from the money of a corporation organized under the act that is required by the language of the act to be distributed to shareholders or to other corporations so organized is not a distribution to its shareholders as defined in AS 10.06.990.

(c) Notwithstanding the provisions of AS 10.06.546, a plan of merger, consolidation, or exchange in which each participating corporation either (1) was organized under the act, within the same one of the 12 regions of Alaska established under the act, or (2) resulted from the prior merger, consolidation, or exchange of other similarly organized corporations within the same region, is approved if it receives the affirmative vote of the holders of at least a majority of the outstanding shares of each corporation. If a class of shares of a corporation specified in this subsection is entitled to vote as a class, the plan of merger, consolidation, or exchange is approved if it receives the affirmative vote of the holders of at least a majority of the outstanding shares of each class of shares entitled to vote as a class and of the total outstanding shares. Notwithstanding AS 10.06.574 - 10.06.582, a plan of merger, consolidation, or exchange approved under this section before December 19, 1991, may not include a right of shareholders to dissent.

(d) *Repealed, sec. 21 ch 6 SLA 1993*

(e) Notwithstanding the provision of AS 10.06.502 - 10.06.510, a corporation organized under the act may amend its articles by a vote of the board of directors in order for the corporation to comply with the mandatory requirements of the act

(f) Notwithstanding the other provisions of this chapter, a corporation organized under the act is governed by the act to the extent the act is inconsistent with this chapter, and the corporation may take any action, including amendment of its articles, authorized by the act, and the action is considered to be approved and adopted if approved under the act. An amendment approved under the act and delivered to the commissioner under AS 10.06.512 shall be filed by the commissioner under AS 10.06.9.0, and a certificate of amendment shall be issued.

(g) Notwithstanding AS 10.06.358, if there are no retained earnings, the directors of a corporation organized under the act may declare and pay distributions in cash or property out of its net profits for the fiscal year in which the distribution is declared and for the preceding fiscal

year, except when the corporation is insolvent under AS 10.06.360. For the purposes of this subsection, a corporation's debts include the amounts it is required to distribute under 43 U.S.C. 1606(i) and 43 U.S.C. 1606(j). The directors may determine the net profits derived from the exploitation or liquidation of wasting assets without consideration of the depletion of those assets resulting from lapse of time, consumption, liquidation, or exploitation, of the assets, and a distribution declared from those net profits shall be described, concurrently with distribution of the net profits to shareholders, as a distribution from wasting assets without consideration of the depletion of the assets. In this subsection, "wasting assets" means timber resources and subsurface estates.

(h) Notwithstanding AS 10.06.358, the directors of a corporation organized under the act may, from time to time, distribute to its shareholders in partial liquidation a portion of the corporation's assets out of capital, in cash or property, except that a distribution

(1) may not be made at a time when the corporation is insolvent under AS 10.06.360;

(2) may not be made unless the articles of incorporation authorize the board to make the distribution or the distribution is authorized by the affirmative vote of the holders of at least two-thirds of the outstanding shares;

(3) when made, shall be identified as a distribution in partial liquidation and the amount per share shall be disclosed to the shareholders concurrently with the distribution.

(i) Notwithstanding AS 10.06.633(e), a corporation that is organized as a Native corporation under the act, that has been involuntarily dissolved by the commissioner under AS 10.06.633, and that has failed to apply for reinstatement during the period established under AS 10.06.633(e), may be reinstated under AS 10.06.633(e) within one year of June 29, 1994. The reinstated corporation and its shareholders have all of the rights, privileges, liabilities, and obligations that would have applied to them if the corporation had not been dissolved, and all corporate and shareholder actions taken during the period of dissolution are considered to be as valid as if dissolution had not occurred.

(j) If a corporation is formed before June 29, 1994 to replace a Native corporation that has been involuntarily dissolved under AS 10.06.633, and if the replacing corporation has the same name as the dissolved corporation, the replacing corporation and its shareholders succeed, upon payment of any amounts that would have been required for the reinstatement of the dissolved corporation under AS 10.06.633(e), to all of the rights, privileges, liabilities, and obligations that would have applied to the dissolved corporation and its shareholders if the dissolved corporation had been reinstated under AS 10.06.633(e).

(k) In this section,

(1) "act" means 43 U.S.C. 1601 - 1641 (Alaska Native Claims Settlement Act),

(2) "Native corporation" has the meaning given in 43 U.S.C. 1602(m)

History -

(sec. 1 ch 166 SLA 1988; am sec. 53, 54 ch 82 SLA 1989; am sec. 21 ch 6 SLA 1993; am sec. 1, 2 ch 120 SLA 1994)

Revisors Notes -

In 1989, the word "and" was inserted preceding "the corporation may take" in the first sentence of subsection (f)

Subsections (i) and (j) were enacted as (j) and (k) respectively. Relettered in 1994, at which time former (i) was relettered as (k)

Cross References -

For other provisions relating to corporations organized under the Alaska Native Claims Settlement Act, see the editor's note under AS 10.06.504.

Amendment Notes -

The 1989 amendment, effective July 1, 1989, substituted "43 U.S.C. 1601 - 1629e as amended" for "43 U.S.C. 1601 - 1629a" near the beginning of subsection (a); substituted "the act" for "43 U.S.C. 1601 - 1629a" throughout subsections (a) - (d); and added subsections (e) - (i).

The 1993 amendment, effective April 14, 1993, repealed subsection (d).

The 1994 amendment, effective June 29, 1994, added present subsections (i) and (j), added the paragraph (k)(1) designation and made a section reference substitution therein, and added paragraph (k)(2) and made a related stylistic change.

Sec. 10.06.455. CLASSIFICATION OF DIRECTORS.

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

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

History -

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

Cross References -

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

Amendment Notes -

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

Sec. 10.06.453. NUMBER AND ELECTION OF DIRECTORS.

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

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

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

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

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

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

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

History -

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

Amendment Notes -

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

Editors Notes -

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

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

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

Collateral Refs -

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

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

Sec. 10.06.504. PROCEDURE TO AMEND ARTICLES OF INCORPORATION.

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

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

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

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

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

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

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

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

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

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

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

History -

(sec. 1 ch 166 SLA 1988)

Editors Notes -

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

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

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

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

liability of a director to the corporation or its stockholders for monetary damages under AS 10 06 210(1)(N) may be adopted by the affirmative vote of a majority of the shares represented at the regular or special meeting at which a quorum is present in person or by proxy."

LEGAL SERVICES

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

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

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

MEMORANDUM

January 30, 1996

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

TO: Representative Ivan Ivan

FROM: *TB*
Theresa Bannister
Legislative Counsel

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

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

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

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

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

Representative Ivan Ivan

January 30, 1996

Page 2

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

If I may be of further assistance, please advise.

TLB:klb

96-047.klb

telnet