

Original sponsor: Commerce Committee

Offered: 3/24/76  
Referred: Rules

1 IN THE SENATE

BY THE COMMERCE COMMITTEE

2 CS FOR SENATE BILL NO. 443

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 NINTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to disclosure requirements in takeover  
7 bids."

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

9 \* Section 1. AS 45 is amended by adding a new chapter to read:

10 CHAPTER 57. TAKEOVER BID DISCLOSURE ACT.

11 Sec. 45.57.010. PROVISIONS OF TAKEOVER BIDS. The following pro-  
12 visions apply to every takeover bid:

13 (1) The period of time within which securities may be ten-  
14 dered by an offeree under a takeover bid shall not be less than 21 days  
15 nor more than 35 days from the date copies of the takeover bid are first  
16 published or sent or given to offerees.

17 (2) Securities deposited under a takeover bid may be with-  
18 drawn by an offeree or his attorney-in-fact by demand in writing on the  
19 offeror or the depository at any time within 21 days from the date  
20 copies of the takeover bid are first published or sent or given to  
21 offerees.

22 (3) When a takeover bid is made for less than all the shares  
23 or other units of a class and when a greater number of shares or other  
24 units is deposited under it than the offeror is bound or willing to take  
25 up and pay for, the shares or other units taken up by the offeror shall  
26 be taken up as nearly as may be pro rata, disregarding fractions,  
27 according to the number of shares or other units deposited.

28 (4) When an offeror varies the terms of a takeover bid before  
29 the expiration of it by increasing the consideration offered, the

1 offeror shall pay the increased consideration to each offeree whose  
2 securities are taken up even if they have been taken up and paid for  
3 before the variation of the takeover bid.

4 (5) When a takeover bid is sent by mail to offerees, it shall  
5 be accompanied by a copy of the statement filed with the department  
6 under sec. 20 of this chapter.

7 Sec. 45.57.020. DISCLOSURE. (a) No offeror may make a takeover  
8 bid unless at least 20 days before it he files with the department and  
9 with the registered agent of the offeree company a statement containing  
10 all the information required by (c) of this section and either

11 (1) within 10 days following the filing no hearing has been  
12 ordered by the department or requested by the offeree company; or

13 (2) a hearing has been ordered within that time and upon the  
14 hearing the department has adjudicated that the offeror proposed to make  
15 fair, full and effective disclosure to offerees of all information  
16 material to a decision to accept or reject the offer.

17 (b) A hearing shall begin within 20 days of the date of filing of  
18 the statement and adjudication shall be made within 30 days of the  
19 filing unless extended by the department for the convenience of the  
20 parties or protection of the offerees.

21 (c) The statement to be filed with the department under (a) of  
22 this section shall include the following information and the additional  
23 information that the department may require as necessary in the public  
24 interest or for the protection of offerees:

25 (1) the name, address and business experience of the offeror  
26 and each associate of the offeror;

27 (2) the terms and conditions of the takeover bid, which shall  
28 include the applicable provisions of sec. 10 of this chapter;

29 (3) the source and amount of the funds or other consideration

1 used or to be used in making the takeover bid, and if any part of those  
2 funds or consideration is represented or is to be represented by funds  
3 or other consideration borrowed or otherwise obtained for the purpose of  
4 making the bid, a description of the transaction and the names of the  
5 parties to it, except that if a source of funds is a loan made in the  
6 ordinary course of business by a bank or financial institution cus-  
7 tomarily engaged in the business of making loans, it will be sufficient  
8 to so state;

9 (4) plans or proposals that the offeror may have to liquidate  
10 the offeree company, to sell its assets to or merge it with any other  
11 person, or to make any other material change in its business or cor-  
12 porate structure;

13 (5) the number of shares or other units of securities of each  
14 class presently owned by the offeror and each associate of the offeror;

15 (6) information as to any contracts, arrangements, or under-  
16 standings with a person with respect to securities of the offeree  
17 company, including but not limited to transfer of any of the securities,  
18 joint ventures, loan or option arrangements, puts or calls, guaranties  
19 of loans, guaranties against loss or guaranties of profits, division of  
20 losses or profits, or the giving or withholding of proxies, naming the  
21 persons with whom those contracts, arrangements, or understandings have  
22 been entered into, and giving the details of them;

23 (7) complete information on the organization and operations  
24 of the offeror, including without limitation the year of organization,  
25 form of organization, jurisdiction in which it is organized, a descrip-  
26 tion of each class of the offeror's capital stock and of its long-term  
27 debt, financial statements for the current period and for the three most  
28 recent annual accounting periods, a brief description of the location  
29 and general character of the principal physical properties of the

1 offeror and its subsidiaries, a description of pending legal proceedings  
2 other than routine litigation to which the offeror or any of its sub-  
3 sidiaries is a party or of which any of their property is the subject, a  
4 brief description of the business done and projected by the offeror and  
5 its subsidiaries and the general development of that business over the  
6 past five years, the names of all directors and executive officers  
7 together with biographical summaries of each for the preceding five  
8 years to date, the approximate amount of any material interest, direct  
9 or indirect, of any of the directors or officers in a material trans-  
10 action during the past three years or in a proposed material transaction  
11 to which the offeror or any of its subsidiaries was or is to be a party,  
12 and complete information concerning all inducements to officers and  
13 directors of the offeree company which are not made available to all  
14 security holders.

15 (d) The department may within 10 days of the filing order a hear-  
16 ing to determine whether fair, full and effective disclosure is pro-  
17 posed, if in the opinion of the department cause for a hearing exists.  
18 The offeree company may within 10 days of the filing request a hearing  
19 and the department shall upon receipt of the request order a hearing.

20 (e) All written soliciting material used by the offeror in con-  
21 nection with the takeover bid shall be filed with the department and the  
22 registered agent of the offeree company not later than three days before  
23 the time copies of the material are first published or sent or given to  
24 offerees.

25 (f) If, under an arrangement or understanding with the offeror,  
26 any persons are to be elected or designated as directors of the offeree  
27 company, otherwise than at a meeting of security holders, and the  
28 persons so elected or designated will constitute a majority of the  
29 directors of the offeree company, then, before the time that person

1 takes office as a director, the offeror shall file with the department,  
2 and transmit to all holders of record of securities of the offeree  
3 company who would be entitled to vote at a meeting for election of  
4 directors, information substantially equivalent to the information which  
5 would be required by sec. 14(a) or 14(c) of the Securities Exchange Act  
6 of 1934 to be transmitted if the person was a nominee for election as a  
7 director at a meeting of the security holders.

8 Sec. 45.57.030. RECOMMENDATIONS TO ACCEPT OR REJECT. A written  
9 solicitation or recommendation to offerees, other than by the offeror,  
10 to accept or reject a takeover bid shall be filed with the department  
11 not later than the time copies of the solicitation or recommendation are  
12 first published or sent or given to offerees.

13 Sec. 45.57.040. DECEPTIVE PRACTICES. It is unlawful for a person  
14 to make an untrue statement of a material fact or omit to state a  
15 material fact necessary in order to make the statements made, in the  
16 light of the circumstances under which they are made, not misleading, or  
17 to engage in a fraudulent, deceptive, or manipulative act or practice,  
18 in connection with a takeover bid, or a solicitation of offerees in  
19 opposition to or in favor of a takeover bid.

20 Sec. 45.57.050. INVESTIGATIONS AND SUBPOENAS. (a) The department  
21 in its discretion may

22 (1) make public or private investigations inside or outside  
23 this state as it considers necessary to determine whether a person has  
24 violated or is about to violate a provision of this chapter or an order  
25 under this chapter, or to aid in the enforcement of this chapter or in  
26 the prescribing of forms under this chapter;

27 (2) require or permit a person to file a statement in writing  
28 under oath or otherwise as the department determines, as to all the  
29 facts and circumstances concerning the matter to be investigated; and

1 (3) publish information concerning a violation of this  
2 chapter or an order under this chapter.

3 (b) For the purpose of an investigation or proceeding under this  
4 chapter, the department or an officer designated by it may administer  
5 oaths and affirmations, subpoena witnesses, compel their attendance,  
6 take evidence, and require the production of books, papers, correspon-  
7 dence, memoranda, agreements, or other documents or records which the  
8 department considers relevant or material to the inquiry.

9 (c) In case of contumacy by, or refusal to obey a subpoena issued  
10 to a person, the superior court, upon application by the department, may  
11 issue to the person an order requiring him to appear before the depart-  
12 ment, or the officer designated by it, to produce documentary evidence  
13 if so ordered or to give evidence touching the matter under investiga-  
14 tion or in question. Failure to obey the order of the court may be  
15 punished by the court as a contempt of court.

16 (d) No person is excused from attending and testifying or from  
17 producing a document or record before the department, or in obedience to  
18 the subpoena of the department or officer designated by it, or in a  
19 proceeding instituted by the department, on the ground that the testi-  
20 mony or evidence required of him may tend to incriminate him or subject  
21 him to a penalty or forfeiture. However, no individual may be prose-  
22 cuted or subjected to a penalty or forfeiture for or on account of a  
23 transaction, matter, or thing concerning which he is compelled, after  
24 claiming his privilege against self-incrimination, to testify or produce  
25 evidence, documentary or otherwise, except that the individual testi-  
26 fying is not exempt from prosecution and punishment for perjury or  
27 contempt committed in testifying.

28 Sec. 45.57.060. INJUNCTIONS. When it appears to the department  
29 that a person has engaged or is about to engage in an act or practice in

1 violation of a provision of this chapter or an order under this chapter,  
2 it may bring an action in the superior court to enjoin the acts or  
3 practices and to enforce compliance with this chapter or order under  
4 this chapter. Upon a proper showing, the appropriate remedy shall be  
5 granted. The court may not require the department to post a bond.

6 Sec. 45.57.070. CRIMINAL PENALTIES. A person who wilfully vio-  
7 lates a provision of this chapter, upon conviction, is punishable by a  
8 fine of not less than \$100 nor more than \$5,000, or by imprisonment for  
9 not less than 30 days nor more than three years, or by both. However,  
10 no person may be imprisoned for the violation of an order if he proves  
11 that he had no knowledge of the order. No indictment or information may  
12 be returned under this chapter more than two years after the alleged  
13 violation.

14 Sec. 45.57.080. CIVIL LIABILITIES. (a) An offeror who (1) makes  
15 a takeover bid which does not comply with the provisions of this chapter  
16 or (2) makes a takeover bid by means of an untrue statement of a mate-  
17 rial fact or an omission to state a material fact necessary in order to  
18 make the statement made, in the light of the circumstances under which  
19 it was made, not misleading (the offeree not knowing of the untruth or  
20 omission), and who does not sustain the burden of proof that he did not  
21 know, and in the exercise of reasonable care could not have known, of  
22 the untruth or omission, is liable to any offeree whose shares are taken  
23 up under the takeover bid who may bring civil action (A) to recover the  
24 shares, together with all dividends received, costs and reasonable  
25 attorney fees, upon the tender of the consideration received from the  
26 offeror, or (B) for the substantial equivalent in damages if the offeror  
27 no longer owns the shares.

28 (b) Every person who materially participates or aids in a takeover  
29 bid made by an offeror liable under (a) of this section, or who

1 directly or indirectly controls an offeror who is liable, is also liable  
2 jointly and severally with and to the same extent as the offeror unless  
3 the person who so participates, aids or controls, sustains the burden of  
4 proof that he did not know, and in the exercise of reasonable care could  
5 not have known, of the existence of the facts by reason of which the  
6 liability is alleged to exist. There shall be contribution as in cases  
7 of contract among the several persons liable.

8 (c) A tender specified in this section may be made at any time  
9 before entry of judgment.

10 (d) No person may bring action under this section unless brought  
11 within two years after the transaction upon which it is based. If a  
12 person liable under this section makes a written offer, before suit is  
13 brought, to return the shares taken up under the takeover bid, together  
14 with all dividends received, upon the tender of the consideration  
15 received from the offeror, or to pay damages if the offeror no longer  
16 owns the shares, no person may maintain a suit under this section unless  
17 he rejected the offer in writing within 30 days of its receipt.

18 (e) Any condition, stipulation or provision binding an offeree to  
19 waive compliance with a provision of this chapter or a regulation issued  
20 under it is void.

21 (f) The rights and remedies provided by this chapter shall be in  
22 addition to any and all other rights and remedies that may exist at law  
23 or in equity.

24 Sec. 45.57.090. CONSENT TO SERVICE OF PROCESS. A nonresident  
25 offeror, except a foreign corporation which has complied with AS 10.05.-  
26 597 - 10.05.696, who makes a takeover bid is considered to have ap-  
27 pointed the commissioner of commerce and economic development as his  
28 agent upon whom may be served, in any matter arising under this chapter,  
29 any process, notice, order or demand except one issued by the depart-

1 ment. Service may be made on the commissioner or any of his staff at  
2 his office. He shall send it by registered or certified mail addressed  
3 to the offeror at his latest address on file and keep a record of it. A  
4 process, notice, order or demand issued by the department shall be  
5 served by being mailed by the commissioner or any of his staff by  
6 registered or certified mail addressed to the offeror at his latest  
7 address on file.

8 Sec. 45.57.100. REGULATIONS. The department may make and adopt  
9 regulations, and adopt forms, that are necessary or desirable to carry  
10 out the provisions of this chapter.

11 Sec. 45.57.110. DEFINITIONS. As used in this chapter, unless the  
12 context requires otherwise,

13 (1) "department" means the Department of Commerce and  
14 Economic Development;

15 (2) "exempt offer" means, with respect to any class of equity  
16 securities of the offeree company,

17 (A) an isolated offer to purchase equity securities from  
18 individual shareholders and not made to shareholders generally;

19 (B) an offer made by an issuer to purchase its own  
20 equity securities or equity securities of a subsidiary at least  
21 two-thirds of the voting stock of which is owned beneficially by  
22 the issuer;

23 (C) an offer to purchase equity securities to be ef-  
24 fected by a registered broker-dealer on a stock exchange or in the  
25 over-the-counter market if the broker performs only the customary  
26 broker's function, and receives no more than the customary broker's  
27 commissions, and neither the principal nor the broker solicits or  
28 arranges for the solicitation of orders to sell equity securities  
29 of the offeree company;

1 (D) an offer to purchase equity securities made to all  
2 holders of the securities if the number of such holders does not  
3 exceed 100 at the time of the offer;

4 (E) an offer which the board of directors of the offeree  
5 company recommends to the security holders of the company if the  
6 terms of the offer, including any inducements to officers or  
7 directors which are not available to all security holders, have  
8 been furnished to security holders;

9 (3) "offeree" means a person, whether a security holder of  
10 record or a beneficial owner, to whom a takeover bid is made;

11 (4) "offeree company" means a corporation incorporated under  
12 the laws of Alaska or a corporation which has its principal office and  
13 substantial assets located in Alaska, whose equity securities are the  
14 subject of a takeover bid;

15 (5) "offeror" means a person who makes a takeover bid, and  
16 includes two or more persons

17 (A) whose takeover bids are made jointly or in concert,  
18 or

19 (B) who intend to exercise jointly or in concert any  
20 voting rights attaching to the equity securities for which a  
21 takeover bid is made;

22 (6) "offeror's presently owned equity securities" means, with  
23 respect to any class of securities of an offeree company, the aggregate  
24 number of shares or other units which, on the date of a takeover bid,  
25 are beneficially owned or subject to a right of acquisition directly or  
26 indirectly by the offeror or an associate of the offeror;

27 (7) "associate of the offeror" means

28 (A) a corporation or other organization of which the  
29 offeror is an officer, director or partner, or is, directly or

1 indirectly, the beneficial owner of 10 per cent or more of any  
2 class of equity securities;

3 (B) a person who is, directly or indirectly, the bene-  
4 ficial owner of 10 per cent or more of any class of equity securi-  
5 ties of the offeror;

6 (C) a trust or other estate in which the offeror has a  
7 substantial beneficial interest or as to which the offeror serves  
8 as trustee or in a similar fiduciary capacity;

9 (D) a relative or spouse of the offeror or a relative of  
10 the spouse, who has the same home as the offeror;

11 (E) a person directly or indirectly controlling, con-  
12 trolled by, or under common control with, the offeror;

13 (8) "takeover bid" means an offer, other than an exempt  
14 offer;

15 (9) "offer" means an offer made by any person directly or  
16 through an agent by advertisement or any other written or oral com-  
17 munication to offerees to purchase the number of shares or other units  
18 of any class of equity security of the offeree company that, together  
19 with the offeror's presently owned shares, will in the aggregate exceed  
20 five per cent of the outstanding shares of that class;

21 (10) "Securities Exchange Act of 1934" means the federal  
22 statutes of that name as in effect or subsequently amended.

23 Sec. 45.57.120. SHORT TITLE. This chapter may be cited as the  
24 Takeover Bid Disclosure Act.  
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