

Original sponsor: Commerce Committee

Offered: 5/11/76
Referred: Rules

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 HOUSE 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 or omit or cause to be made or omitted, in a document filed or
15 in a proceeding under this chapter a statement which is, at the time and
16 in the light of the circumstances under which it is made, false or
17 misleading in a material respect. It is unlawful for a person to engage
18 in a fraudulent, deceptive, or manipulative act or practice, in connec-
19 tion with a takeover bid, or a solicitation of offerees in opposition to
20 or in favor of a takeover bid.

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

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

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

1 gated; and

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

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

10 Sec. 45.57.060. INJUNCTIONS. When it appears to the department
11 that a person has engaged or is about to engage in an act or practice in
12 violation of a provision of this chapter or an order under this chapter,
13 it may bring an action in the superior court to enjoin the acts or
14 practices and to enforce compliance with this chapter or order under
15 this chapter. The court may not require the department to post a bond.

16 Sec. 45.57.070. CRIMINAL PENALTIES. A person who wilfully vio-
17 lates a provision of this chapter, upon conviction, is punishable by a
18 fine of not more than \$5,000, or by imprisonment for not more than three
19 years, or by both. However, no person may be imprisoned for the viola-
20 tion of an order if he proves that he had no knowledge of the order. No
21 indictment or information may be returned under this chapter more than
22 five years after the alleged violation.

23 Sec. 45.57.080. CIVIL LIABILITIES. (a) An offeror who (1) makes
24 a takeover bid which does not comply with the provisions of this chapter
25 or (2) makes a takeover bid by means of a statement which is, at the
26 time and in the light of the circumstances under which it is made, false
27 or misleading in a material respect, and who does not sustain the burden
28 of proof that he did not know, and in the exercise of reasonable care
29 could not have known, of the untruth or omission, is liable to any

1 offeree whose shares are taken up under the takeover bid. An offeree
2 may bring civil action (1) to recover the shares, together with all divi-
3 dends received, costs and reasonable attorney fees, upon the tender of
4 the consideration received from the offeror, or (2) for the substantial
5 equivalent in damages if the offeror no longer owns the shares.

6 (b) Every person who materially participates or aids in a takeover
7 bid made by an offeror liable under (a) of this section, or who
8 directly or indirectly controls an offeror who is liable, is also liable
9 jointly and severally with and to the same extent as the offeror unless
10 the person who so participates, aids or controls, sustains the burden of
11 proof that he did not know, and in the exercise of reasonable care could
12 not have known, of the existence of the facts by reason of which the
13 liability is alleged to exist. There shall be contribution as in cases
14 of contract among the several persons liable.

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

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

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

28 (f) The rights and remedies provided by this chapter shall be in
29 addition to any and all other rights and remedies that may exist at law

1 or in equity.

2 Sec. 45.57.090. CONSENT TO SERVICE OF PROCESS. A nonresident
3 offeror, except a foreign corporation which has complied with AS 10.05.-
4 597 - 10.05.696, who makes a takeover bid affecting an offeree company
5 is considered to have appointed the commissioner of commerce and economic
6 development as his agent upon whom may be served, in any matter arising
7 under this chapter, any process, notice, order or demand except one
8 issued by the department. Service may be made on the commissioner or
9 any of his staff at his office. He shall send it by registered or
10 certified mail addressed to the offeror at his latest address on file
11 and keep a record of it. A process, notice, order or demand issued by
12 the department shall be served by being mailed by the commissioner or
13 any of his staff by registered or certified mail addressed to the
14 offeror at his latest address on file.

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

18 Sec. 45.57.110. DEFINITIONS. As used in this chapter, unless the
19 context requires otherwise,

20 (1) "department" means the Department of Commerce and
21 Economic Development;

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

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

26 (B) an offer made by an issuer to purchase its own
27 equity securities or equity securities of a subsidiary at least
28 two-thirds of the voting stock of which is owned beneficially by
29 the issuer;

1 (C) an offer to purchase equity securities to be ef-
2 fected by a registered broker-dealer on a stock exchange or in the
3 over-the-counter market if the broker performs only the customary
4 broker's function, and receives no more than the customary broker's
5 commissions, and neither the principal nor the broker solicits or
6 arranges for the solicitation of orders to sell equity securities
7 of the offeree company;

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

11 (E) an offer which the board of directors of the offeree
12 company recommends to the security holders of the company if the
13 terms of the offer, including any inducements to officers or
14 directors which are not available to all security holders, have
15 been furnished to security holders;

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

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

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

24 (A) whose takeover bids are made jointly or in concert,
25 or

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

29 (6) "offeror's presently owned equity securities" means, with

1 respect to any class of securities of an offeree company, the aggregate
2 number of shares or other units which, on the date of a takeover bid,
3 are beneficially owned or subject to a right of acquisition directly or
4 indirectly by the offeror or an associate of the offeror;

5 (7) "associate of the offeror" means

6 (A) a corporation or other organization of which the
7 offeror is an officer, director or partner, or is, directly or
8 indirectly, the beneficial owner of 10 per cent or more of any
9 class of equity securities;

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

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

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

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

20 (8) "takeover bid" means an offer, other than an exempt
21 offer;

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

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

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