

NATIVE CORPORATION MERGERS

Stockholder Votes May Figure in Corp.s' Merger Decisions

By JEFF RICHARDSON

A bill allowing the merger of Native corporations to be approved by a majority of stockholders at a meeting rather than a majority of all affected stockholders, has been introduced in the Alaska State Senate.

The bill was introduced by Sen. Frank Ferguson, (D-Kotzebue) at the request of the NANA Regional Corp. NANA has been eyeing the idea of merging with all or some of its village corporations. The purpose behind such a merger, according to Ferguson, would be to avoid duplication and pool financial resources.

Although the Native claims settlement act prohibits the transfer of Native-owned stock until 1991, which would have to be done in the event of a merger, U.S. Sen. Ted Stevens has introduced legislation in Congress which would allow transfer of stock before that date.

Under the bill presented by Sen. Ferguson, a merger of Native corporations would be approved if it receives the affirmative votes of the holders of two-thirds of the shares of each corporation represented at the meeting at

which the vote is taken.

As state law now applies to corporations, a merger plan must receive the approval of the holders of two-thirds of all outstanding shares, whether they are represented at the meeting or not.

Ferguson's bill would apply only to those corporations formed under the land claims act.

Since Alaska law requires only one-third of the outstanding shares of the corporation to be represented at a meeting for a quorum, it is conceivable that holders of less than one-third of all shares of a regional corporation would approve a plan that affects all shareholders.

However, when asked if shareholder participation in a merger vote would be effectively diminished by the change in law, Ferguson said corporate by-laws provide for the use of proxy votes by shareholders who are unable to attend the meeting. He said NANA Corp. would provide ample notice to shareholders so they could exercise their right to cast what is essentially an absentee vote.

Ferguson's bill was originally referred to the Senate Commerce Committee. It is now in the Rules Committee where it will undergo further consideration.

In the event that a merger of a

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regional and village corporation is approved, here is probably what would happen:

—The village corporation would cease to exist and its assets would be transferred to the regional corporation.

—In exchange for stock in the defunct corporation, a stockholder could acquire stock in the surviving corporation.

—If a person did not want to take stock in the surviving corporation, he could demand cash payment for the value of the stock he held in the defunct corporation, provided he followed certain procedures set forth in the Alaska Statutes. He would have to submit written notice to the corporation that he was opposed to the merger before the vote was taken. He then would not vote at all or vote against the merger. Within ten days of the time the vote was taken, he would have to make written demand for cash payment for the value of his shares.

—Whether stock is transferred or cashed in, its value must be determined by a tedious process. In this case, the value would be based on future payments from the Alaska Native Fund, value of Native land, present resource development, and projections of future development.