

**HOUSE BILL NO. 251**

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES MOSES, MacLean, Williams

Introduced: 3/15/95

Referred: Labor and Commerce

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to Native corporations."

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

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

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

7 (1) A director who votes for or assents to a distribution to the  
8 corporation's shareholders contrary to the provisions of AS 10.06.358, 10.06.360,  
9 10.06.363, or 10.06.365 or contrary to a restriction in the articles of incorporation, is  
10 liable to the corporation, jointly and severally with all other directors voting for or  
11 assenting to the distribution, for the amount of the distribution that is paid or the value  
12 of the assets that are distributed in excess of the amount of the distribution that could  
13 have been paid or distributed without violation of AS 10.06.405 - 10.06.438,  
14 10.06.960(1), or the restrictions of the articles of incorporation.

15 (2) A director who votes for or assents to a distribution to the

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

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

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

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

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

31 (n) The provisions of AS 10.06.460 do not apply to a corporation organized

1 under the act, if the corporation has adopted articles that provide for classification of  
2 directors under AS 10.06.455.

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

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

8 (b) The administrator may issue an order against an applicant, registered  
9 person, or other person who knowingly or intentionally violates this chapter, [OR] a  
10 regulation or order of the administrator under this chapter, or AS 10.06.960(m),  
11 imposing a civil penalty of not more than \$2,500 for a single violation, or not more  
12 than \$25,000 for multiple violations, in a single proceeding or a series of related  
13 proceedings.

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

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

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

22 (e) If the administrator is informed that a person has engaged or is about to  
23 engage in an act or practice in violation of AS 10.06.960(m), AS 45.55.139, or  
24 45.55.160, and if the act or practice relates to a regular or special meeting of the  
25 shareholders of a Native corporation, the administrator shall

26 (1) issue an order

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

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

31 (2) bring an action in the superior court to enjoin the acts or practice,

1 to void a proxy obtained in violation of AS 10.06.960(m), AS 45.55.139, or 45.55.160,  
2 or to enforce compliance with AS 10.06.960(m), AS 45.55.139, or 45.55.160, and,  
3 upon a proper showing, the appropriate remedy shall be granted.

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

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

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

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

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

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

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