

S

B

4

111

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

OFFICE OF THE COMMISSIONER

POUCH D

JUNEAU, ALASKA 99811

Phone: 465-2500

April 28, 1981

Honorable Bob Mulcahy
Chairman
Senate Labor &
Commerce Committee
Pouch V
Juneau, Alaska 99811

Dear Senator Mulcahy:

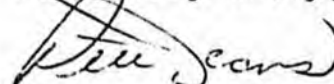
Re: SB 411

SB 411 which will soon be before your committee is a companion bill to CSHB 325 which recently passed the House.

Although the House Labor and Commerce Committee was provided with a Fiscal Note and testimony on this bill, the bill inadvertently passed the House without the attendant Fiscal Note. We are enclosing herewith a copy of that Fiscal Note as we feel it is important that it be considered by your committee. In addition, we are enclosing a copy of our Bill Analysis which requests that the language of SB 411 be conformed to that of CSHB 325. These changes will make clear that the area of concern is solely that of Native corporations.

The Division of Banking and Securities' staff is available for testimony on the bill at such time as you may schedule it for hearing.

Yours very truly,



FOR Charles R. Webber
Commissioner

CRW/mc2/1

Enclosures

Department of Commerce and Economic Development
Division of Banking and Securities

Bill Analysis
SB 411

Senate Bill 411, "An Act relating to orders under the Alaska Securities Act of 1959," provides the Administrator of Securities with proper authority to take action against deceptive and fraudulent practices in proxy solicitations. The bill corrects the lack of administrative remedies in AS 45.55.159, enacted in 1977.

The intention in 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 ANSCA 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.

The Division of Banking and Securities recommends the adoption of the amendments incorporated in CSHB 325 (L & C). With this proposed amendment, the Division would be in favor of this legislation to clarify and provide adequate authority over misleading and fraudulent proxy solicitations by Native corporations.

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)

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
GENERAL FUND	0	35.8	37.6	38.5	40.5	42.6
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
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. L. Kinnell
 AGENCY Dept. of Commerce & Econ. Dev.
 PHONE 265 2571
 Original: Legislative Finance
 cc. Budget and Management
 Prime Sponsor (First Legislator Named)

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.

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

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
10	CONTRACTUAL	03
11	COMMODITIES	04
12	EQUIPMENT	05
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	
16	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	

AGENCY Commerce and Economic Development PROGRAM Consumer Protection

BRU Banking and Securities

COMPONENT Financial Institutions

13 REQUEST FOR NEW POSITION.

FY 82



Official Business

Alaska State Legislature

Senate

Committee on Labor & Commerce

Pouch V
State Capitol
Juneau, Alaska 99811

SUMMARY SB 411

Amends AS 45.55.200 relating to orders and injunctions under the Alaska Securities Act. When the Commissioner of Commerce and Economic Development determines that a person has engaged or is about to engage in a practice in violation of the Alaska Sec. Act he may, after giving reasonable notice, issue an order directing the person to cease and desist from continuing the act, or he may bring an action in the superior court. He may issue a temporary order pending the hearing, which shall remain in effect until 10 days after the hearing is held, and which becomes final, if the person to whom the notice is addressed does not request a hearing within 15 days after receipt. Bill expands the scope of the order issued by the administrator, and requires the person to file annual reports, proxies, consents or authorizations, proxy statements, or materials relating to proxy solicitations, with the administrator for examination, 10 working days before a distribution to shareholders. This period of filing may not exceed three years.

If the proxies were solicited by untrue or misleading means (prohibited under AS 45.55.160) the order shall void the proxies including their future exercise or actions resulting from their past exercise.

§ 45.55.140

f proving an
the person

a exemption
section with
may not be
ted parties,
onclusions of
rily deny or
mination of
a summary
sted parties
it within 15
set down for
red by the
d or vacated
ordered, the
ring to all
end it until

actively. No
or 45.55.150
order under
d not know,
nown of the

chedule of fees
302 ch 198
A 1966; am
§ 15 ch 218
A 1978; am

"sold" for
ddle of the
ted "any sales
the end of the

ports. — For
6, see House
report on ch.
e 1977 Senate

securities are
nder § 402(a)
ct, 84 ALR3d

§ 45.55.150

TRADE AND COMMERCE

§ 45.55.180

Sec. 45.55.150. Filing of sales and advertising literature. The administrator may by rule or order require the filing of a prospectus, pamphlet, circular, form letter, advertisement, or other sales literature, or advertising communication addressed or intended for distribution to prospective investors, including clients or prospective clients of an investment adviser. (§ 303 ch 198 SLA 1959; am § 12 ch 105 SLA 1961; am § 14 ch 86 SLA 1972)

Sec. 45.55.160. Misleading filings. It is unlawful for a person, in a document filed with the administrator or in a proceeding under this chapter, to make or cause to be made an untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading. (§ 304 ch 198 SLA 1959; am § 15 ch 86 SLA 1972)

Materiality under common law. — Under Alaska common law, a misrepresentation is material if there is a substantial likelihood that a reasonable shareholder would consider it important in deciding how to vote. Subjective proof that one or more shareholders actually granted a proxy because of a falsehood is not required; only the objective standard encompassed in the definition of materiality need be met. *Brown v. Ward*, Sup. Ct. Op. No. 1825 (File No. 3579), 593 P.2d 247 (1979).

Proxy solicitations held materially false. — Where the misrepresented ability of a regional corporation to distribute

money or land to shareholders on the large scale expressed in the solicitation would be likely to influence shareholders to grant proxies to the solicitor, the proxy solicitations were materially false as a matter of law. *Brown v. Ward*, Sup. Ct. Op. No. 1825 (File No. 3579), 593 P.2d 247 (1979).

ALR and C.J.S. references. — Attorney's preparation of legal document incident to sale of securities as rendering him liable under state securities regulations statutes, 61 ALR3d 252.

19 C.J.S. Corporations §§ 931, 1364; 53 C.J.S. Licenses § 78.

Sec. 45.55.170. Unlawful representations concerning registration or exemption. (a) Neither the fact that an application for registration under AS 45.55.030—45.55.060 or a registration statement under AS 45.55.070—45.55.120 is filed nor the fact that a person or security is effectively registered constitutes a finding by the administrator that a document filed under this chapter is true, complete, and not misleading. Neither the fact of filing nor the fact that an exemption or exception is available for a security or a transaction means that the administrator has passed in any way upon the merits or qualifications of, or recommended or given approval to, a person, security, or transaction.

(b) It is unlawful to make, or cause to be made, to a prospective purchaser, customer, or client any representation inconsistent with (a) of this section. (§ 305 ch 198 SLA 1959; am § 13 ch 105 SLA 1961)

Sec. 45.55.180. Administration of chapter. (a) The Department of Commerce and Economic Development shall administer this chapter.

55.190

oyee of
is filed
lic. No
icer or
except
ding or
either
law or
nder a
e of the

The
private
sary to
te any
to aid
es and
file a
rator
matter
g any
r.
r this
may
their
apers,
ts or
to the

nd to
rator,
e the
duce
g the
er of

from
or in
ed by
ound
nate
dual
r on
he is
n, to
t the

§ 45.55.195

TRADE AND COMMERCE

§ 45.55.210

individual testifying is not exempt from prosecution and punishment for perjury or contempt committed in testifying. (§ 307 ch 198 SLA 1959)

Sec. 45.55.195. Reimbursement of expenses incident to examination. (a) An issuer, broker-dealer, agent, or investment adviser shall reimburse the administrator for actual travel expenses and per diem incurred in connection with an examination incident to a registration under this chapter.

(b) The administrator may by rule or order adopt a schedule of charges for annual examination fees of issuers, broker-dealers, agents and investment advisers.

(c) If an issuer, broker-dealer, agent or investment adviser fails to pay the fees and expenses provided for in this section, the fees and expenses shall be paid out of the funds of the administrator in the same manner as other disbursements made by the administrator. The amounts paid from the funds of the administrator are a lien upon all of the assets and property in this state of the issuer, broker-dealer, agent or investment adviser and the amount may be recovered by the attorney general on behalf of the state.

(d) Failure of the issuer, broker-dealer, agent or investment adviser to pay fees and expenses under this section is a wilful violation of this chapter and the violation falls within the provisions of AS 45.55.060, 45.55.120, 45.55.200 and 45.55.210. (§ 16 ch 86 SLA 1972)

Sec. 45.55.200. Orders and injunctions. Whenever it appears to the administrator that a person has engaged or is about to engage in an act or practice in violation of any provision of this chapter or rule or order under this chapter, he may

(1) if he considers it in the public interest or for the protection of investors, issue an order directing the person to cease and desist from continuing the act or practice, provided that reasonable notice of and an opportunity for a hearing shall first be given, except that the administrator may issue a temporary order pending the hearing which shall remain in effect until 10 days after the hearing is held and which shall become final if the person to whom notice is addressed does not request a hearing within 15 days after the receipt of notice; or

(2) bring an action in the superior court to enjoin the acts or practices and to enforce compliance with this chapter or rule or order under this chapter, and upon a proper showing, the appropriate remedy shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets; the court may not require the administrator to post a bond. (§ 308 ch 198 SLA 1959; am § 1 ch 126 SLA 1968)

Sec. 45.55.210. Criminal penalties. (a) A person who wilfully violates a provision of this chapter except AS 45.55.160, or who wilfully violates a rule or order under this chapter, or who wilfully violates AS

FISCAL NOTE

I. REQUEST

Bill/Resolution No. Senate Bill 411

Title An Act Relating to Orders Under the Alaska Securities Act of 1959

Requested by Hohman

Date 4/16/81

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)

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
GENERAL FUND	0	35.8	37.6	38.5	40.5	42.6
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
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)

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.

IV. DATE 4/17/81

PREPARED BY Larry Carroll

AGENCY Commerce and Economic Development

PHONE 465-2521

Original: Legislative Finance

cc: Budget and Management

Prime Sponsor (First Legislator Named)