

HB 794

House Bill 794 seeks to encourage public participation in two banking institutions, mutual savings banks and savings and loan associations. These institutions were created to promote thrift among people of small means.

Mutual savings banks are non-stock, non-profit banks, and thus are not taxed as banks. Presently, voting rights are granted only to their small group of corporators, who do not directly represent the depositors. This bill would extend voting privileges to the depositors, who share proportionately in earnings after expenses and allocations to reserves and surpluses by the trustees. Just as shareholders may vote in corporations, depositors could vote in mutual savings banks on matters affecting their investments.

The original reason for not extending voting to depositors was since the class of depositors was the poor, they could not be expected to be knowledgeable for intelligent voting. This condescending attitude toward the poor seems inconsistent with our contemporary Alaskan values, which encourage public participation by all citizens. Opening up voting would give the consumer protection for his investments. This is in the true spirit of the purpose of mutual savings banks.

Section 4 intends to accomplish the same - namely, public participation, - for savings and loan associations by denying proxies. Proxies in a membership institution defeats the social purpose of such an institution by transferring power to the hands of a few powerful people. It would be beneficial to keep an institution in reach of the people for which it was intended to serve. Those who want corporate structures have the alternative of commercial banks and trust companies.

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

DIVISION OF BANKING, SECURITIES, SMALL LOANS & CORPORATIONS

POUCH D — JUNEAU 99811

February 25, 1976

Honorable Bob Bradley
Chairman
House Commerce Committee
Pouch V
Juneau, Alaska 99811

Dear Bob:

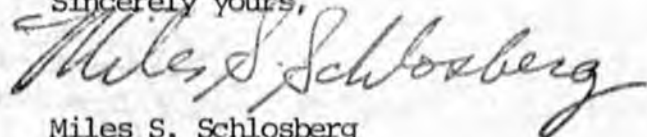
Re: HB 794 - Proxy Voting

I will not be able to attend the hearing on HB 794, which is scheduled for Wednesday evening, February 25. I would like to present my comments in writing since I cannot express them verbally before the Committee on the 25th. Therefore, could you please read this to the Committee at the hearing.

I oppose this bill because:

1. The effect of this bill is to permit a few large stockholders to dominate their banks by effectively making it unlikely that most small shareholders will vote, since they will not attend the meetings.
2. The bill would create a greater concentration of banking control because the small shareholders would be less likely to participate.
3. The bill would cause banks to be further immune from the sensibilities and sensitivities of the community which is represented to some extent by their widely dispersed shareholders.

Sincerely yours,



Miles S. Schlosberg
Director

STATE OF ALASKA THE LEGISLATURE

POUCH V - STATE CAPITOL
JUNEAU, ALASKA 99801

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 25, 1976

SUBJECT: Constitutionality of State Prohibition on Proxy
Voting as Applied to State Chartered Financial
Institutions - WO #2251

TO: Representative Bob Bradley

FROM: John Siemers, Legislative Intern *JS*

Under the Securities and Exchange Act of 1934 (15 U.S.C. 78a et. seq.) the Securities and Exchange Commission is authorized to adopt regulations governing solicitation of proxies (15 U.S.C. 78n). The Commission's authority extends only to securities which are required to be registered under the '34 Act. Under section 12(b) of the Act (15 U.S.C. 781(b)) securities listed on a national exchange must be registered with the Commission. Under 12(g) of the Act securities in a corporation whose assets exceed \$1,000,000 and whose stockholders number 500 or more persons must also be registered. Voluntary registration is also recognized under 12(g) for securities which are not required to be registered under the Act.

However, under 12(g)(2)(C) any security, other than a security evidencing nonwithdrawable capital, issued by a savings and loan association, cooperative bank, homestead association or similar institution, which is supervised and examined under state or federal law need not be registered under the Act (and, indeed, the wording of subsection (g) appears to be such that voluntary registration is not permitted either).

Therefore, for purposes of the proxy regulations of the '34 Act, there are two classes of securities. One class consists of securities not subject to registration. The other class consists of (a) the securities of corporations whose stock is listed on a national exchange or, (b) whose assets exceed \$1,000,000 and whose shareholders number at least 500 or more. A ban on proxy voting when applied to a state chartered bank which falls under this classification might raise questions as to federal supremacy in the area of proxy regulations. It might be argued that Congress in adopting a uniform system of proxy regulations applicable to a certain

class of securities also intended to develop a uniform system of shareholder voting which contemplates the existence of proxy voting. As such, a state law forbidding the use of proxies where such a ban is applied to securities registered under the '34 Act might represent state interference in a regulatory field over which Congress has chosen to exercise exclusive jurisdiction. This argument seems rather tenuous, since federal regulations of proxy solicitations and voting are, when applied to state chartered corporation, supplemented by the state's law of agency. Thus it would appear that Congress has not preempted the field, and that Congress has not created a federally protected right to vote by proxy. Federal regulations affecting proxies simply establish procedures by which proxies may be solicited (see 12 CFR 11.5, 206.5 and 335.5).

If securities registered under the '34 Act can be subjected to a state ban on proxy voting, exempted securities would also be subject to such a ban without interfering with federal supremacy. This does not mean, however, that such a ban would be immune from any constitutional challenge. Depending upon how the courts interpret the policy objectives of the bill, it may be struck down either under the equal protection clause or the commerce clause of the United States Constitution. If the court perceives the bill as an attempt to achieve a legitimate policy objective (e.g., to encourage shareholder participation in management of the corporation and to subject management to more careful scrutiny by stockholders) then the ban would probably be upheld. If, however, the courts look deeper into the intent of the bill, they could possibly conclude that the ban represents an attempt to eliminate out of state shareholders in Alaska's financial institutions. If the court reached this conclusion, it would undoubtedly declare the ban an unconstitutional discrimination against interstate commerce or possibly a denial of equal protection.

JS:bh