

Introduced: 4/15/80
Referred: Finance

1 IN THE HOUSE

BY THE RULES COMMITTEE

2 HOUSE BILL NO. 1006

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 ELEVENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act establishing the portfolio of Alaska citizen
7 enterprises; and providing for an effective date."

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

9 * Section 1. DECLARATION OF POLICY, PURPOSES AND FINDINGS. (a) It is
10 the policy of the state to provide for the utilization, development and
11 conservation of the state's natural resources and the income derived from
12 them for the maximum benefit of its people.

13 (b) The purposes of this Act are to

14 (1) transfer part of the wealth derived from the natural resources
15 of the state to its residents;

16 (2) provide a means for the direct participation of state resi-
17 dents in the financing of business enterprises which benefit the state, and
18 to provide residents with the opportunity to share in potential profits;

19 (3) reduce ownership and control of industries in the state by
20 nonresidents;

21 (4) encourage greater participation in and understanding of the
22 capitalist system by residents through a wider distribution of economic
23 interests in state business enterprises;

24 (5) encourage increased awareness and involvement by state resi-
25 dents in the management of state natural resource production and development;

26 (6) encourage increased awareness and involvement by state resi-
27 dents in state participation in business enterprises; and

28 (7) encourage increased awareness and involvement by state resi-
29 dents in the development of local industry.

1 (c) The legislature finds that

2 (1) it is in the public interest and furthers a public purpose to
3 distribute a part of Alaska's wealth derived from natural resources to state
4 residents to increase their involvement and awareness regarding the management
5 of the state's natural resources, the development of its local industry, and
6 the capitalist system;

7 (2) a mechanism allowing the state to distribute a part of its
8 resource wealth to residents will best promote the state's interest in creat-
9 ing direct involvement by residents in the decisions concerning the state's
10 natural resource management; and

11 (3) a mechanism allowing the state to distribute a part of its
12 ownership interests in business enterprises to residents will best promote
13 the state's interest in creating direct involvement by residents in the
14 decisions concerning state investments and development of local industry.

15 (d) Except as otherwise required by law, it is intended that distribu-
16 tions to residents under this Act shall be unencumbered property.

17 * Sec. 2. AS 43 is amended by adding a new chapter to read:

18 CHAPTER 17. PORTFOLIO OF ALASKA CITIZEN ENTERPRISES.

19 ARTICLE 1. PORTFOLIO OF ALASKA CITIZEN ENTERPRISES PROGRAM.

20 Sec. 43.17.010. ESTABLISHMENT OF PROGRAM. The portfolio of Alaska
21 citizen enterprises is established in the Department of Revenue to
22 provide for distribution of state assets to state residents.

23 Sec. 43.17.020. PORTFOLIO PLANS. The department shall develop
24 portfolio plans for distribution of state assets. A portfolio plan must
25 provide for

26 (1) contribution or transfer of assets owned by the state or
27 to be acquired by the state;

28 (2) distribution of interests in the assets to eligible
29 residents by issuing certificates representing units of

- 1 (A) a state energy resource trust;
- 2 (B) a state industrial development project;
- 3 (C) a state general stock ownership corporation;
- 4 (D) a state investment fund;
- 5 (E) a state real estate trust;
- 6 (F) business enterprises.

7 Sec. 43.17.030. PORTFOLIO PLANS SUBMITTED TO LEGISLATURE. (a)
8 Beginning with the First Session of the Twelfth Legislature and ending
9 with the First Session of the Thirteenth Legislature, the commissioner
10 shall submit to the legislature, on or before the 30th day of each
11 legislative session, one or more portfolio plans.

12 (b) A portfolio plan submitted to the legislature under this
13 section must

- 14 (1) specify the assets to be distributed;
- 15 (2) specify the manner in which the assets not then owned by
16 the state will be acquired by the state;
- 17 (3) specify the date on which a person must be a state resi-
18 dent to be eligible to participate in the distribution of units under
19 AS 43.17.060 - 43.17.090;
- 20 (4) specify the manner in which a person must apply to pur-
21 chase or receive a unit;
- 22 (5) specify the types of assets involved, an appraisal of
23 their value, the number of units to be distributed, and the manner in
24 which they are to be distributed;
- 25 (6) specify the terms of payment for units to be sold and the
26 number of units to be distributed free;
- 27 (7) specify restrictions on the transfer or encumbrance of a
28 unit distributed by the state;
- 29 (8) propose needed legislation;

1 (9) include proposed articles of incorporation and bylaws of
2 a corporation or the proposed trust indenture of a trust needed to
3 implement the plan;

4 (10) if a corporation or trust is needed to implement the
5 plan, include a method of selection or the names of the incorporators
6 and initial directors of a corporation and trustees of a trust;

7 (11) provide a financial assessment of the plan including

8 (A) administrative costs;

9 (B) initial costs;

10 (C) a projection of future costs;

11 (D) contingent costs or liabilities;

12 (E) a projection of future earnings;

13 (F) value of units;

14 (G) probable financial and tax consequences for pur-
15 chasers and recipients of units;

16 (12) assess applicable state or federal laws or regulations;

17 and

18 (13) provide other information considered necessary by the
19 commissioner.

20 Sec. 43.17.040. LEGISLATIVE APPROVAL. (a) A portfolio plan may
21 not be implemented until it has been approved by the legislature by law.

22 ARTICLE 2. DISTRIBUTION OF UNITS.

23 Sec. 43.17.050. ELIGIBILITY. (a) To be eligible to purchase a
24 unit under AS 43.17.080 - 43.17.090 or to receive a unit distributed
25 under AS 43.17.070, a person must

26 (1) be a resident of the state on the eligibility date estab-
27 lished in the portfolio plan under which the unit is distributed;

28 (2) file an application; and

29 (3) submit with the application a signed, sworn certification

1 that the person was a resident on the eligibility date and other proof
2 of residency as the commissioner may require.

3 (b) Other proof of residency under (a)(3) of this section may
4 include

5 (1) evidence that the person was registered to vote in Alaska
6 on the eligibility date, and actually voted in the last statewide general
7 election before that date;

8 (2) a copy of the person's Alaska resident income tax return
9 for the tax year which includes the eligibility date, or for the previous
10 tax year;

11 (3) an Alaska driver's license, or a resident hunting, fish-
12 ing, or trapping license, issued before the eligibility date, and valid
13 on that date;

14 (4) evidence that the person had telephone or utility service
15 at a private residence in the state on the eligibility date listed in
16 his name or in the name of a spouse, or in the name of a parent or
17 guardian if the person is a minor;

18 (5) an affidavit of one or more individuals having personal
19 knowledge concerning the person's residency on the eligibility date; and

20 (6) other documentary evidence of residency acceptable to the
21 commissioner.

22 (c) A person is presumed to be a resident on the eligibility date
23 if he provides at least two items specified in (b) of this section.

24 (d) The department shall prescribe and furnish a form for ap-
25 plications and for certification of residency.

26 Sec. 43.17.060. NUMBER AND PURCHASE PRICE OF UNITS ISSUED. (a)
27 For each portfolio plan the commissioner shall establish a purchase
28 price for each unit to be sold under AS 43.17.080 - 43.17.090. The
29 price for each unit may not exceed \$50.

1 (b) The commissioner shall determine the number of units to be
2 distributed and sold by dividing the value of the assets contributed
3 under the portfolio plan by the purchase price of a unit established
4 under (a) of this section.

5 (c) The value of assets contributed to a state industrial develop-
6 ment project, a state general stock ownership corporation, a state
7 investment fund, a state real estate trust, or a business enterprise, is
8 equal to the cost to the state of the assets contributed to the portfolio
9 plan, plus an amount that compensates the state for the administrative
10 costs of acquiring, holding, and distributing those assets.

11 (d) The value of assets contributed to a state energy resource
12 trust is the conservatively appraised value of the assets contributed to
13 the trust. A conservatively appraised value for assets in a state
14 energy resource trust is a value determined by generally accepted apprai-
15 sal methods and shall be calculated using

16 (1) estimates of resource production volumes having an accu-
17 racy confidence level of 75 percent or greater;

18 (2) an assumed rate of increase in future world prices for
19 resource commodities not exceeding the general rate of price inflation
20 in the United States; and

21 (3) a discount rate reflecting the judgment of private in-
22 vestors as to the expected rate of return before payment of taxes re-
23 quired to justify incremental investments in the exploration and develop-
24 ment of resources comparable to those committed under a portfolio plan.

25 (e) Before a sale of units, the commissioner shall publish notice
26 of the purchase price.

27 Sec. 43.17.070. FREE DISTRIBUTION. A part of the total number of
28 units to be distributed under a portfolio plan shall be granted in equal
29 parts without consideration to all eligible persons who apply to receive

1 them. The part of the units to be distributed under this section shall
2 be at least five percent, but not more than 15 percent, of the total
3 number of units to be distributed unless otherwise required by law.

4 Sec. 43.17.080. FIRST RESTRICTED SALE. (a) The commissioner
5 shall offer for sale in a first restricted sale all units authorized to
6 be distributed under a portfolio plan, other than those distributed
7 under AS 43.17.070.

8 (b) In a first restricted sale, a person may subscribe for any
9 number of units by submitting an application and certificate of resi-
10 dency under AS 43.17.050 and a deposit equal to 10 percent of the pur-
11 chase price of the subscribed units. The deposit must be in the form of
12 cash, check, or money order.

13 (c) The person shall indicate on his application whether he wishes
14 to pay for the units at one time or under an extended purchase plan.

15 (d) If the sale is oversubscribed, each person subscribing under
16 this section may complete the purchase of the lesser of

17 (1) the number of units he subscribed for; or

18 (2) the number of units which allows for an equal distribu-
19 tion of all the units authorized for sale among all the subscribers.

20 (e) The commissioner shall notify each subscriber who elects to
21 pay for units at one time of the total number of units he is entitled to
22 purchase and of the balance due, after crediting his deposit, to complete
23 the purchase. On receipt of cash, check, or money order equal to the
24 balance due, the commissioner shall issue to the subscriber a certificate
25 for each unit purchased. If the subscriber fails to complete the pur-
26 chase as provided in this subsection within 60 days of notification, the
27 commissioner shall issue to him the number of whole units paid for by
28 the deposit, and refund any balance remaining from the deposit.

29 (f) The commissioner shall notify each subscriber who elects to

1 pay for units under an extended payment plan of the total number of
2 units that he is entitled to purchase in the first restricted sale, and
3 issue to him

4 (1) certificates for one-tenth of the units;

5 (2) a refund of the difference, if any, between the deposit
6 and the purchase price for the number of units represented by certifi-
7 cates issued; and

8 (3) purchase warrants under AS 43.17.110 for nine-tenths of
9 the units.

10 Sec. 43.17.090. SECOND RESTRICTED SALE. (a) If the first re-
11 stricted sale under a portfolio plan is undersubscribed and if the plan
12 authorizes a second restricted sale, the commissioner shall conduct a
13 second restricted sale.

14 (b) A person may submit one or more sealed bids, each of which
15 must specify the number of units that he wishes to purchase and a bid
16 price for each unit. The bid price must be equal to or exceed a minimum
17 bid price specified by the commissioner, which may be less than, equal
18 to, or more than the purchase price at the first restricted sale.

19 (c) A sealed bid must be accompanied by an application and certifi-
20 cate of residency under AS 43.17.050 and by a deposit equal to 10 percent
21 of the total bid price. The deposit must be in the form of cash, check,
22 or money order.

23 (d) The commissioner shall tally the bids in descending order of
24 bid price, until the total number of units bid for equals the number of
25 units to be sold. If the number of units to be sold exceeds the number
26 of units bid for, the commissioner shall tally all bids at or above the
27 minimum bid price. The commissioner shall accept each bid that has been
28 tallied.

29 (e) Units sold in a second unrestricted sale may not be paid for

1 under an extended payment plan. The commissioner shall notify a success-
2 ful bidder of the total number of units he is entitled to purchase and
3 of the balance due, after crediting his deposit, to complete the pur-
4 chase. On receipt of cash, check or money order the commissioner shall
5 issue to the bidder certificates representing the units purchased. If
6 the bidder fails to complete the purchase within 60 days, the commis-
7 sioner shall issue to him certificates representing the number of whole
8 units paid for by the deposit, and refund any balance remaining from the
9 deposit.

10 Sec. 43.17.100. UNRESTRICTED SALE. Except as expressly prohibited
11 by this chapter or under the terms of a portfolio plan, the commissioner
12 may hold as investments or may sell for maximum revenue any units autho-
13 rized to be distributed under a portfolio plan which remain undistributed
14 after completion of the free distribution, the first restricted sale,
15 and the second restricted sale, and which are not reserved under issued
16 purchase warrants.

17 Sec. 43.17.110. PURCHASE WARRANTS. (a) Purchase warrants issued
18 under AS 43.17.080(f) entitle a subscriber to purchase under an extended
19 payment plan nine-tenths of the number of units which the subscriber was
20 entitled to purchase in a first restricted sale on the following
21 schedule:

22 (1) one-tenth not later than one year after the purchase
23 warrant was issued;

24 (2) one-tenth not later than two years after the purchase
25 warrant was issued;

26 (3) one-tenth not later than three years after the purchase
27 warrant was issued;

28 (4) one-tenth not later than four years after the purchase
29 warrant was issued;

1 (5) one-tenth not later than five years after the purchase
2 warrant was issued;

3 (6) one-tenth not later than six years after the purchase
4 warrant was issued;

5 (7) one-tenth not later than seven years after the purchase
6 warrant was issued;

7 (8) one-tenth not later than eight years after the purchase
8 warrant was issued;

9 (9) one-tenth not later than nine years after the purchase
10 warrant was issued.

11 (b) The total price for a unit purchased under this section shall
12 be the purchase price of the unit at the time of the first restricted
13 sale under AS 43.17.080 increased by an amount equal to the weighted
14 average rate of interest to be paid by the state on bonds issued during
15 the prior fiscal year compounded from the date the purchase warrant was
16 issued to the date of payment for the units. The purchase price shall
17 be decreased by the amount of dividends, interest, royalties, or profits
18 received by the state from holding the units between the date the pur-
19 chase warrant was issued and the date of payment for the units, but the
20 price may not be reduced below 50 percent of the purchase price for the
21 units at the time of the first restricted sale.

22 (c) Payment for units purchased by exercising a purchase warrant
23 may be made by cash, check or money order.

24 (d) A purchase warrant may not be transferred, and may not be
25 exercised except by a person who is a resident at the time the purchase
26 warrant is exercised. A purchase warrant is void if transferred.

27 Sec. 43.17.120. DISPOSITION OF PROCEEDS. The commissioner shall
28 deposit net proceeds from the sale of units under this chapter into the
29 Alaska permanent fund established in art. IX, sec. 15 of the state

1 constitution and AS 37.13.010.

2 ARTICLE 3. GENERAL PROVISIONS.

3 Sec. 43.17.130. DISPOSITION OF UNITS. (a) Except as provided in
4 (b) of this section, a person has an unrestricted right to sell, trans-
5 fer, devise, pledge or dispose of a unit, an interest in a unit, or
6 earnings from a unit.

7 (b) A portfolio plan for a state general stock ownership corpora-
8 tion or for a state energy resource trust may include restrictions on
9 the transfer or disposition of units in the corporation or trust.

10 Sec. 43.17.140. VOTING RIGHTS. (a) The commissioner may exercise
11 the voting rights attached to a unit that the state owns, holds in
12 trust, or reserves for future distribution.

13 (b) The voting rights attached to ownership of a unit distributed
14 under a portfolio plan must be conveyed unrestricted to the person
15 receiving the unit. The commissioner may not reserve a voting right or
16 require as a condition of the distribution that the recipient waive a
17 voting right, grant a proxy, or adhere to a voting trust.

18 Sec. 43.17.150. TAX TREATMENT. (a) The receipt by a person of a
19 unit distributed under AS 43.17.070 - 43.17.090 is not taxable under
20 AS 43.20. Earnings from a unit and from a sale or transfer of a unit
21 are taxable under AS 43.20.

22 Sec. 43.17.160. CREDIT FOR FEDERAL TAXES PAID. If the receipt by
23 a person of a unit distributed under AS 43.17.070 - 43.17.090 is treated
24 as income under the Internal Revenue Code and if, as a result, the
25 person is required to pay additional federal income tax, the amount of
26 additional tax attributable to that income may be applied as a credit
27 against the person's Alaska individual income tax for the tax year in
28 which the additional federal income tax is paid.

29 Sec. 43.17.170. AUTHORITY TO PARTICIPATE IN MARKET. (a) If the

1 commissioner determines that an efficient public market does not exist
2 for the sale of units held by persons, he may buy, sell, and trade in
3 those units for the purpose of establishing that market. The commis-
4 sioner shall publish regularly the bid and ask prices for those units.

5 (b) If the commissioner trades in units as authorized in (a) of
6 this section, he shall maintain an average markup sufficient, in his
7 judgment, to compensate the state for the administrative costs of his
8 trading activity.

9 (c) In this section, "efficient public market" means a market in
10 which the units distributed under this chapter have a readily ascer-
11 tained market value and in which they may be bought or sold readily and
12 without unnecessary or unreasonable transaction costs.

13 Sec. 43.17.180. WAIVER OF RESTRICTIONS. AS 37.10.085 does not
14 apply to the acquisition of assets under this chapter.

15 Sec. 43.17.190. REGULATIONS. The department may adopt regulations
16 necessary to administer this chapter.

17 Sec. 43.17.200. PENALTIES. In addition to any criminal penalties
18 imposed, if a person is convicted of perjury or unsworn falsification on
19 the basis of a certification made under AS 43.17.050 and the conviction
20 is not reversed, that person is not eligible for a distribution of units
21 under this chapter.

22 Sec. 43.17.210. DEFINITIONS. In this chapter,

23 (1) "assets" means shares of stock, debentures or other debt
24 obligations, royalties or other interests in minerals, or other inter-
25 ests in business enterprises or natural resources;

26 (2) "business enterprise" means a private corporation engaging
27 in or about to engage in natural resource extraction or processing, or
28 in manufacturing, transportation, communication, trade or services in
29 the state, whose securities the commissioner has purchased under his

1 existing investment authority under AS 37.10, or has proposed to purchase
2 under the terms of a portfolio plan established under this chapter;

3 (3) "certificate" means an instrument evidencing ownership of
4 one or more units and includes stock certificates, debentures or other
5 debt instruments and trust certificates;

6 (4) "commissioner" means the commissioner of revenue;

7 (5) "department" means the Department of Revenue;

8 (6) "eligibility date" means a date established by the commis-
9 sioner for a distribution of units under a portfolio plan established
10 under this chapter;

11 (7) "extended purchase plan" means the purchase of units over
12 a period of time through the exercise of purchase warrants;

13 (8) "oversubscribed" means a sale in which the total number
14 of units subscribed for exceeds the total number of units available for
15 sale;

16 (9) "person" means a natural person;

17 (10) "purchase warrant" means an instrument authorizing the
18 purchase of units under this chapter;

19 (11) "resident" means a person who maintains a permanent place
20 of abode in the state with the intention of making the state his per-
21 manent place of residence and who resides in the state continuously
22 except for temporary purposes only and with the intent of returning; a
23 person may not be considered to have gained a residence solely by reason
24 of his presence and he may not lose it solely by reason of his absence
25 because of marriage to a person engaged in the civil or military service
26 of this state or the United States; a person may not be considered to
27 lose his residence while a student at an educational institution, while
28 in an institution at public expense, while confined in prison, while
29 engaged in the navigation of waters of this state, of the United States,

1 or of the high seas, or while residing upon an Indian or military reser-
2 vation; a minor takes the residence of his parent or of his legal guar-
3 dian; a married woman may establish her own residence and does not
4 presumptively take the residence of her husband;

5 (12) "state energy resource trust" means a trust established
6 under this chapter the assets of which are a right to receive income
7 equal to a specified part of the rentals, royalties, or net profits
8 belonging to the state under specified leases of state land for the
9 extraction of oil, gas, coal, oil shale, or other minerals or a speci-
10 fied part of the revenue from the sale of oil, gas, coal, oil shale, or
11 other minerals taken by the state as in kind royalties under those
12 leases;

13 (13) "state general stock ownership corporation" means a
14 corporation formed in accordance with subchapter U, Chapter 1 of the
15 Internal Revenue Code of 1954, as amended (26 U.S.C. secs. 1391 - 1397);

16 (14) "state industrial development project" means a business
17 enterprise engaged in or about to engage in natural resource extraction
18 or processing, or in manufacturing, transportation, or communications in
19 the state, and to which the state or an agency or subdivision of the
20 state contributes an investment of equity or debt exceeding \$100,000,000;

21 (15) "state investment fund" means a regulated investment
22 company organized in accordance with subchapter M, Chapter 1 of the
23 Internal Revenue Code of 1954 as amended (26 U.S.C. secs. 851 - 855);

24 (16) "state real estate trust" means a real estate investment
25 trust organized in accordance with subchapter M, Chapter 1 of the
26 Internal Revenue Code of 1954 as amended (26 U.S.C. secs. 856 - 858);

27 (17) "undersubscribed" means a sale in which the total number
28 of units available for sale exceed the number of units subscribed;

29 (18) "unit" means an undivided fractional ownership right or

1 interest in a trust, corporation, fund, project or enterprise established
2 under this chapter.

3 * Sec. 3. The enactment of a version of Senate Bill No. 170 or House Bill
4 No. 240 relating to general stock ownership corporations and creating the
5 Alaska General Stock Ownership Corporation constitutes approval of a portfolio
6 plan under AS 43.17.030 enacted by sec. 2 of this Act. After enactment of
7 either, the commissioner of revenue shall implement the portfolio plan in
8 accordance with this Act, subject to necessary appropriation. If the port-
9 folio plan is approved under this section, the commissioner of revenue may,
10 notwithstanding the approval, submit to the legislature by the 30th day of
11 the First Session of the Twelfth Legislature a revised portfolio plan if in
12 his judgment a revised plan is necessary to accomplish the policy, purposes
13 and findings under this Act or to provide complete information concerning the
14 plan. A revised portfolio plan submitted under this section is subject to
15 legislative approval under AS 43.17.030.

16 * Sec. 4. This Act takes effect immediately in accordance with AS 01.10.-
17 070(c).

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