

HB

357

Testimony

1:30 Monday, March 6 in Judiciary

- **Franklin Terry Elder: Will Attend Meeting**
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ALASKA STATE LEGISLATURE

Chair:
MILITARY AND VETERANS AFFAIRS

Member:
JUDICIARY
COMMUNITY AND REGIONAL AFFAIRS
LABOR AND COMMERCE



REPRESENTATIVE LISA MURKOWSKI

Government Hill • Elmendorf • East Anchorage

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Sponsor Statement HB 357

" An Act Relating to the redemption of shares of certain Alaska corporations."

House Bill 357 allows for the redemption of preferred stock at the discretion of the shareholder. By providing this option, Alaska corporations are given an alternative to raise funds and Alaskan investors are given an expanded investment opportunity. As the Alaska Corporate Code stands now, redemption of preferred shares is only at the option of the issuer.

The right to have stock redeemed under specific conditions is an important commercial term in a sale to a holder, a provision commonly included in the sale of redeemable preferred stock. This share redemption right gives the holder an avenue to get the holder's cash back under terms negotiated with the issuing corporation.

With the enactment of this bill, share redemption would continue to be subject to other provisions of the code. For example, redemption is prohibited if the amount of the corporation's retained earnings immediately before the proposed distribution does not equal or exceed the amount of the proposed distribution. These restrictions on distributions are codified as AS 10.06.358.

The Alaska Corporations Code is modeled, in part, after the California Corporations Code which has been amended and expanded to allow issuance of stock that is redeemable under circumstances other than at the option of the issuing corporation. For example, in the case of preferred stock, share redemption is allowed at the option of the holder. A number of other states allow issuance of stock under conditions as provided in the proposed changes to the Alaska Corporations Code. These proposed changes would bring Alaska law in line with these other states and promote commerce in Alaska.

I urge your support of HB 357.

FISCAL NOTE

Bill Version: HB 357

(H) Publish Date: 2/28/00

**STATE OF ALASKA
2000 LEGISLATIVE SESSION**

Revision Date/Time (Note if correction) _____ Dept. Affected Community & Econ. Dev.
 Title Redemption of shares of certain AK Corporations BRU Banking, Securities, and Corporations
 Component Banking, Securities, and Corporations
 Sponsor Rep. Murkowski
 Requester H L&C Component Serial No. 1233

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY00) cost: _____

POSITIONS

Full-time					
Part-time					
Temporary					

ANALYSIS: (Attach a separate page if necessary)

The division does not anticipate any fiscal impact with this proposed legislation.

Prepared by Franklin T. Elder, Director Phone 465-2521
 Division Banking, Securities and Corporations Date/Time 2/24/00 8:24 AM
 Approved by Commissioner Deborah B. Sedwick Date 2/24/00
 Agency Community and Economic Development

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Sectional Analysis of HB 357

Section 1:

- Provides drafting style corrections to make specific reference to AS 10.06.325

Section 2:

- Provides that a corporation may through its articles of incorporation, establish common shares that are redeemable either at the option of the corporation or on the happening of specified events.
- Provides that preferred shares are redeemable at the option of the corporation, on the happening of a specified event, at the option of the holder, or upon vote of the shareholders.

Section 3:

- Eliminates the prohibition against share redemption at the option of the holder.
- Clarifies existing law as to share redemption involving an open-end investment company.

Section 4:

- Establishes general guidelines to be followed in share redemption.
- Clarifies that AS 10.06.325 is the only manner by which a corporation may issue redeemable shares notwithstanding the provisions of AS 10.06.375 which allow a corporation to impose additional restriction on share redemption.

THE
FOLLOWING
DOCUMENT(S)
ARE
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COPIES

STATEMENT OF TESTIMONY IN SUPPORT SHARE REDEMPTION BILL (HB 357)

Submitted Before the
House Labor and Commerce Committee
on
February 25, 2000

Members of the committee, my name is Julius J. Brecht. I am an attorney and the managing shareholder of the law firm of Wohlforth, Vassar, Johnson & Brecht, A Professional Corporation having offices in Anchorage, Alaska. I am a past director of the Alaska Division of Banking, Securities and Corporations, serving from 1976 through 1980. Since then I have been in private practice in Anchorage, Alaska. My law practice is in the area of business law with a focus on securities, corporate and finance law.

I participated in the development and, later, the review of proposals for a new Alaska corporate code in the late-1970s and through the 1980s. That ten year effort resulted in a bill being enacted by the Alaska Legislature which became the Alaska Corporations Code, effective July 1, 1989. That code is codified at AS 10.06.

As comprehensive as was the effort to prepare and enact the Alaska Corporations Code, the needs of corporate law do change with time. For example, the Alaska Corporations Code provisions on redemption of shares found at AS 10.06.325 was based upon a similar provision of the California Corporation Code at that time. California law had, for some time, prohibited shares which are redeemable at the option of the holder, with limited exception. However, in 1983, the California Corporations Code was changed expressly to allow share redemption at the option of the holder.

HB 357 provides for amendment of the Alaska Corporations Code pertaining to share redemption of an Alaska corporation. The primary focus of the bill is on changes to AS 10.06.325. At present, Section 325 allows share redemption at the option of the

issuing corporation. However, it prohibits an Alaska corporation from selling stock that includes a right in the holder of the stock to require the corporation to redeem the stock.

The bill expands the circumstances under which share redemption may occur. The right to have stock redeemed under specific conditions is an important commercial term in a sale of stock to a holder. It is a provision commonly included in the issuance and sale of redeemable preferred stock. It gives the holder a mechanism for the return of the holder's investment under terms as negotiated with the corporation.

The changes to AS 10.06.325 proposed in HB 357, in major part, simply revise Alaska corporate law to reflect the same changes adopted in California relating to share redemption at the option of the holder. A number of other states, which have become commercial centers in this country, have similar provisions regarding share redemption at the option of the holder. Based upon my limited review of a small portion of those commercial states, I found that, in addition to California, the states of Michigan, Ohio, Connecticut, Delaware and New Jersey have similar provisions.

Even with enactment of HB 357, a share redemption right would continue to be subject to other provisions of the code which preclude the exercise of the redemption right under certain circumstances. A distribution to a corporation's shareholders, e.g., as a result of an exercise of share redemption rights, is prohibited unless certain conditions are met. Those conditions are that the amount of the corporation's retained earnings immediately before the proposed distribution equals or exceeds the amount of the proposed distribution or otherwise satisfies conditions on distributions set forth in the code. These restrictions on distributions are codified at AS 10.06.358.

In my view, the proposed changes to Section 325 do not lessen the provisions of the code protecting shareholders of the corporation. However, the proposed changes will

allow greater flexibility to a corporation's board of directors in addressing capital needs in present day financial markets.

The other provisions of HB 357 make other changes to the Alaska Statutes to accommodate these primary changes to Section 325. I have prepared a brief section-by-section outline of the provisions of the bill. It is attached to this statement of testimony.

In summary, the Alaska Corporations Code is, in my view, presently in need of amendment to recognize the needs of modern corporations, while retaining shareholder protection as already adopted in other commercial states. Specifically, that amendment is needed to incorporate changes to code provisions of California on which Section 325 is based.

Thank you for the opportunity to present this testimony before the committee.

STATEMENT OF TESTIMONY IN SUPPORT OF THE SHARE
REDEMPTION BILL (HB 357)

Submitted Before the
House Labor and Commerce Committee
On
February 25, 2000

Members of the committee, my name is John M. Lowber. I am a Senior Vice President and the Chief Financial Officer for General Communication, Inc. and its Subsidiaries and have been serving in that capacity for nearly fifteen years. I am also a certified public accountant in the state of Alaska. In my capacity as Chief Financial Officer, it is my responsibility to raise various types of debt and equity financing necessary to meet the requirements of GCI's continuously evolving business plans.

My interest in the proposed revision to the Alaska Corporations Code is based on my recent experience negotiating the terms of a preferred stock transaction.

During the spring of 1999, GCI became interested in raising a modest amount of additional capital in order to fully implement its business plan for the remainder of 1999. Our interest in raising additional capital led us to negotiate with a couple of investors willing to purchase convertible preferred stock of GCI. The company and the potential investors negotiated and executed a term sheet, and attorneys began preparing definitive agreements. It was during this process that it was brought to my attention that, unlike that of many other states, Alaska law does not allow the sale of securities that are redeemable at the option of the holder.

In a normal situation, an investor buys convertible securities that can be exchanged for a fixed number of shares of common stock. As the value of the underlying common stock increases, so does the likelihood that the convertible security will be converted into common stock. The investors' expected strategy is to convert to common stock, usually at a premium to the market price at the time of the initial investment, and then sell the common stock in order to realize the gain on the investment. Oftentimes, the security will provide for an interest element to go along with the conversion feature. The investor enjoys a current return on his or her investment while at the

same time sharing in the upside potential posed by an increase in the value of the common stock.

An investor will generally require protection in the event that the underlying stock does not appreciate or in fact, depreciates. This protection is usually in the form of a redemption option. Should things not materialize as planned, the investor would have the right, under previously negotiated conditions, to ask the Company to redeem the shares. The right to request redemption under certain circumstances provides comfort to the investor that the monies invested will be returned. Absent such a right, the investor would likely require an increased return to compensate for the perceived increase in risk. An increased return to the investor equates to a higher cost of capital to the issuer.

This bill will help Alaska companies raise capital in an increasingly competitive marketplace. Without that opportunity, Alaskan businesses will have an increasingly hard time raising capital to invest in their Alaskan business. Alternatively, businesses may find it necessary to incorporate in other states, driving the services which support incorporation to those states. It is my belief that the legislature should do what it can to eliminate any competitive disadvantages that might arise as a result of incorporating in Alaska

Thank you for your consideration.

WOHLFORTH, VASSAR, JOHNSON & BRECHT
A PROFESSIONAL CORPORATION

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March 3, 2000

Via Facsimile: 907.465.2819
and DHL WorldWide Express

Representative Pete Kott, Chair
House Judiciary Committee
House of Representatives, State Capitol, Room 118
Juneau, Alaska 99801-1182

Re: Statement in Support of HB 357 -- Share Redemption Bill

Dear Representative Kott:

Please find enclosed a statement of testimony which I respectfully submit to the House Judiciary Committee pertaining to SB 357, an act relating to the redemption of shares of certain Alaska corporations.

I am an attorney in private practice and managing shareholder of my firm in Anchorage. I am a past director of the Alaska Division of Banking, Securities and Corporations, serving from 1976 through 1980. Since then, I have been in private practice in Anchorage. My law practice is in the area of business law, with a focus on securities, corporate and finance law. In particular, I have represented General Communication, Inc. on corporate and securities matters for a number of years, including the present share redemption statutory amendment.

It is my understanding that the committee intends to hold hearings on this bill at 1 p.m. on March 6, 2000. I request the opportunity to offer testimony to the committee via teleconference from Anchorage.

Sincerely,

WOHLFORTH, VASSAR
JOHNSON & BRECHT



Julius J. Brecht

JJB/neb

Enclosure(s)

STATEMENT OF TESTIMONY IN SUPPORT SHARE REDEMPTION BILL (HB 357)

**Submitted Before the
House Judiciary Committee
on
March 6, 2000**

Chairman Kott and members of the committee, my name is Julius J. Brecht. I am an attorney and the managing shareholder of the law firm of Wohlforth, Vassar, Johnson & Brecht, A Professional Corporation having offices in Anchorage, Alaska. I am a past director of the Alaska Division of Banking, Securities and Corporations, serving from 1976 through 1980. Since then I have been in private practice in Anchorage, Alaska. My law practice is in the area of business law with a focus on securities, corporate and finance law.

Thank you for the opportunity to appear before the committee to offer testimony on HB 357, a bill relating to share redemption.

I participated in the development and, later, the review of proposals for a new Alaska corporate code in the late-1970s and through the 1980s. That ten year effort resulted in a bill being enacted by the Alaska Legislature which became the Alaska Corporations Code. That code became effective July 1, 1989 and is codified at AS 10.06.

As comprehensive as was the effort to prepare and enact the Alaska Corporations Code, the needs of corporate law do change with time. For example, the code provisions on redemption of shares found at AS 10.06.325 was based upon a similar provision of the California Corporations Code at that time. California law had, for some time, prohibited shares which are redeemable at the option of the holder, with limited exception. However, in 1983, the California code was changed expressly to allow share redemption at the option of the holder.

HB 357 provides for amendment of the Alaska Corporations Code pertaining to share redemption of an Alaska corporation. The primary focus of the bill is on changes to AS 10.06.325. At present, Section 325 allows share redemption at the option of the issuing corporation. However, it prohibits an Alaska corporation from selling stock that includes a right in the holder of the stock to require the corporation to redeem the stock.

The bill expands the circumstances under which share redemption may occur. The right to have stock redeemed under specific conditions is an important commercial term in a sale of stock to a holder. It is a provision commonly included in the issuance and sale of redeemable preferred stock. It gives the holder a mechanism for the return of the holder's investment under terms as negotiated with the corporation.

The changes to AS 10.06.325 proposed by the bill before the committee, in major part, simply revise Alaska corporate law to reflect similar changes adopted in California relating to share redemption at the option of the holder. A number of other states, which have become commercial centers in this country, have similar provisions regarding share redemption at the option of the holder. Based upon my limited review of a small portion of those commercial states, I found that, in addition to California, the states of Michigan, Ohio, Connecticut, Delaware and New Jersey have similar provisions.

Even with enactment of HB 357, a share redemption right would continue to be subject to other provisions of the code which preclude the exercise of the redemption right under certain circumstances. A distribution to a corporation's shareholders, e.g., as a result of an exercise of share redemption rights, is prohibited unless certain conditions are met. Those conditions are that the amount of the corporation's retained earnings immediately before the proposed distribution equals or exceeds the amount of the proposed distribution or otherwise satisfies conditions on distributions set forth in the code. These restrictions on distributions are codified at AS 10.06.358.

In my view, the proposed changes to Section 325 do not lessen the provisions of the code protecting shareholders of the corporation. However, the proposed changes will allow greater flexibility to a corporation's board of directors in addressing capital needs in present day financial markets.

The other provisions of HB 357 make other changes to the Alaska Statutes to accommodate these primary changes to Section 325. I have prepared a brief section-by-section outline of the provisions of the bill. It is included with this statement of testimony.

In summary, the Alaska Corporations Code is, in my view, presently in need of amendment to recognize the needs of modern corporations, while retaining shareholder protection as already adopted in other commercial states. Specifically, that amendment is needed to incorporate changes to code provisions of California on which Section 325 is based.

Again, thank you for the opportunity to present this testimony before the committee. I am available should you have questions about the bill.

The following is a brief outline of the specific provisions of the share redemption bill (HB 357) submitted to the Alaska legislature in January 2000:

- **Section 1 of the bill –**
 - *Provides* drafting style correction to make specific reference to AS 10.06.325

- **Section 2 of the bill –**
 - *Provides* a corporation may through its articles establish common shares that are redeemable, under either of the following –
 - At option of the corporation (present Alaska law)
 - On the happening of specific events (new separate provision, follows California law)
 - *Provides* a corporation may through its articles establish preferred shares that are redeemable under any of the following –
 - At the option of the corporation (present Alaska law)
 - On the happening of specified events (new separate provision, follows California law)
 - At the option of the holder (new provision, follows California law)
 - Upon vote of shareholders (new provision, follows California law)

- **Section 3 of the bill –**
 - *Eliminates* prohibition against share redemption at holder option (follows California law)
 - *Clarifies* existing law as to share redemption involving an open-end investment company

- **Section 4 of the bill (new provisions) –**
 - *Establishes* guidelines for share redemption (Subsection (d), follows California law) –
 - Must state terms and conditions in articles
 - For partial share redemption, must state share selection method in articles
 - Exception – Share redemption at option of corporation (covered by AS 10.06.385)
 - *Clarifies* AS 10.06.325 is only way to issue redeemable shares (Subsection (e)) –
 - Notwithstanding provisions of AS 10.06.375 allowing a corporation to impose "additional restriction" on share redemption