

H B

325

COMMITTEE REPORT

HOUSE

3/12/81

FURTHER:

(5)

Date: _____

Mr. Speaker:

The Committee on LABOR & COMMERCE has had HB 325

"An Act relating to orders under the Alaska Securities Act of 1959."

under consideration and reports it back as follows:

do pass do not pass

do pass with attached amendments(s)

replace with CS for HB 325 same title
 new title

and recommends _____

AND attaches a "Letter of Intent" New Fiscal Note

reports it back without recommendation

referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

David ...

George ...

CHAIRMAN

by state law. Under 45 - etc -
Allows for proxy votes needs
Adequate Enforcement, need a power
reform to lessen (hard) political
Reputation - are not honest - state
can void proxies if mislead.
Gives Enforcement Agency some leeway -
prompt enforcement.

Native can exempt of Sec. Fed -
state proxy - find info on forward
to correct situation protects shareholders.
Gov under Fed Sec Law 1992.
Shareholders do not get total picture
of ~~CA activities~~ an issue - on proxy
Solicitation

Larry Carroll. Div Banking & Securities Dept Conn.
Div supports legislation - guided by some Rules -
Find under existing Sec Act. 1977 enacted Chap 125.
Proxy materials filed with state. Under statute
more not have authority to force correction -
CDR will provide Fed & keep in order to
correct situation - if denied - proxy's can
be wiped out. Administrative steps

HB 325

Al Adams Dist 21.

Prime HB 325. Public protection
measure Bill - Applies to
Corp's Alaska Village & Wildlife

Regional Corp - Don Nelson
Bristol Bay Corp - L.P. Causill
C&D.

1. Large regional corp -
Proby solicitor spend;
improve infra - - Proby infra
is incomplete or missing.
2. Prohibit improper state
power on Proby -

NAME

Bill No

Representing

Donald Nielsen
L. P. Cannon

H.B 325
" "

Bristol Bay Native Corp.
Banking & Securities

directly or indirectly for the benefit

individual, a corporation, a partnership, company, a trust where the interests are held by a security, an unincorporated association, or a political subdivision of a govern-

every contract of sale of, contract of purchase or interest in a security for which includes every attempt or offer to sell, or offer to buy, a security or interest in a security given or delivered with, or as a part of, a sale of securities or any other thing of value of the subject of the purchase and sale, or value; a purported gift of assessable property, or an offer and sale; every sale or purchase or subscription to another security by the issuer, as well as every sale or offer to a holder a present or future right or interest in a security of the same or another security, or an offer of the other security;

§ 133, "Securities Exchange Act of 1933," "Securities Exchange Act of 1934," and "Investment Company Act of 1935," and "Investment Company Act of 1935" mean the federal statutes of those acts, 1959;

means a note; stock; treasury note; evidence of indebtedness; certificate of participation in any profit-sharing plan; certificate of participation in a profit-sharing plan; transferable share; investment certificate; certificate of deposit; certificate of interest or participation in a lease or in payments out of title or lease or in any sale of or interest in real property or in an option on a contract for the purchase of mineral commodities or any other interest in real property to the public and not regulated by the authority of the United States Department of the Interior; however, the contract or option is not included in the provisions of sec. 70 of this chapter if the security is traded on the floor of a bona fide exchange or sold to the public by a dealer registered under this chapter; interest in the net worth including goods furnished to the risk capital of a venture with the benefit to the investor where the investor has control over the investment or policy

decision of the venture; or, in general, any interest or instrument commonly known as a "security," or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing; "security" does not include an insurance or endowment policy or annuity contract under which an insurance company promises to pay a fixed sum of money either in a lump sum or periodically for life or for some other specified period;

(13) "state" means any state, territory, or possession of the United States, the District of Columbia, and Puerto Rico. (§ 301 ch 198 SLA 1959; am §§ 1 and 2 ch 105 SLA 1961; am § 9 ch 5 SLA 1966; m §§ 9, 10 ch 86 SLA 1972; am § 1 ch 217 SLA 1975)

Sec. 45.55.138. Application to Alaska Native Claims Settlement Act corporations. The initial issue of stock of a corporation organized under Alaska law pursuant to the Alaska Native Claims Settlement Act (P.L. 92-203; 85 Stat. 688; 43 U.S.C. 1601 et seq.) is not a sale of a security under §§ 70 and 130(10) of this chapter. (§ 6 ch 70 SLA 1972)

Sec. 45.55.139. REPORTS OF CORPORATIONS. A copy of all annual reports, proxies, consents or authorizations, proxy statements and other materials relating to proxy solicitations distributed, published or made available by any person to at least 30 Alaska resident shareholders of a corporation which has total assets exceeding \$1,000,000 and a class of equity security held of record by 500 or more persons and which is exempted from the registration requirements of sec. 70 of this chapter by sec. 138 of this chapter, shall be filed with the administrator concurrently with its distribution to shareholders. (§ 1 ch 55 SLA 1972)

Sec. 45.55.140. Exemptions. (a) The following securities are exempted from § 70 of this chapter:

- (1) a security, including a revenue obligation, issued or guaranteed by the United States, a state, a political subdivision of a state, or an agency or corporate or other instrumentality of one or more of the foregoing; or a certificate of deposit for any of the foregoing;
- (2) a security issued or guaranteed by Canada, a Canadian province, a political subdivision of a Canadian province, an agency or corporate or other instrumentality of one or more of the foregoing, or a foreign government with which the United States currently maintains diplomatic relations, if the security is recognized as a valid obligation by the issuer or guarantor;
- (3) a security issued by and representing an interest in or a debt of, or guaranteed by, a bank organized under the laws of the United States, or a bank, savings institution, savings and loan association, building and loan association, or trust company organized and supervised under the laws of a state or of the United States;

Bristol
Bay
Native
Corporation

445 E. 5TH AVENUE / P. O. BOX 220 / ANCHORAGE / ALASKA 99510 / PH. (907) 278-3602

April 1, 1981

STATEMENT BY DONALD F. NIELSEN
IN SUPPORT OF HOUSE BILL NO. 325

My name is Donald F. Nielsen. I am the Vice President of Bristol Bay Native Corporation. Today, I am speaking on behalf of Bristol Bay Native Corporation and the Alaska Federation of Natives. Both organizations support House Bill No. 325 entitled "An Act relating to orders under the Alaska Securities Act of 1959." This bill would expand the remedies the State has in dealing with false and misleading statements made in proxy solicitations of Native corporation shareholders.

By way of background, let me state that Alaska Native Claims Settlement Act corporations are exempt from federal securities laws. Instead, their proxy solicitations are governed solely by the State of Alaska. Recently, the State took a major step to insure fairness in proxy solicitations of Native shareholders. The mechanism to insure fairness was regulations under Alaska Statute 45.55.139 and .160. These new regulations require that proxy solicitations give Natives shareholders the type of information that is necessary for them to make an informed judgment before voting on matters presented for their consideration, such as election of directors or approval

of proposals. These regulations are comprehensive and reasonable. However, without adequate enforcement, they are meaningless.

At present, the State is sure of only two enforcement alternatives: (1) a criminal proceeding under Alaska Statute 45.55.210 with a fine, jail term or both, or (2) a civil proceeding with injunctive relief. One is, in many cases, too harsh a remedy, and the other is time consuming.

A prompt enforcement alternative is needed with a range of lesser penalties. Such a solution is embodied in House Bill No. 325. First, it applies to administrative hearings which are less expensive and time consuming for all. Second, its penalties are not harsh fines or jail sentences, but pre-distribution review of solicitation materials and/or voiding of proxies where there is a finding of false or misleading statements.

Bristol Bay Native Corporation believes that the new proxy regulations need to be enforced promptly for the protection of Native shareholders. We believe that House Bill No. 325 creates the opportunity for such prompt enforcement. Therefore, we support the passage of House Bill No. 325.



STATE OF ALASKA
OFFICE OF THE GOVERNOR

BILL ANALYSIS

Department Commerce and Economic Development	Sponsor (Principal) Adams	Bill Number HB 325
Department Position Approve with amendments as noted.		
Division Director <i>William F. Koehpach</i>	Date 3/18/81	Commissioner Date

GOVERNOR'S OFFICE USE

Comments:

Position Noted By: _____ Date: _____

SUMMARY

1. a) Related Bills (Similar or Conflicting) None	1. b) Other Agencies Affected by Bill None
2. a) Organizational Support for Bill Alaska Federation of Natives Various regional corporations	2. b) Organizational Opposition to Bill None known

3. Program Effects of Bill
Provides Administrator of Securities with proper authority to enforce deceptive and fraudulent practices in proxy solicitations. This bill corrects the lack of administrative remedies in AS 45.55.139, enacted in 1977.

4. Fiscal Impact: None *B 812* Fiscal Note Attached

5. Amendments Proposed:
Addition of the words "in filings under Section 139" immediately after Section 45.55.200(a)(1)(B) and immediately after Section 45.55.200(a)(1)(C)

6. Comments:
See attached.

Bill Analysis

HB 325

The intention of adding the two new sections, B and C, to AS 45.55.200(a) is to provide proper enforcement for violations of Section 160 by companies described in Section 139 only. The legislation, as introduced, does not limit the Administrator's authority to proxy solicitations by ANCSA corporations. In fact, it would permit the Administrator to take action against the GM's and IBM's even though the Alaska Securities Act does not otherwise provide such authority as their proxy solicitations are already fully regulated under the Federal Securities Act of 1934.

With the proposed language added, the Division of Banking and Securities would be in support of this legislation to clarify and provide adequate authority over misleading and fraudulent proxy solicitations by Native corporations.

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST
 Bill/Resolution No. House Bill 325
 Title An Act Relating to Orders Under the Alaska Securities Act of 1959
 Requested by Adams Date 3/21/81

II. FISCAL DETAIL
 Agency Affected Commerce and Economic Development
 Program Category Affected Consumer Protection
 BRU, Program, or Subprogram(s) Affected Banking and Securities
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
100 PERSONAL SERVICES		22.1	23.4	24.8	26.3	27.9
200 TRAVEL		10.0	10.5	11.0	11.5	12.0
300 CONTRACTUAL		2.7	2.7	2.7	2.7	2.7
400 COMMODITIES		1.0	1.0	0	0	0
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	0	35.8	37.6	38.5	40.5	42.6

FUNDING (Thousands of Dollars)

GENERAL FUND	0	35.8	37.6	38.5	40.5	42.6
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

FULL TIME		1	1	1	1	1
PART TIME		0	0	0	0	0
TEMPORARY		0	0	0	0	0

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

See attached.

IV. DATE 3/16/81 PREPARED BY James J. Thompson J. Blundell
 AGENCY Dept. of Commerce & Econ. Dev.
 PHONE 465 2571
 Original: Legislative Finance
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)

FISCAL NOTE

HB 325

When AS 45.55.139 was enacted in 1977, the Division of Banking and Securities had no prior history or other documentation to show the potential impact of administering proxy laws and regulations relative to the Alaska Native Claims Settlement Act. Based on investigative time and costs incurred in this area since 1977 and on the fact that 31 regional and village corporations currently come under the provisions of AS 45.55.139 and this proposed legislation, the projected costs are reasonable.

Travel costs include investigative travel of securities staff for hearings and witness travel costs. Contractual cost is for additional persons as required by the Department of Administration pursuant to the memorandum of February 5, 1981.

Any questions on this Fiscal
Note please call L.P. Carroll 2521.

1	POSITION TITLE Administrative Support Tech II			RANGE/STEP 8A	BARG. UNIT. G	LOCATION Juneau	GOV.	APPROV.	DISAPP.
2	TYPE OF POSITION PFT	STAFF MONTHS 12	RP No.	PCN No. 1186	PRIORITY	FORM 12	PAGE/LINE	LEG.	

3 TYPE OF EXPENDITURE		AMOUNT
1	2	3
PERSONAL SERVICES:		
4 SALARY	\$1,393/month	16.7
5 BENEFITS		2.6
6 FICA		1.0
7 HEALTH INS.		1.8
8 TOTAL PERSONAL SERVICES	01	
9 TRAVEL	02	22.1
10 CONTRACTUAL	03	0
11 COMMODITIES	04	1.0
12 EQUIPMENT	05	0
13 OTHER space costs		2.7
14 TOTAL COST		25.8

JUSTIFICATION:

See Bill Analysis and Fiscal Note to House Bill 325.

CODE	FUNDING SOURCE	
15	FED RCPTS. 1002	
16	GF MATCH. 1003	
17	GEN. FUND 1004	25.8
18	I-A RCPTS. 1005	
19	PGM RCPTS 1028	
20	OTHER	

21	CONTINUATION		FOR B&M USE ONLY
22	ADDITION	X	

AA KEY NUMBER _____ COLUMN NO. _____

AGENCY Commerce and Economic Development PROGRAM Consumer Protection

BRU Banking and Securities

COMPONENT Financial Institutions

13 REQUEST FOR NEW POSITION.

FY 82

Page _____ of _____

REVISED DATE _____

FISCAL NOTE

HB 325

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6	FICA	1.0
7	HEALTH INS.	1.8
8	TOTAL PERSONAL SERVICES 01	
9	TRAVEL 02	22.1
10	CONTRACTUAL 03	0
11	COMMODITIES 04	1.0
12	EQUIPMENT 05	0
13	OTHER space costs	2.7
14	TOTAL COST	25.8

JUSTIFICATION:

See Bill Analysis and Fiscal Note to House Bill 325.

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20		OTHER	

21	CONTINUATION		FOR B&M USE ONLY
22	ADDITION	X	

4A KEY NUMBER _____ COLUMN NO. _____

AGENCY Commerce and Economic Development PROGRAM Consumer Protection

BRU Banking and Securities

COMPONENT Financial Institutions

13 REQUEST FOR NEW POSITION.

FY 82

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REVISED DATE _____

report to its stockholders containing substantially all the information contained in annual reports of corporations subject to the 1934 Act. Such reports by Native corporations would not be filed with or reviewed by the SEC, but the Committee believes that the Native leadership will comply fully with the intent of this provision and will submit annual reports to their stockholders which are as effective in disclosing corporate activities as those prepared by companies regulated under the 1934 Act by the SEC. Finally, the Committee understands that the general provisions of Alaska law provide protection for Native stockholders from any corporate mismanagement and misrepresentations or omissions to represent in connection with sales of securities, and that Alaska courts would look to precedents under federal securities laws for appropriate standards of conduct by management and other persons connected with securities transactions. Native corporations have assured the Committee that they do not intend to seek an exemption from state securities laws on the basis of this exemption from federal laws and intend to pursue the passage of State legislation to the extent necessary to provide any appropriate additional protection. Therefore, it is not necessary at this time to impose additional federal requirements.

It should be noted that these corporations are being exempted from the federal securities laws on the understanding that federal regulation of Settlement Act corporations is not necessary to protect Native stockholders or the public during the twenty-year period when Native-owned stock cannot be sold. However, if this assumption proves invalid in light of experience, the Committee is prepared to re-impose such provisions of the federal laws as may be necessary. In short, the twenty-year exemption should be viewed by the Natives as an experiment which will be stopped if it is abused.

SECTION 4

Subsection (a) merely makes clear the congressional intent that payments and grants under the Settlement Act are not to be deemed a substitute for any governmental program or benefit which is otherwise available to Alaska Natives as citizens of the United States and Alaska.

Subsection (b) makes clear that benefits under the Settlement Act shall not be considered as income or other resources for purposes of the Food Stamp program. The background to subsection (b) is provided in an August 6, 1974, memorandum prepared by the Congressional Research Service of the Library of Congress:

THE LIBRARY OF CONGRESS, WASHINGTON, D.C. 20540

THE COUNTING OF INCOME FROM PAYMENTS UNDER THE ALASKA NATIVE CLAIMS SETTLEMENT ACT IN DETERMINING ELIGIBILITY FOR AND THE AMOUNT OF FOOD STAMP AND CASH WELFARE BENEFITS

Food Stamps

In March 1974, the State of Alaska notified the Federal offices of the Food Stamp Program (in the USDA's Food and Nutrition Service) that it was Alaska's interpretation that