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Alaska State Senate

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Senate Finance Committee
State Affairs Committee
Vice-Chair, Rules Committee
Chair, Administrative Regulation Review

P.O. Box 1069
Kotzebue, Alaska 99752
(907) 442-2494

William L. Hensley

SPONSOR'S EXPLANATION

OF PROPOSED CS FOR SENATE BILL 437

This bill would authorize corporations with five to eight directors and using cumulative voting to stagger the terms of directors. Such a classification is not open to corporations having fewer than nine directors under current law.

The terms could be established by a corporation as either two or three year terms under my proposed substitute. My original bill would have allowed only two year terms.

Corporations deciding upon staggered terms would divide the board membership into two classes, nearly equal in size as possible. At the initial election, half of the directors would be elected for one year terms and the other half for two-year terms. After that election, all would either serve two or three year terms, whichever had been established by the board.

This bill does not require staggered terms; it simply authorizes corporations to establish (through amendment of their by-laws) such terms if their membership so desires.

1 IN THE SENATE

2 CS FOR SENATE BILL NO. 437 ()

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to staggered terms for corporate
7 directors."

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

9 * Section 1. AS 10.05.186 is amended to read:

10 Sec. 10.05.186. CLASSIFICATION OF DIRECTORS. (a) When the
11 board of directors consists of nine or more members, instead of having
12 [ELECTING] all of the directors elected annually, the bylaws may
13 provide that the directors be divided into either two or three classes
14 that are [, EACH CLASS TO BE] as nearly equal in number as possible,
15 with the term of office of directors of the first class to expire at
16 the first annual meeting of shareholders after the directors' [THEIR]
17 election, the term [THAT] of the second class to expire at the second
18 annual meeting after the directors' [THEIR] election, and the term
19 [THAT] of the third class, if any, to expire at the third annual
20 meeting after the directors' [THEIR] election. At each annual meeting
21 after the classification the number of directors equal to the number
22 in [OF] the class whose term expires at the time of the meeting shall
23 be elected to hold office until the second succeeding annual meeting
24 if there are two classes, or until the third succeeding annual meeting
25 if there are three classes.

26 (b) When the board of directors of a corporation that uses cumu-
27 lative voting consists of five to eight members, instead of having all
28 of the directors elected annually, the bylaws may provide that all of
29 the directors have two-year terms or that all of the directors have

1 three-year terms, and that the directors are to be divided into two
2 classes that are as nearly equal in number as possible, with the term
3 of office of the directors of the first class to expire at the first
4 annual meeting of shareholders after the directors' election and the
5 term of the second class to expire at the second annual meeting after
6 the directors' election. At each annual meeting after the classifica-
7 tion, the number of directors equal to the number in the class whose
8 term expires at the time of the meeting shall be elected to hold
9 office until the second succeeding annual meeting if the directors
10 have two-year terms, or until the third succeeding annual meeting if
11 the directors have three-year terms.

12 (c) Classification of directors is not effective before the
13 first annual meeting of shareholders.
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ATTORNEYS AT LAW

RECEIVED JAN 27 1988

BAXTER & MARKS

PROFESSIONAL CORPORATION

P O BOX 2819
JUNEAU, ALASKA 99803
(907) 789-3166

FRED J BAXTER
STEVEN G MARKS
DANIEL G BRUCE
CRYSTAL SOMMERS BRAND

January 21, 1988

Senator Jim Duncan
P. O. Box V
Juneau, Alaska 99811

Re: Staggered Terms for Board of Directors with
Less than Nine Directors

Dear Jim:

As I have previously indicated to you, Huna Totem Corporation would like to consider reducing the size of their Board of Directors to less than nine members while being able to provide for the election of officers on staggered terms. Currently there are nine directors on Huna Totem's Board.

A review of AS 10.05.183 reads as follows:

At the first annual meeting of shareholders and at each annual meeting thereafter, the shareholders shall elect director to hold office until the next annual meeting, except in case of the classification of directors as permitted by this chapter. Each director holds office for the term which elected and until a successor is elected and qualified.
(Emphasis added.)

AS 10.05.186 read as follows:

Classification of directors. When the board of directors consists of nine or more members, instead of electing all directors annually, the bylaws may provide that the directors be divided into either two or three classes, each class to be as nearly equal in number as possible, with the term of

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office of directors of the first class to expire at the first annual meeting of shareholders after their election, that of the second class to expire at the second annual meeting after their election and that of the third class if any to expire at the third annual meeting after their election. At each annual meeting after the classification the number of directors equal to the number of the class whose term expires at the time of the meeting shall be elected to hold office until the second succeeding annual meeting if there are two classes, or until the third succeeding annual meeting, if there are three classes. Classification of directors is not effective before the first annual meeting of shareholders. (§35 ch 126 SLA 1957). (Emphasis added).

A reading of the above statutory provisions seems to indicate that a board of directors of less than nine in size is not entitled to have staggered terms. Willis Kirkpatrick, Director of the Division of Banking, Securities and Corporations concurs with my interpretation that board of directors less than nine in number are unable to provide for the election of directors through staggered terms and all directors would be required to stand for reelection at the same time.

Now that Huna Totem Corporation has completed its logging operation and is consolidating its business holdings, serious consideration is being given to reducing the size of the board of directors. However, the board wishes to be able to provide for staggered terms should they elect to have a board of seven or five directors. The staggering term proposed would have five directors with one three year term elected every year, one two year term elected the first and second years. Starting with the third year of this plan there would be two directors elected every year, i.e. one three year position and one two year position.

I have discussed the classification problem with Willis Kirkpatrick. It appears that at approximately the same time that I was in contact with Willis Kirkpatrick concerning the classification problem Governor Cowper received a similar request from Nelson N. Angapak. Mr.

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Angapak was requesting classification for five or more directors because he felt it was not uncommon to have all five directors fail to be reelected at an annual meeting. Such action naturally disrupts the function of village corporations and brings the added expense to the villages of educating new directors and holding additional elections.

Mr. Kirkpatrick is of the opinion that classification of directors (staggered terms as opposed to annual election of all directors) can have both positive and negative effects. On the one hand, classification has been criticized on the grounds that it reduces shareholder control over the board because two or more annual elections may be required before shareholders will be able to effect a change in the majority of the board and because of its impairment of the effectiveness of cumulative voting. On the other hand, Mr. Kirkpatrick believes that classification provides some assurance of continuity of management as well as affording new directors an opportunity to become familiar with corporate affairs during a longer term in office and to benefit from the experience of codirectors who have served for longer than a one year term.

In an attempt to maintain some sort of equilibrium between the benefit of maintaining continuity of management and at the same time leaving minority shareholders with sufficient power to have their views taken seriously by management, Mr. Kirkpatrick has proposed that AS 10.05.186 be amended by adding section (b) which would read as follows:

(b) When the board of directors of a corporation which has cumulative voting consists of five to eight members, instead of electing all the directors annually, the bylaws may provide that the directors be divided into two classes, each class to be as nearly equal in number as possible, with the term of office of directors of the first class to expire at the first annual meeting of shareholders after their election, that of the second class to expire at the second annual meeting after their election. At each annual meeting after the classification the number of directors equal to the number of the

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class whose term expires at the time of the meeting shall be elected to hold office until the second succeeding annual meeting. Classification of directors is not effective before the first annual meeting of shareholders.

I believe that Mr. Kirkpatrick's proposed statutory change is a reasonable approach to solving the problem and would protect minority shareholders as well as allowing corporations to reduce the size of the board of directors for efficiency and economy reasons.

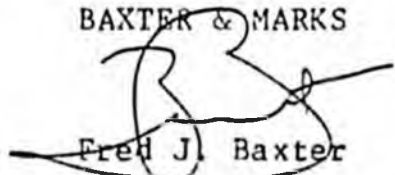
If you find that the proposed statutory amendment meets with your approval I would appreciate your giving consideration to proposing legislation in this regard.

I would be more than happy to meet with you to discuss the particulars of this legislation and/or to provide whatever assistance might be possible in the way of testimony, etc.

Thank you for your consideration of this matter.

Very truly yours,

BAXTER & MARKS



Fred J. Baxter

FJB/cah
cc: George D. Cooper

Alaska State Senate

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William L. Hensley

MEMORANDUM

TO: Senator Tim Kelly, Chairman
Senator Labor and Commerce Committee

FROM: Senator Willie Hensley *WH*

SUBJ: Request for scheduling of Senate Bill 437

DATE: February 29, 1988

I would appreciate it if you would schedule a hearing on Senate Bill 437, relating to staggered terms for corporate directors.

This bill would allow corporations having fewer than nine directors to have staggered terms.

Thank you.

WLH/BA/mjt

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: SB 437
PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: An Act relating to staggered
terms for corporate directors
Sponsor: Hensley
Requester: _____

Agency Affected: Commerce & Econ. Dev.
BRU: Banking, Securities & Corporations
Components: _____

EXPENDITURES / REVENUES : (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
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REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
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FUNDING: (Thousands of dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULLTIME	-0-	-0-	-0-	-0-	-0-	-0-
PARTTIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: Willis F. Kirkpatrick, Director *Willis* Phone: 465-2521
Division: Banking, Securities and Corporations Date: _____

Approved by Commissioner: J. Anthony Smith *Kathy Newsham* Date: 2/27/88
Agency: Department of Commerce and Economic Development

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page ____ of ____

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