

Testimony
By: D. R. Kirtley
Joint Judiciary Hearing
Dover, Delaware
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My name is Donald R. Kirtley. I am Vice President, Public Affairs of Hercules Incorporated. Hercules has approximately 3,000 employees in Delaware. This month we are celebrating our 75th anniversary as a company and as a Delaware corporation.

I am here to speak in favor of House Substitute No. 1 for HB 396, and to ask you to move ahead expeditiously in its enactment. Hercules believes its enactment is important to Delaware for the following reasons:

First, to keep Delaware in its leadership position as the State of choice for incorporation. Half of the largest U. S. corporations are incorporated in Delaware. That means half are not. By my count, at least 28 State legislatures out there where the other half are incorporated have already acted. Delaware is playing catch up. This issue has been debated since last April. The Bar Association spent the summer and fall working on the issue, drafting the proposal and sending it to interested parties for comment. So the issue has been fully aired and debated.

Secondly, we seek its enactment for fiscal and economic development reasons, which will become clear as I describe what this bill does and does not do.

This bill does not limit legitimate fully financed, fully priced buy out offers for a company's stock.

This bill has nothing to do with legitimate proxy fights in which shareholders vote to throw out the current board of directors of a corporation in favor of one more to its liking.

All this bill does is stop the greenmailers.

I will give you an example of how greenmailers work: they take a stock position and ask the company to buy them out at double or triple what they paid. If the company says no, the greenmailer takes a larger position and announces a takeover bid, a raid. Quickly, arbitrageurs (speculators) buy the company's stock and thus the company's shareholder base shifts from investors to arbitrageurs. The latter's only goal is to ratchet up the stock as quickly as possible to make a fast profit.

I will mention two companies with which I am familiar that this has happened to and describe some of the job loss and community and economic development loss that followed.

Gulf Oil Company was headquartered in Pittsburgh and employed 5,000 people there. A greenmailer raided Gulf. In the battle Gulf became so crippled it was forced to seek a "white knight" to come in and take over. The white knight took over the assets -- and let the people go. 5,000 jobs were lost in Pittsburgh, and the personal loss by those families was crushing and the economic development loss to the community was severe.

Phillips Petroleum Company is headquartered in a small town, Bartlesville, Oklahoma. A town about the size of Dover. A greenmailer raided Phillips. Instead of seeking a white knight, the company recapitalized, meaning it borrowed the money to pay off the greenmailer and the arbitrageurs. But it ended up badly in debt. The interest costs on the debt are so great, Phillips has had to lay off thousands of employees in the town of Bartlesville, a devastating blow to the local economy and, of course, to the people involved. This week, as we speak, another 500 people are being laid off in Bartlesville.

The specific political, public policy matter the legislature is being called on to address here is this: Are we in favor of greenmailers or are we against them? The bill doesn't stop takeovers or proxy fights; it stops greenmailers. Do we declare open season on our state's corporations and jobs by greenmailers - or do we shut down the greenmailers.

This bill does one thing: it stops the greenmailer. At least 28 other States are ahead of us in taking action against this type of activity. And I hope you ladies and gentlemen will move expeditiously toward curtailing it also.