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# STATE OF ALASKA

## THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

JUNEAU 99801

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*Carlos*  
*Mike*  
AUDIT DIVISION  
POUCH W — ALASKA OFFICE BUILDING

FINANCE DIVISION  
POUCH WF — STATE CAPITOL

### MEMORANDUM

DATE: January 30, 1979

TO: Honorable Mike Colletta ✓  
Honorable Jim Duncan  
Project Directors for the Kelso Study

FROM: Milt Barker, <sup>MB</sup>Fiscal Analyst  
Legislative Finance Division

SUBJECT: GSOC Recommendations

Mr. Louis Kelso indicated he would be glad to receive any recommendations on GSOC policies or reactions to the specific issues he raised during his January 25, 1979 presentation. Also attached is his draft GSOC legislation and an AG's response to some questions posed by Kelso which further elucidate some of the issues. Any responses should probably be in the mail by February 2 if they are to be considered for the publication of his report which is due February 15.

Following are issues raised at the January 25 hearing and in subsequent discussions:

1. What is the definition of an eligible individual for receiving GSOC stock? Kelso recommends all individuals, regardless of age, born before a particular date who are residents of and are domiciled in Alaska. In law, domicile turns on intent supported by objective tests. (See Section III of AG's opinion.) An unanswered question is the eligibility of military personnel.
2. What is the legal age for acquisition of shares? Kelso recommends the age of majority. Shares would be held in escrow until age 19.
3. Are shares of minors to be voted? Kelso recommends no voting of minor's shares. Legal guardian could be permitted to vote such shares under current law, AS 10.05.165(b).
4. What pecuniary rights over minor's shares would a legal guardian have? Kelso recommends guardian could not sell or alienate stock in any way.

Also recommends no dividends on stock in escrow. However, dividends could be paid and accumulated in escrow or paid to guardian for maintenance of child. (See Section IV of AG's opinion.)

5. On all shares held in escrow for whatever reason, Kelso recommends no dividends, inalienability, and no voting rights.
6. What happens to shares upon stockholder's death? Kelso recommends they be available for transfer through laws of descent. However, Section 5 of the draft legislation seems to give, even in this case, the GSOC a right of first refusal for the first five years after issuance, which may be intended only for those moving out of state. No transfer to non-residents, in any case, shall be made.
7. If a stockholder moves outside, shall he be required to sell his stock? Draft legislation does not require it, nor does federal law.
8. How will stock be valued? Kelso recommends book value for first five years; (no stock would be released from escrow for five years) market thereafter, with periodic appraisals to guide buyers and sellers.
9. Kelso recommends a nine-member board of directors, five of which must be Alaska residents at all times during their tenure. Appointment of board by the Governor is recommended. Legislative confirmation is not recommended to keep the GSOC as free as possible of the aura of state agency status. This might be of value if court challenge under equal protection or other constitutional articles is made.

Directors classified as to term of office are recommended. Each would serve three-year terms, with three directors elected each year. Classification may make it more likely that a couple factions will control the corporation. Electing all directors at once could provide broader representation. Existing mechanisms, which may create minority representation, are proxy voting (AS 10.05.159), cumulative voting (AS 10.05.162), and voting trusts (AS 10.05.171). Establishment of an executive committee (AS 10.05.195) can delegate the board's authority to two or more directors if articles of incorporation or bylaws so provide.



10. Although the draft legislation allows the GSOC to engage in its own trust operations and handling of stock, Alaska law heretofore has not permitted this. Fiduciary responsibility requires an outsider to handle these functions normally. Contract trust arrangements could be implemented faster than in-house, although Kelso thinks in-house may be cheaper. Kelso points out that "you don't want Bank of America to sign the checks".
11. The analysis by Wilmer, Cutler & Pickering said the most difficult problem with the GSOC is its "closed class" feature, which limits ownership to residents on a certain date and precludes persons who later qualify as residents from becoming shareholders.

"Whether to provide a mechanism for opening the class is a policy decision for the legislature," Wilmer, Cutler & Pickering said. "One possibility would be to rely on the apparent requirement in the Internal Revenue Code for a closed-class and open the class only if required by court decision. Another possibility would be to provide a mechanism for extending GSOC membership to new residents; this approach, however, should be cleared with the Internal Revenue Service as being consistent with the federal legislation."

Kelso suggests that one solution might be to allow new residents to purchase AGSOC stock at book value after a two-year waiting period.

Whether or not the GSOC could facilitate this by purchasing its own shares may be problematical since the federal law states that GSOC shares are transferable only to "eligible individuals". Certainly the GSOC or other entity could match buyers and sellers but this would not make for as smooth a market.

12. The appropriation for a loan for start-up costs in Section 9 in the GSOC draft will have to go in a separate bill or a fiscal note if it is to be an appropriation. However, under AS 37.10.070(a) (b), the Commissioner of Revenue could probably make such a loan on his own determination without an appropriation. Another alternative may be an appropriation to guarantee a private loan. A loan is preferred so that the IRS can't claim the GSOC has assets making the initial distribution of stock a taxable item.

13. The State guarantee of project financing proposed in Section 10 of the draft would probably require a referendum since, as a possible unfunded liability, it would be similar to bonded indebtedness. A straight state loan to the GSOC if funded from a state bond issue would certainly require a referendum. However, accepting the vote of the stockholders as the referendum among voters would probably not pass constitutional muster because of the divergence of the two groups.
14. What sorts of investments is the GSOC to make? Senator Sumner urges many smaller-scale investments and cited the principles of diversification and the prudent man rule. Mr. Kelso claims this is the rich man's prudent man rule, but that the poor man's prudent rule which is "put all your eggs in one basket", should be applied in this case.

The GSOC draft contemplates and philosophically opines for major capital-intensive types of investment. The tax rules applicable to GSOC's heavily favor capital intensive investments as long as the GSOC is highly leveraged, i. e., has a high debt to equity ratio. Large depreciation deductions are needed to offset large principal amortization payments so that taxable income is not greater than book income, thus, creating tax liabilities for shareholders without distributable earnings to cover them. The tax rules further favor capital intensive investment by allowing the pass-through to shareholders of the investment tax credit on machinery and equipment.

15. Kelso's study will include proposed articles of incorporation and bylaws, and a time and sequence table for implementing GSOC legislation.

Attachments 3

cc: Gas Pipeline Committee  
Budget & Audit Committee  
Rep. Terry Gardiner  
Rep. Russ Meekins

PROPOSED ALASKA STATE LEGISLATION

AN ACT TO CREATE ALASKA GENERAL STOCK OWNERSHIP CORPORATION  
AND TO AMEND THE ALASKA STATUTES IN CONNECTION THEREWITH

THE ESTABLISHMENT OF ALASKA GENERAL STOCK OWNERSHIP  
CORPORATION (AGSOC) BY THE LEGISLATURE OF THE STATE OF ALASKA

WHEREAS, the Legislature of the State of Alaska hereby finds and determines that it bears a share of the responsibility for providing the institutional background, framework and facilities for assuring, to the maximum extent of its ability so to do, the opportunity for every Alaskan resident legitimately to achieve economic self-sufficiency for himself and his dependents, both through the opportunity to engage in gainful employment to the extent that the existing state of technology and economic development within Alaska, from time to time, provide demand for such employment, and through the legitimate opportunity through all means consistent with the protection and sanctity of private property to acquire and build viable holdings of productive capital, either in the form of direct ownership of equity stock in business enterprises that in turn own productive assets and engage in the production of goods and services for use either within or without the State of Alaska; and

WHEREAS, this Legislature finds and determines that the heretofore conventionally used methods of financing economic development and growth and the production of economic goods and services tend to result in the ownership of newly formed capital and of productive capital resulting from changes in the ownership of existing productive capital, by the relatively small number of consumer units already well endowed with the ownership of productive wealth, and at the same time tend to deny to those who need to participate in the process of producing goods and services as a means of enabling themselves to enjoy reasonable levels of consumption, but who do not already own significant holdings of productive capital, the opportunity legitimately to acquire such ownership; and

WHEREAS, this Legislature finds that the conventional methods of business finance heretofore used in economic development and in effecting, through purchase and sale, the ownership of existing productive assets, by private-sector business itself, particularly by corporations, heavily relies upon the use of credit to acquire assets capable of producing the revenues through which such credit obligations can be repaid, but that this fundamental logic of private-sector business finance does not encompass and extend to the non-capital-owning majority of the residents of the State of Alaska, or indeed to the residents of any other state in the United States; and

WHEREAS, this Legislature finds and determines that the function of technological advance is to introduce into the process of producing economic goods and services technological means and processes that displace employment, and that when such technological advances are conventionally financed, they tend to increase the productive power of those



who are already excessively productive rather than of those individuals who are economically under-productive; and

WHEREAS, this Legislature further finds that conventional methods of business finance therefore tend to make the already excessively productive minority more economically productive still, but deny the acquisition of such additional economic productive power to those who have nothing to sell in the marketplace of production except their labor power; and

WHEREAS, this Legislature finds that this state of affairs inevitably creates within the great majority of residents of the State of Alaska an enormous mismatch between the level of unsatisfied needs and wants and the possession of productive power, represented not only by the personal labor power of the individuals involved, but by their ownership of significant holdings of productive capital, so that widespread poverty, and the need for widespread welfare and philanthropy, both public and private, results; and

WHEREAS, this Legislature finds and determines that the ideal free democratic society is one composed of economically self-sufficient consumer units, each capable of producing, through their privately owned productive power, the level of income necessary to maintain the reasonable lifestyles they separately and individually desire; and

WHEREAS, this Legislature further finds and determines that in our advanced industrial economy the predominant cause of poverty is the lack of the private and individual ownership of productive capital by consumer units made up of individuals and of families and that governmental policy in the past has been primarily focused upon measures which ameliorate, or are intended to ameliorate, the effects of such poverty, but which do not tend to attack and eliminate its cause; and

WHEREAS, this Legislature finds and determines that it is its duty towards its citizens and residents to take all reasonable steps within its power to assist those citizens and residents in raising their individually-owned productive power through assisting them legitimately to buy and pay for the ownership of productive capital, and thus, in due course, to release them from the bonds of poverty and to free the State Government and its taxpayers from the burdens of welfare and its citizens and residents from the need for such welfare; and

WHEREAS, this Legislature hereby finds and determines that it is due and proper that the State of Alaska insist, to the maximum degree feasible, that the economic development and growth of this State be carried out by private enterprise in ways which lead to the possession of economic self-sufficiency and autonomy of the individuals and families who make up the consumer units of the economy of this State, rather than in a manner that creates a few rich and many poor.

NOW, THEREFORE, BE IT, AND IT IS HEREBY ENACTED by the Legislature of the State of Alaska that the Governor of this State be, and he hereby is, authorized and directed forthwith to cause the incorporation of Alaska General Stock Ownership Corporation (AGSOC), by the filing of appropriate Articles of Incorporation with the Division of Banking and Securities of the Department of Commerce of this State and to

appoint as incorporators and as the first Board of Directors of AGSOC, or at least as a majority thereof, not less than five (5) nor more than nine (9) individuals having the experience, capabilities and commitments to the goals set forth in the Preamble to this Act; and the Executive Department of the State of Alaska is hereby authorized and directed to perform or to cause to be performed such additional acts as may be necessary or desirable to perfect the organization of AGSOC as a General Stock Ownership Corporation under Title VI of the Internal Revenue Code of 1954, as amended, and under this Act.

BE IT ENACTED THAT:

Section 1. Alaska General Stock Ownership Corporation shall be a domestic corporation for profit under the laws of the State of Alaska, and shall not be an agency or political subdivision of the State of Alaska.

Section 2.

(a) The initial Board of Directors of AGSOC (hereinafter referred to as the "Board") shall consist of nine (9) members, at least five (5) of whom shall at all times during their terms as members of the Board be residents of the State of Alaska.

(b) Members of the initial Board shall be divided into three (3) classes, each class consisting of three (3) individuals, designated as Class One directors, each with a term of one (1) year and until their successors are elected and qualified; Class Two directors, each with a term of two (2) years and until their successors are elected and qualified; and Class Three directors, each with a term of three (3) years and until their successors are elected and qualified. Vacancies in the nine (9) member Board of Directors of AGSOC, should the Governor fail to appoint all nine (9) members prior to incorporation of AGSOC, may be filled by the incumbent Board members who shall designate the class of each director so appointed to fill a vacancy.

Section 3. Alaska General Stock Ownership Corporation is hereby authorized and directed:

(a) to issue only one class of stock;

(b) to issue shares only to residents (eligible individuals) of Alaska as defined herein;

(c) to initially issue at least one (1) share of its stock to each resident of Alaska, unless such resident elects within one (1) year after the date of such issuance not to receive such share;

(d) to provide that no share of stock shall be transferable --

(i) by a shareholder other than by will or the applicable laws of descent and distribution until after the expiration of five (5) years from the date such stock is issued by AGSOC except in the event the shareholder ceases to be a resident of the State of Alaska;



(ii) to any person other than an individual who is at the time of such transfer an individual resident of Alaska as defined herein, except that for purposes of such transfer the date thereof, rather than the date applicable to the initial issue of stock, shall apply;

(iii) to any individual who, after the transfer, would own more than ten (10) shares of the stock of AGSOC;

(e) to perform all acts and conform to all legal requirements to qualify and thereafter to continue to qualify as a General Stock Ownership Corporation under the Internal Revenue Code of 1954, as amended; and

(f) not to invest in or acquire any interest in properties acquired by it or for its benefit through exercise of the right of eminent domain.

Section 4. Shares acquired by each eligible individual upon original issue by AGSOC shall not be sold, pledged, assigned, mortgaged, subject to encumbrance, voluntary or involuntary, or otherwise transferred by the shareholder prior to the expiration of the five (5) year period or until the shareholder shall reach the age of majority, as defined by Alaska law, or until the shareholder shall have complied with all reasonable rules and regulations of AGSOC pertaining to the release of such shares from escrow, whichever of said events shall be the last to occur, except in the event of death of the shareholder or upon the shareholder ceasing to be a resident of the State of Alaska.

Section 5. AGSOC shall have a right of first refusal to purchase shares of stock of AGSOC legally proposed to be transferred during the period of five (5) years after initial issuance thereof as provided in Section 3(d)(i) of this Act. Such shares may be held by the AGSOC in the general escrow or trust account of its trust or escrow division, in which event such stock shall continue its status as issued and outstanding stock of AGSOC for all purposes, except that such shares, while so held, shall not be voted nor shall they be entitled to dividends declared thereon. The Board of Directors shall also have the power to determine that such reacquired shares shall be cancelled and such shares of stock shall thereupon return to the status of authorized and unissued shares.

Section 6. AGSOC shall have the power to make and enforce reasonable rules and regulations with respect to the establishing of escrow accounts for each stockholder of the corporation; for releasing shares of stock to the owner or buyer thereof; for the operation of its trust division; for the transfer and recording of transfers of its stock if it determines to function as its own transfer agent; for the operation of its trust division if it determines to establish a trust division, and with respect to the issue, transfer, repurchase and other handling or dealing with its stock as its Board of Directors may adopt and promulgate. All such rules and regulations shall be published to the stockholders of AGSOC and shall be available in suitable form to any stockholder at any time upon request during regular business hours.



Section 7. For purposes of this Act the terms "resident", "eligible individual", or "qualified individual" shall have the same and identical meaning, and shall mean an individual, regardless of age, born before 12:00 o'clock midnight on \_\_\_\_\_, 1979, who is a resident of and is domiciled in the State of Alaska on such date and who remains a resident of Alaska through the date such stock of AGSOC is initially issued.

Section 8. The following amendments shall be and hereby are made to the Alaska Statutes:

(a) Title 10, Section 10.05.012, is hereby amended by inserting prior to the first word in the second sentence thereof the words: "Except with respect to General Stock Ownership Corporations,".

(b) The last sentence of Title 10, Section 10.05.186, is hereby amended to read: "Except with respect to General Stock Ownership Corporations, no classification of directors is effective prior to the first annual meeting of shareholders."

(c) Title 10, Section 10.05.204, is hereby amended by adding a new Subsection (7) at the end thereof as follows:

"(7) Notwithstanding the foregoing or any other provisions of Title 10 of the Alaska Statutes, dividends may be declared and paid by a General Stock Ownership Corporation at any time and from any source to the extent deemed by the Board of Directors thereof necessary to comply with the distribution requirements of the laws of Alaska and of the United States."

(d) Title 10, Section 10.05.216, Subsection (e), is hereby amended by inserting at the beginning of the first sentence thereof the words: "(e) Except with respect to General Stock Ownership Corporations,".

(e) Title 10, Section 10.05.255(a), Subsection (7), is hereby amended by inserting at the beginning of the first sentence thereof the words: "(7) Except with respect to General Stock Ownership Corporations,".

(f) Title 10, Section 10.05.264, is hereby amended by inserting at the beginning of the first sentence thereof the words: "Except with respect to General Stock Ownership Corporations,".

(g) Title 45 is hereby amended by adding a new Section 45.55.139 thereto to read:

"Section 45.55.139. The stock of a General Stock Ownership Corporation organized under the Alaska General Stock Ownership Corporation Act is not a security and the issue or sale of such stock shall not be construed as a sale of a security or a sale of securities under this chapter."

Section 9. Preliminary Short Term Loan Financing for AGSOC. There is hereby appropriated from the general fund of the State of Alaska the

sum of \_\_\_\_\_ Dollars  
(\$ \_\_\_\_\_) as and for a short term loan, not exceeding five (5) years in duration, to Alaska General Stock Ownership Corporation to cover its organization and start-up expenses, including but not limited to: organization and qualification as a domestic corporation; contracting for legal, accounting and other professional services; employment of management and staff personnel to search out, analyze and evaluate potential investments and to create effective liaison with appropriate departments and agencies of the Federal and State Governments; arranging financing for acquisition of appropriate investments; identifying the persons who will be eligible to become stockholders of the Corporation; preparing a data base of stockholders eligible for initial issuance of AGSOC shares; establishing or arranging for appropriate trust and escrow departments or services; arranging for banking, stock registrar and other appropriate services; paying directors' fees and expenses; obtaining necessary licenses and paying fees and taxes, if any; procuring office facilities, equipment and supplies, travel, communication expense, and all other expenses normally expended in starting up a new enterprise. The term, amount and rate of interest of said loan shall be established by the Commissioner of Revenue of this State.

Section 10. State Guaranty of a Portion of AGSOC Project Financing.

(a) The Alaska General Stock Ownership Corporation Act contemplates that AGSOC shall make major investments in self-liquidating capital assets, either by acquisition or by construction and development thereof. Upon the determination by the Board of Directors of AGSOC to acquire or construct and develop a particular capital investment, and the determination of the price thereof, the Board of Directors and management of AGSOC, either at a regular annual meeting of the shareholders or at a special meeting of the shareholders, shall submit the question of the approval of the proposed acquisition or development and construction of such project, with an adequate description of the details and projected operational results thereof, to said shareholders for approval. Approval of such capital asset acquisition or development and construction thereof shall require the approval of a majority of the shareholders voting at a meeting of shareholders duly called and held, provided such majority shall be not smaller in number than the majority of the voters of the State of Alaska voting in the general election having the highest number of votes cast in any of the three (3) preceding general elections. Such approval, for all purposes, including compliance with Article IX, Section 8, of the Constitution of the State of Alaska, shall constitute ratification by a majority of the qualified voters of the State who vote on the question.

(b) In the event that the shareholders shall approve such capital asset acquisition or development and construction, and AGSOC shall arrange the financing thereof from private or public lending sources, or from a combination thereof, and if the Board of Directors shall determine that such financing cannot be obtained, or cannot be obtained on reasonable and feasible terms without a partial and subordinated guaranty of the repayment thereof by the State of Alaska, the appropriate officers of the State of Alaska are hereby authorized and directed, on behalf of the State of Alaska and as a pledge of its general



credit, to enter into and to execute such documents as may be necessary to evidence such guaranty as may be requested by the Board of Directors of AGSOC, up to a maximum amount equal to thirty-five percent (35%) of the aggregate cost of said project, including reasonable working capital therefor.

(c) In the event the State shall be called upon to make payment under any such partial guaranty of project financing for AGSOC, the claim of the State against AGSOC for repayment of such funds and interest thereon shall be subordinate to the rights of all lenders to and creditors of AGSOC who shall have extended credit or loaned funds to it in connection with such project.

Section 11. Identification of Residents of Alaska Eligible to Become AGSOC Shareholders.

(a) Prior to issuing any stock, AGSOC shall take all reasonable measures, by public advertising, radio and television broadcasting, and otherwise, to make known to all residents of the State of Alaska its intention to issue stock to each person eligible to become a shareholder and to similarly notify all Alaskan residents of the eligibility requirements to become a registered shareholder of AGSOC. Such efforts shall be made from time to time and shall continue for a period of at least ninety (90) days prior to the date for issuance of stock of AGSOC, and shall be made at least once each month over the next eleven (11) months, and as frequently thereafter as the Board of Directors of AGSOC may deem appropriate. The procedural details pertaining to the identification of persons eligible to be shareholders and to the registration of such persons as shareholders, either in person, or if they are minors represented by a parental or legal guardian, or if they be incompetent persons by a legal guardian, shall be fully provided to each person making inquiry at a properly designated office by a representative of AGSOC.

(b) The duty and responsibility, however, of each qualified resident to make application for registration as a shareholder of AGSOC shall rest solely and exclusively upon such qualified resident and upon the parental and legal guardians of qualified individuals.

(c) AGSOC shall have no obligation to reimburse any eligible individual who may incur income tax liability as the result of failure to make timely application for registration as a shareholder of AGSOC, nor shall AGSOC be liable for previously declared or paid dividends to which an applicant for registration as a shareholder would have been entitled had timely application therefor been made. Subject to these limitations, however, an eligible resident who would have been entitled to the issuance of a share or shares of stock of AGSOC, had application been made prior to the time of such issuance and had such qualification continued through the date of such issuance, may at any time thereafter make such application and receive the stock to which he shall thus be established as being entitled.

Section 12. Civil and Criminal Penalties for Misrepresentation of Facts Determining Eligibility to Become AGSOC Shareholder.

(a) Any individual who shall have received stock upon original

issue by AGSOC through fraudulent or misleading representations shall, upon demand therefor in writing being made by or on behalf of AGSOC, return all certificates or other evidence of the ownership of such shares and the full amount of dividends received thereon, together with interest at the rate of eight percent (8%) per annum from the date that such dividend or dividends were received to the date of such repayment. In the event of failure of such illegal holder of shares of AGSOC, AGSOC shall be entitled to institute civil action in any Court of the State of Alaska to enforce such recovery, together with payment of all legal fees and court costs incurred by AGSOC in effecting such recovery.

(b) Any person who shall obtain for himself or for a person as to whom he is or has represented that he is a parental or legal guardian the issuance of shares of AGSOC through fraud, misrepresentation or by any deceitful or illegal means, shall be guilty of a (felony) (misdemeanor) for each share so issued and shall be subject to a fine of up to Five Thousand Dollars (\$5,000.00) upon conviction of each count of such fraud and to imprisonment for up to three (3) years in State prison for each count of such fraud as to which a final conviction shall be obtained.



## QUESTIONS RE ALASKA AGSOC-I PROJECT

Section 1391 of Revenue Act of 1978, Paragraph (a)(3), defines a GSOC as a corporation "chartered by an act of the State legislature."

1. Can an enabling act authorize the Governor to appoint a specified number of incorporators (who will also serve as first board) to incorporate a GSOC to be name AGSOC-I in conformity to the federal law and Alaska Corporations Code, as amended, and other general laws?
2. How does Alaskan law define "resident?"
  - a) What problems does this raise with regard to intent of AGSOC?
  - b) How solved?

Enabling legislation must:

- Fix date as of which a "resident" is defined.
- Define "eligible individual."

Determine under Alaska law: who is a resident?

- What is definition of resident for purposes of the Securities Act of 1933 intra-state exemption?

If no age restriction is placed on eligibility, do parents have natural guardianship powers and responsibilities over the property of their children?

- Must they periodically account?
- May a child's income be spent for his maintenance?
- Must a guardianship under Court supervision be applied for?
- Would not the burden be substantial?

3. Can AGSOC-I engage in a trust and escrow business with respect to its own stock?

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4. Could it by the enabling act be authorized to establish a trust department to establish escrows for AGSOC-I stockholders, handle stock transfer function, acquire company stock under rights of first refusal or otherwise and resell such stock to qualified buyers?

It is intended that all shares of AGSOC-I would be held in escrow by the trust department of the Corporation during the initial five-year inalienability period. Escrow would continue during the minority of any shareholder.

Can we protect stock while in escrow from being subjected to claims of creditors, liens, contractual purchase rights, etc.--in short, tight "spendthrift" provisions. Will this present problems under Alaska law?

5. Could enabling law provide that stock in its trust department shall continue to be outstanding stock except would earn no dividends and carry no voting rights until resold to qualified buyer?
6. Could enabling legislation give effective spendthrift protection during initial five-year non-transferability period.
7. Could enabling law appropriate grant or authorize loan of start-up financing or must such law be separate?
8. What would be impact on AGSOC-I and/or its stockholders of Alaskan tax laws?
9. What fees and taxes might Alaska impose on AGSOC-I that could be exempted by law?
- Corporate income tax (automatic adjustment to federal law?).
  - Corporation Commissioner's fees.
  - Any excise taxes, like stock transfer taxes.
  - Severance taxes if it produces oil or gas or other minerals.
  - Land taxes.
  - All taxes of every nature whatsoever.

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10. What steps would be necessary to synchronize operations with Alaska Blue Sky law?
  - a) Does Commissioner of Corporations administer Blue Sky law?
  - b) Could we get published regulations?

Note: we anticipate exemption from Federal 1933 Act, but will confer with SEC regarding conformity to 1934 Act.

11. To be practical, should AGSOC-I be exempted from effect of other Alaskan laws?
12. Are there models of other public or quasi-public corporations which have been incorporated in Alaska whose enabling legislation, articles or bylaws might be useful as guidelines? If so, could we be sent copies?
13. Could Attorney General advise on effect of profitable operations of AGSOC-I on flow of federal funds into Alaska?



I. HOW SHOULD "RESIDENT" BE DEFINED UNDER ALASKA LAW FOR THE PURPOSES OF AGSOC?

The Alaska statutes do not provide a uniform definition of the term "resident." Rather, the term is defined in each chapter in which it is applicable, and the wording of the definitions vary considerably. Specific statutory language aside, the definitions set out in the Alaska statutes fall into two main categories, those based on a durational residency requirement, and those based on an individual's intent.

A statute typical of the former type may be found in the Fish and Game provisions, at 16.35.180(b):

In this section, "resident" means a person who, for the immediately preceding year, has maintained a permanent place of abode inside the state, and who has continually maintained his residence in the state.

A statute typical of the second category of statutes defining "resident," those based on intent, is AS 36.95.010(5). This definition is a part of the Public Contracts provisions, and provides:

"Resident" means a person who maintains his domicile in the state: domicile is the true and permanent home of a person from which he has no present intention of removing and to which he intends to return whenever he is away;

Clearly, it will be necessary to choose between these types of definitions of "resident" when determining the meaning of the term for the GSOC. The choice of either will raise some constitutional issues, which are somewhat different under Alaska law than under federal law. The Alaska law issues will be discussed below.

II. THE ALASKA SUPREME COURT'S TREATMENT OF DURATIONAL RESIDENCY REQUIREMENTS

The Alaska Supreme Court has considered the constitutional implications of durational residency requirements in various contexts in recent years. An analysis of these cases indicates that the test applied by the Alaska Court for determining the constitutionality of durational residency requirements is somewhat stricter than that applied by the U.S. Supreme Court.

Durational residency requirements, as they necessarily involve a disparity of treatment between long-term and short-term

residents, are subject to attack under the equal protection clauses of state and federal constitutions. The traditional federal approach involves a two-tiered test with two standards of review, the rational basis test and the compelling state interest test, (strict scrutiny.) While our Court continues to apply the federal standard for evaluating the constitutionality of a classification under the U.S. constitution, \*/ it has developed a different approach in applying the Alaska constitution. A brief review of the recent Alaska cases involving durational residency requirements will best serve to demonstrate the Court's approach.

In State v. Van Dort, 502 P.2d 453 (Alaska 1972) the Court determined that a 75-day durational residency requirement for voting purposes was violative of the equal protection clause. The Court held that all durational residency requirements are prima facie invalid as in contravention of the equal protection clause because they penalize the right to travel. The Court noted that the only such requirements that could be countenanced were those absolutely necessary for administrative purposes. Applying the compelling state interest test, the Court determined that even Alaska's unique physical characteristics were insufficient to justify a requirement in excess of 30 days.

The following year, the Court considered State v. Wylie, 516 P.2d 142 (Alaska 1973) which involved a challenge to a one year durational residency requirement for preference in state employment. That case differed from Van Dort in that the interest sought to be protected in Wylie was not a constitutionally guaranteed one. Nonetheless, the Court applied the compelling state interest test, solely on the basis that the right to travel was infringed.

We therefore conclude that the right to interstate travel is itself a fundamental right and any classification which serves to penalize the exercise of that right must be subjected to strict judicial scrutiny. 516 P.2d at 147.

Applying the compelling interest test, the Court concluded that the durational residency requirement was not necessary to promote

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\*/ State v. Erickson, 574 P.2d 1 at 11 (Alaska 1978).

the compelling governmental interest of reducing unemployment and "upgrading Alaska's human resources." 516 P.2d at 150. Additionally, the Court noted that the requirements were not tailored with sufficient precision to satisfy the compelling state interest test.

Soon after Wylie, the Court heard another case where it appeared that the right affected was neither fundamental nor a necessity for life. In State v. Adams, 522 P.2d 1125 (Alaska 1974) involving a challenge to the durational residency requirement for divorce (one year), the Court held that all durational residency requirements must be evaluated under the compelling state interest test, as all infringe upon the fundamental right to travel. The Court held that none of the state's alleged interests were sufficient to justify the requirement for those interests could be accomplished by less harsh methods. 522 P.2d at 1132.

Again in Gilbert v. State, 526 P.2d 1131 (Alaska 1974) the Court applied the compelling state interest test in a case involving durational residency requirements for election legislative office, a nonfundamental right. However, in Gilbert the state satisfied the test by offering three justifications for the requirement: exposure of the candidate to prospective constituents, assurance of legislative familiarity with state, and protection from frivolous candidates. 526 P.2d at 1134. For the first time, the choice of the stricter standard of review was not outcome determinative.

The most recent durational residency requirement case that has been considered by our Court is Hicklin v. Orbeck, 565 P.2d 159 (Alaska 1977), rev'd on other grounds, 98 S. Ct. 2482 (1978), a case involving a constitutional challenge to the "Alaska Hire" law which limited petroleum and pipeline jobs to one-year Alaska residents. Again, the Alaska Court held that durational residency requirements must be subjected to strict scrutiny under both the Federal and State Constitutions because they penalize those who have exercised their fundamental right to travel.

In Hicklin, the Court specifically rejected the argument



that strict scrutiny should not be applied unless the right denied was a fundamental one, or a basic necessity of life.

We have never used this "basic necessities" reasoning. 565 P.2d at 163.

Applying the compelling state interest test, the Court found that the interests the state was seeking to further through the law in question were similar to those it claimed in Wylie, reduction of unemployment rate for Alaska residents and use of resources to cultivate its human resources. 565 P.2d at 164. Again the Court found that the means chosen to achieve the ends were not the least drastic possible, and invalidated the durational residency requirement portion of the "Alaska Hire" laws.

Thus it can be seen that the Alaska Supreme Court has utilized the compelling state interest test in every situation in which the right to travel is impaired, which necessarily includes all durational residency requirements. The U.S. Supreme Court, on the other hand, has evaluated the right affected by the statute to determine whether the strict standard should be applied. Arguably, the Alaska Court has applied the standard somewhat more flexibly, by demonstrating that the choice of standard is not outcome determinative. Thus under the Alaska law as enunciated to date, the strict standard of review will be applied to every durational residency requirement, but that standard may be satisfied by a proper state showing as in Gilbert. The impact of the variance between the Alaska interpretation of the equal protection clause and the federal might well be actually minimal. See, State v. Edison, 574 P. 21 (Alaska 1978).

It should be noted that the ambiguity in this area might be resolved in the case of Thomas v. Bailey (No. 4204) presently awaiting decision of the Court. While the case, which involves the validity of the initiative proposition for the "Alaska Homestead Act" (which involves land grants to residents meeting certain durational residency requirements) could be decided on other grounds, the Court might take the opportunity to alter its rigid approach to the standard to be applied to durational residency requirements. If it is determined that the GSOC definition of "resident" were to be a durational residency requirement, it might

be advisable to await the outcome of the Thomas v. Bailey case to evaluate better the chances of its being upheld by the Alaska Court.

Even if the Court does not alter its position, it is possible that a durational residency requirement might be upheld by our Court if it is carefully drafted to demonstrate justifiable compelling state interests and to meet those interest in the least drastic manner possible. However, while possible, this prospect is far from probable.

### III. THE ALASKA SUPREME COURT'S APPROACH TO RESIDENCE REQUIREMENTS

If it is determined that the definition of "resident" for the purposes of GSOC should be based on intent, the strict scrutiny test will not be applied. In Lynden Transport Inc. v. State, 532 P.2d 700 (Alaska 1975) the Court noted that residency requirements not based on durational residency do not inhibit travel as is the case where certain privileges are withheld from those who change residence to a new state but do not meet durational requirements. Therefore, such a classification is not subjected to the compelling state interest standard.

Traditionally, classifications not judged by the compelling state interest test were upheld under the rational basis test, great judicial deference being accorded to conceivable legislative purposes that might justify classifications. In Alaska, however, the Court has established a different, and more rigorous, rational basis standard to be applied to classifications not requiring strict scrutiny. This test was enunciated for the first time in State v. Wylie, 516 P.2d 145 (Alaska 1975) wherein the court wrote:

Under the rational basis test, in order for a classification to survive judicial scrutiny, the classification must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike. 516 P.2d at 145.

In Isakson v. Rickey, 550 P.2d 359 (Alaska 1976) the Court had occasion to apply this new rational basis test for the first time. The Isakson Court noted that under their stricter

rational basis approach, "we will no longer hypothesize facts which would sustain otherwise questionable legislation as was the case under the traditional. . . standard." 550 P.2d at 362. Thus judicial deference to a broad range of conceivable legislative purposes and to imaginable facts that might justify classifications is greatly diminished. The new standard was intended to raise the lower tier of the equal protection standards "from virtual abdication to genuine judicial inquiry." 550 P.2d at 363.

Isakson involved a challenge to certain provisions of the Limited Entry Act to the effect that only commercial holders of gear licenses issued before January 1, 1973 could apply for permits for entry into commercial fishing. The purpose of the provision as determined by the Court was to segregate hardship and nonhardship cases at the application phase of the permit issuance process. The Court's next inquiry was whether the classification (holding a gear license prior to a certain date) bore a fair and substantial relation to the purpose of the legislation (the segregation of hardship and nonhardship cases.) The Court found that it did not, and that it in effect created an irrebuttable presumption that no one acquiring a license after the cutoff date could suffer to requisite hardship necessary for an entry permit. 550 P.2d at 365. Thus the provision was found to be violative of the equal protection clause.

The next case in which the Court applied the Isakson rational basis test was State v. Reefer King Co., Inc., 559 P.2d 56, in which the constitutionality of a tax statute imposing a higher tax on "floating" processors than upon "shore-based" processors was challenged. Applying the Isakson rational basis test, the Court found that the distinction between mobile and stationary processors could be viewed as a tax incentive to encourage shore-based processors. The Court held that the tax differential bore a fair and substantial relationship to the goal of encouraging societal contributions of the type made by the shore-based processors.

In Hicklin v. Orbeck, 565 P.2d 159 (Alaska 1977), the Court invalidated the durational residency requirement in the

Initially, we must look to the purpose of the statute, viewing the legislation as a whole, and the circumstances surrounding it. It must be determined that this purpose is legitimate, that it falls within the police power of the state. Examining the means used to accomplish the legislative objectives and the reasons advanced therefore, the court must then determine whether the means chosen substantially further the goals of the enactment. Finally, the state interest in the chosen means must be balanced against the nature of the constitutional right involved.

Applying that analysis in Frickson, the Court determined that there was ample, respectable scientific evidence of harm from the use of cocaine to sustain the legislature's inclusion of cocaine in its classification of narcotics. The legislative goal, the Court determined, was legitimate, and the classification substantially related to that goal. 574 P.2d at 18.

These principal cases on classifications and equal protection do not provide clear answers to all of the GSOC questions on residency definition, but they do provide certain guidelines. It is probable that if the definition of resident for GSOC purposes is based solely on intent, it would be upheld by the Alaska Supreme Court. The classification would be subjected to the Isakson rational basis test, rather than the stricter compelling interest test, and if the provision would pass muster under the privileges and immunities clause, (as the Wilmer, Cutler and Pickering Memorandum of 12.15.78 indicates possible,) it would be upheld by our Court. It is important for the legislation to describe with specificity the purposes of the residency classification, as the Court would not hypothesize the possible purposes.

The outcome of a closed class of residents (based on intent as of a certain date) is less certain. If such an approach is selected, it would be important to draft the legislation in such a way as to avoid the "irrebutable presumption" analysis of Isakson. The Court would look to the purpose of the closed class provision to determine whether it is legitimate. While it is not possible to determine with certainty, it is possible that the justifications offered in the Wilmer, Cutler and Pickering Memorandum of 12.15.78 would be adjudged legitimate purposes.

If this is the case, the only problem would be to draft the legislation in such a way that there was an obvious close



correlation between the classification and the purposes of the statute. Were the first hurdle overcome, the second could probably be accomplished. The cases indicate that the Court will probably find a "fair and substantial relation to the purposes of the legislation" if the purposes are legitimate. \*/ However, it is not possible to be assured of the outcome. Therefore we suggest that you consider the possibility of an amendment to the Alaska Constitution to assure the success of such a provision. \*\*/

Without a Constitutional amendment, the only near certainty is that an open class of residents defined by intent would be permissible under Hicklin. In every other case, we recommend that a nonseverability clause be added to the provisions so that they will "self destruct" if the residency requirement is not upheld. Absent such a clause, the general savings clause of Title 1 would be applicable.

#### IV. GSOC SHAREHOLDERS WHO ARE MINORS

If no age restriction is placed on eligibility, and the GSOC shares are subject to the remainder of Alaska statutes, the gifts to minors might be subject to AS 45.60, the Alaska Uniform Gifts to Minors Act. These provisions very specifically set out exactly what happens to a gift of securities to a minor.

Under AS 45.60.011, a gift of a security to a minor must be made through a custodian, who must be adult member of the minor's family, other than the donor, a legal guardian or a trust company. The section refers to an "adult person" making the gift, but this could be held applicable to a state gift as well. Under the Act, the custodian is responsible for paying over to the minor the amount considered advisable for maintenance, with the remainder

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\*/ But see Isakson irrebutable presumption approach.

\*\*/ This of course would merely assure the success of the provision in Alaska. For a federal level, analysis, see Wilmer, Cutler & Pickering Memorandum of 12/15/78.

to be delivered to the minor on his attaining 19 years of age. Court appointment is required by AS 45.60.091(8), and accounting may be required by petitioning the court pursuant to AS 45.50.071.

If the Alaska Uniform Gifts to Minors Act does not apply to gifts by a corporation (or by the state,) the child's income could still be spent for his maintenance under AS 25.20.040. Problems would arise in the cases of children without homes or taken from their homes, which questions are presently being considered by the Human Resources Section of the Attorney General's Office.

Another possibility which would avoid the problems implicit in the above approaches would be to exempt GSOC from other Alaska laws, and to provide for minor shareholders in the provisions themselves. A possible plan would be to require the GSOC to hold the shares of the minors for them, plus all income on those shares, until the minority is ended. As parents have the duty to provide maintenance for their children anyway, this would not seriously disadvantage any individual, and would provide every Alaska minor owning GSOC shares with a sum of accrued dividends upon achieving majority.

· PLEASE NOTE: THE PRECEDING PAGES WERE TREATED  
· AS A UNIT IN THE ORIGINAL DOCUMENT.

# CRITICAL PATH

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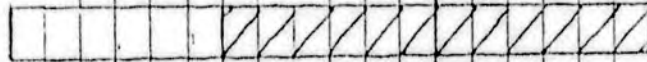
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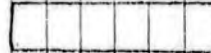
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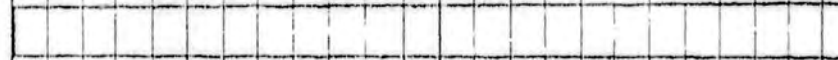
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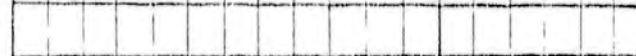
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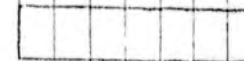
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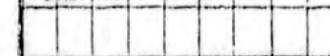
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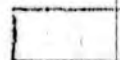
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LEGAL ERROR  
Alaska & U.S.



PROVE  
IT WORKS





### Questions on AGSOC

1. Why do we need an Alaska General Stock Ownership Corporation? What can this institution provide that other alternatives cannot? Do the benefits outweigh the risks?
2. What are the problems with AGSOC vis-a-vis state government?
  - a. Regarding finance, what are the implications for the treasury and the state's credit? Exactly how will AGSOC be able to obtain access to the state's credit under our constitution?
  - b. Regarding political implications, does AGSOC create a conflict of interest between the public interest in business regulation and taxation and the shareholders' interest in higher dividends? As a matter of public policy, should efforts be made to depoliticize AGSOC through prohibitions against lobbying, campaign contribution, endorsement of candidate, etc.?
3. Does the proposal in its present form guarantee democratic management of the corporation? If not, can it be amended to do so? Who will ultimately control the board?
4. Should there be statutory criteria for the types of investments which AGSOC can undertake? Geographical criteria?
5. How do the people of Alaska feel about AGSOC?
6. Given that many hard questions have been raised concerning AGSOC, what do we have to lose from further study during the interim and action next session?

## TWO IMPORTANT POINTS ABOUT THE ALASKA GENERAL STOCK OWNERSHIP CORPORATION

### 1. THE AGSOC IS NOT A "GIVEAWAY".

AGSOC stock would be issued to all citizens of Alaska. No cash investment is required of the shareholder because the AGSOC would borrow the funds necessary for profitable investments. The loan could be secured by the AGSOC assets and a state guarantee. As the loan is repaid the citizens' AGSOC equity increases.

This type of financing is not unique. The wealthy often borrow money on a nonrecourse basis for investment in profitable enterprises. They use their profits to repay the loans leaving themselves with an increased net worth. The AGSOC simply allows the rest of our citizens access to this type of financing.

### 2. AGSOC IS NOT STATE OWNERSHIP.

The stock of AGSOC will be held by the citizens of Alaska. They will vote this stock for a board of directors responsible for running the AGSOC in a profitable manner. AGSOC will be run in the same way as a typical business corporation. The only role for the State in AGSOC will be chartering the corporation and, if necessary, subject to legislative review, guaranteeing loans to the AGSOC.

In Alaska AGSOC may be an alternative to what would otherwise be State ownership of equity interests in some of Alaska's major energy projects. It was out of concern for this possibility that AGSOC was born.

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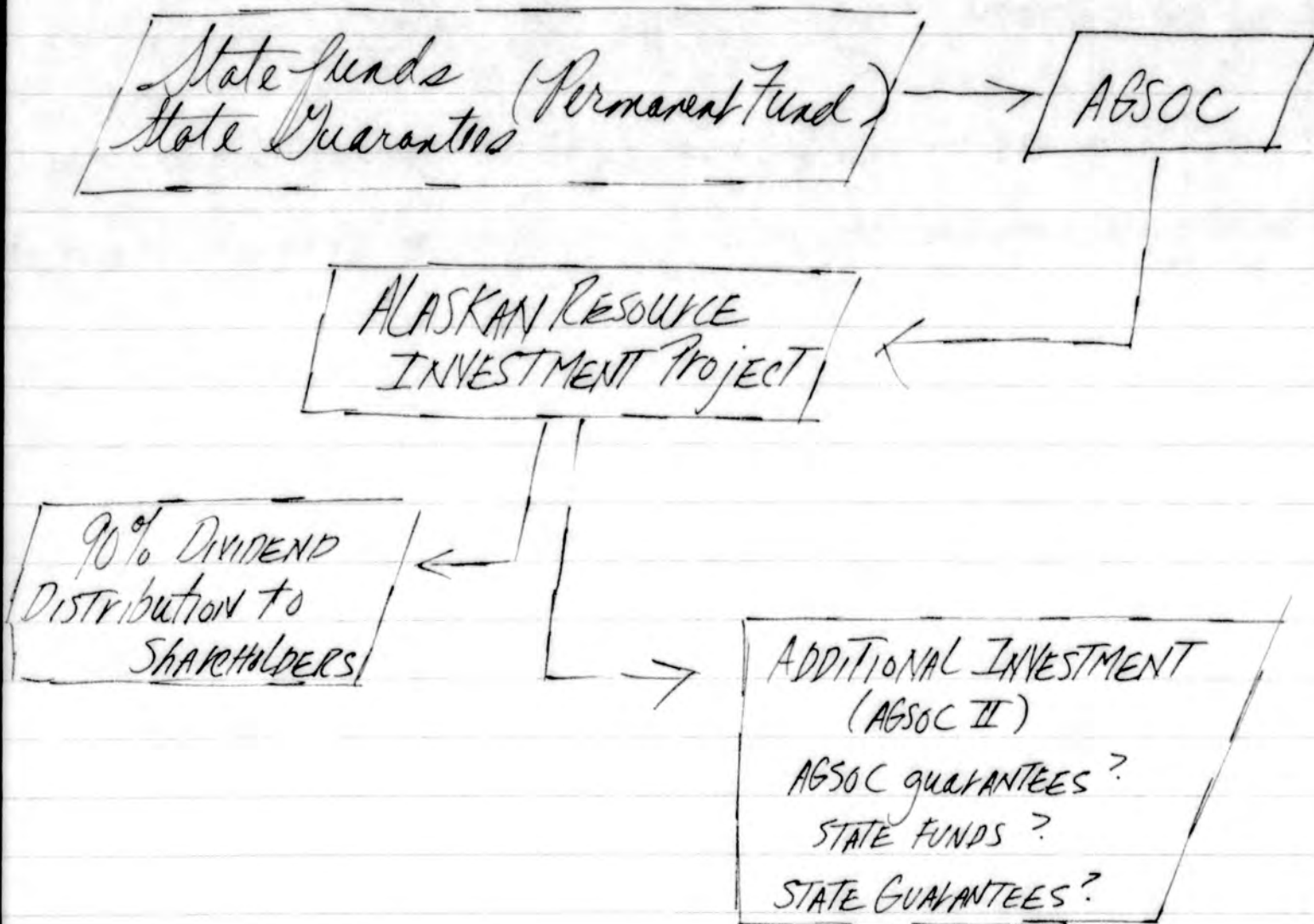
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Dear Senator Colletta;

The following information has been developed by me and discussed with Mr. Jerry Laucke, Mr. John Miskimen and Mr. Mill Barker. Just thought you'd be interested. It may help smooth out any doubts the House may have regarding HESOC.

Sincerely,  
Randall

# AGSOC : ALASKA GENERAL STOCK OWNERSHIP CORPORATION



KELSO PRINCIPLE : WIDESPREAD CAPITAL WEALTH DISTRIBUTION :  
AVOIDANCE OF CONCENTRATED OWNERSHIP IN THE HANDS OF A FEW.

NOTE : THE KELSO PRINCIPLE SHOULD BE USED AS ONE'S GUIDELINE  
AS AGSOC LEGISLATION IS DEVELOPED.



2.

## PROBLEM AREAS OF CURRENT AGSOC PROPOSALS : (SB 170 HB 240)

1. CLOSED SHAREHOLDER CLASS Problem : (i.e.) ALASKAN RESIDENTS AS OF "SUCH IN SUCH" A DATE WILL BECOME SHAREHOLDERS.

IT IS POSSIBLE, IF NOT PROBABLE, THAT STATE FUNDS (TAXPAYER DOLLARS) OR STATE GUARANTEES (TAXPAYER CREDIT) WILL BE USED FOR ADDITIONAL AGSOC PROJECT INVESTMENTS WITH THE BULK OF DIVIDEND DISTRIBUTIONS GIVEN OUTRIGHT TO ONLY A MINORITY OF THOSE TAXPAYERS WHOSE MONEY WILL BE USED FOR THE ABOVE MENTIONED INVESTMENTS!

SOLUTION : PLACE LEGAL LIMITATION ON AGSOC'S power to receive STATE MONEY AUTHORIZATIONS AND/OR GUARANTEES UNLESS STOCK ISSUANCE MADE (ADDITIONAL).

RATIONALE : ONE METHOD OF RAISING MONEY IN THE PRIVATE CORPORATE WORLD IS THROUGH STOCK ISSUANCES. THEREFORE, IF THE STATE OFFERS USE OF ITS MONEY FOR ADDITIONAL AGSOC PROJECT INVESTMENTS, ADDITIONAL STOCK ISSUANCES SHOULD BE MADE. IN KEEPING WITH KELSO'S PRINCIPLE STOCK ISSUANCES WILL REFLECT THE PEOPLE WHO FUND THE INVESTMENT.

SUGGESTION : TAXPAYER TURNOVER ANALYSIS OVER PAST  $\frac{1}{2}$  FUTURE 30 YR. PERIOD IN ALASKA.

## 2. Assignment of Dividend Problem :

After 5 yrs. from the date of original issuance, one may transfer (assign) to another dividend rights. Such an assignment is binding upon AGSOC if given for consideration with adequate notice. Over time, a select few may receive AGSOC capital wealth without controlling or owning more than 10 shares each!

SOLUTION : PROHIBIT ASSIGNMENT OF DIVIDEND RIGHTS!  
THIS CAN BE ACCOMPLISHED THROUGH BY LAW LIMITATIONS, STATE CORPORATE LAW AMENDMENT AND/OR STOCK certificate restrictions issued on its face.

## 3. Proxy Solicitation Problem :

Under present proposals one may transfer one's right to vote via proxy which can be made effective up to 11 months. Any expenses incurred by the BD. of Directors for proxy solicitations (re-election) are reimbursed by AGSOC. STATEWIDE Proxy solicitations can be expensive especially if competitive challenges arise.

THE USE OF AGSOC FUNDS TO MAINTAIN THE BD. OF Directors control tends to encourage concentration of power in the hands of a few... A VIOLATION OF the Kelson principle.

SOLUTION : STATE LEGISLATURE SHOULD ELECT THE BD. OF Directors FROM NOMINATIONS MADE BY THE GOVERNOR OR SOME OTHER ENTITY.

## TWO IMPORTANT POINTS ABOUT THE ALASKA GENERAL STOCK OWNERSHIP CORPORATION

### 1. THE AGSOC IS NOT A "GIVEAWAY".

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In Alaska AGSOC may be an alternative to what would otherwise be State ownership of equity interests in some of Alaska's major energy projects. It was out of concern for this possibility that AGSOC was born.

Jsp

## Joint Interim Gas Pipeline Committee

SEN. MIKE COLLETTA    REP. BILL MILES  
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SEN. FRANK FERGUSON   REP. C. V. CHATTERTON  
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1016 WEST 6TH AVENUE, SUITE 435  
ANCHORAGE, ALASKA 99501  
(907) 274-8351

TO: COMMITTEE CO-CHAIRMEN  
FROM: RANDALL J. MOEN  
DATE: 2/19/79  
RE: Alaska General Stock Ownership Corporation (AGSOC)

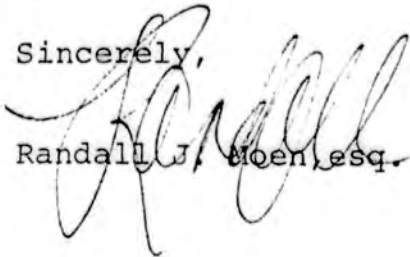
The idea behind AGSOC is that it will give the people a chance at capital ownership and participation rather than a select few. My concern is that through the AGSOC device it may be possible over time for a select few to control AGSOC policies and wealth despite stock ownership limitations.

In order to prevent concentrated policy control and wealth, two major issues should be resolved:

- 1) PROXIES: To what extent can one transfer to another one's right to vote?
- 2) ASSIGNMENT OF DIVIDENDS: To what extent can a resident stockholder assign to another dividend rights?

If you have any questions regarding the above, please contact me.

Sincerely,

  
Randall J. Moen, esq.





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*agsoc*

ALASKA  
GENERAL STOCK OWNERSHIP  
CORPORATION

SUMMARY AND ANALYSIS

Finance Committee Substitute for  
Senate Bill No. 170

April 27, 1979

## BILL SUMMARY

### ALASKA GENERAL STOCK OWNERSHIP CORPORATION

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The general stock ownership corporation (GSOC) bill provides for the creation of a GSOC in Alaska and a new chapter of Alaska Statutes to regulate it. The AGSOC, taking advantage of new federal law, will be exempt from corporate income taxes. Income will be distributed to the shareholders and they will pay tax at their personal rates. The shareholders will be all the residents of Alaska as of the bill's effective date and stock will be distributed to them free of charge. The AGSOC will borrow funds to finance investments.

#### FORMATION OF THE AGSOC

The Alaska General Stock Ownership Corporation is formed by three incorporators appointed one each by the Speaker, Senate President and Governor. The incorporators will select nine people to serve as the initial board of directors subject to disapproval within 15 days by two of the three state officials mentioned. The incorporators will prepare and file the articles of incorporation to begin the AGSOC. The articles will include technical requirements of federal law restricting transfer of shares for five years and mandating issue of stock to all Alaska residents.

The directors, appointed by the incorporators, adopt bylaws, hire officers and begin the process of shareholder identification. The initial board serves only until the first shareholder meeting when the appointed directors must stand for election. The initial articles and bylaws of the corporation must be submitted to the legislature within 30 days of adoption and the legislature has 60 legislative days within which to disapprove of any provision by concurrent resolution.

### AGSOC SHARES

One share of stock will be distributed free of charge to each Alaskans resident who was a resident on the effective date of the bill. Resident means a person who lives in Alaska and intends to remain here permanently. Only individuals may own AGSOC shares and no one may own more than ten. Each week for three months before issuance of stock the AGSOC must by newspaper, radio and television notify residents of their eligibility to receive stock. A resident who does not wish to receive stock may decline. For one year after the initial stock issue a qualified resident may receive his share of stock without charge and for an additional year may purchase his share for book value.

Federal law requires GSOCs to have a charter providing for the issuance of "at least one share (of stock) to each eligible individual." To fulfill this requirement the first share of GSOC stock must be issued without charge to the shareholders. However, there is no restriction upon subsequent sales of GSOC stock. Thus, provision is made for the subsequent sale of AGSOC stock if the shareholders approve.

### SHAREHOLDER POWERS

Each share of stock may be voted at shareholder meetings with 1/3 of the shares required for a quorum. Proxies are prohibited and in their place a corporate ballot and shareholder's pamphlet will be prepared, under regulations insuring fairness, and mailed to each shareholder. Shareholders vote their ballot by mail and cumulative voting is prohibited. The shareholders may nominate directors and place issues on the corporate ballot by petition of 1,000 shareholders. Notice of the right to nominate directors and place issues on the corporation ballot must be made by publication at least 150 days before the shareholder meeting and the meeting notice and ballot must be mailed at least 60 days before the meeting.

AGSOC is required to keep complete books and records available for shareholder inspection and any corporate agent wrongfully refusing shareholder access may be fined \$1,000 per day. Shareholders have the right to remove the entire board by a majority vote or any single director by a vote at least as large as that which elected him. The attorney general or 100 shareholders may file suit to remove a director for fraudulent or dishonest acts or gross abuse of authority. Any shareholder may file a derivative suit on behalf of the corporation if those responsible inside the AGSOC fail to do so. The shareholders have the right to amend the bylaws and with a 2/3 vote the articles of incorporation.

#### DIRECTORS AND OFFICERS

The board of directors has management responsibility for AGSOC. The chairman and at least 3/4 of the board must be Alaskans. Board meetings must be held in the state, but members may participate by conference telephone. Outside directors can never constitute a quorum except when meeting to fill vacancies in the board. AGSOC will have nine directors although the number may be changed in the bylaws. The entire appointed initial board will stand for election at the first annual meeting. Thereafter, members serve for two years with half the board elected each year. Criminal misdemeanor penalties are provided for directors making distributions designed to deceive creditors or shareholders of AGSOC and any agent of AGSOC who makes fraudulent statements regarding the value of shares.

Officers of the AGSOC are appointed by the board of directors and serve at their pleasure. The board establishes the duties of the officers and may replace them at any time.

#### OTHER PROVISIONS

AGSOC is prevented from making endorsements of political candidates or ballot issues and may not spend money for lobbying of the legislature. Many of the other provisions of the Committee bill have been carried over substantially from existing Alaska corporate law. The provisions regarding sales of assets outside the ordinary course of business, dissolution of the corporation, restatement of the articles of incorporation, requirements for annual reports to the Dept. of Commerce, filing fees and charges, procedural provisions and forms, and power of the Commissioner of Commerce are all basically the same provisions which apply to existing Alaska corporations. The bill does retain the right in the legislature to change the law with respect to AGSOC at any time so long as the creditors of the corporation are protected.



## SECTION BY SECTION ANALYSIS

This analysis of Committee action on the Alaska General Stock Ownership Corporation legislation describes the provisions of Section 1 of the Committee bill as of April 27, 1979. Since many of the provisions of the Committee Substitute are carried over wholly or in part from the Alaska Business Corporations Act (ABCA) there is included at the end of each section description a reference to the corresponding section of the ABCA, if any.

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### ARTICLE 1. SUBSTANTIVE PROVISIONS.

- .005. PURPOSES. This section makes it clear that, unless the enabling legislation for a GSOC provides otherwise, the corporation may engage in any legal business. (ABCA 10.05.003).
- .010. GENERAL STOCK OWNERSHIP CORPORATIONS. This section makes it clear that corporation organized under chapter 50, Title 10, are general stock ownership corporations subject to Internal Revenue Code Subchapter "U" and are not agencies of the state for any purpose.
- .015. GENERAL POWER. This section grants to GSOCs the powers of normal corporations to conduct business. Two changes have been made in adapting the ABCA provisions to GSOCs.
  - 1) There is a limitations in (4) preventing a GSOC from investing in property "acquired by it, or for its benefit, through the right of eminent domain . . . ." This limitation prevents GSOCs from acting in collusion with an agency or local government to acquire a going business from an unwilling seller. GSOCs are not prevented from investing in projects where some minor portion of the project is acquired through condemnation if the local government determines that the exercise of its condemnation power is appropriate.
  - 2) The power to establish stock bonus plans is deleted from subsection (15) because of the special nature of GSOCs and the limitations on share ownership would make it difficult for a GSOC to adopt a qualified stock bonus plan for its employees. If the GSOC desires to have its employees benefit from growth in the value of GSOC stock the corporation could adopt a funded "phantom stock" program. (ABCA 10.05.009).

- .020. INDEMNIFICATION OF OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS; INSURANCE. This section is carried over unchanged from the ABCA and allows the corporation to indemnify its directors or employees for expenses and fines incurred as a result of their actions on behalf of the corporation if they acted in good faith. Indemnification is disallowed in derivative suits where the defendant is guilty of negligence or misconduct in his duties unless the court determines the indemnification is proper. The corporation may purchase insurance on behalf of its directors and employees for claims against them arising out of their corporate positions. (ABCA 10.05.010).
- .030. DEFENSE OF ULTRA VIRES. Meaning "beyond the power" an ultra vires act is one which the corporation did not have authority to perform. This section, carried over from the ABCA, provides that this lack of corporate power can be asserted by a shareholder, the corporation, or the attorney general. It may not, however, be asserted by another party to a transaction with the corporation as grounds for failing to perform. (ABCA 10.05.018).
- .035. CORPORATE NAME. This section requires that a GSOC include in its corporate name the words "general stock ownership corporation" or an abbreviation thereof. In addition, the name may not be misleading or deceptively similar to the name of another corporation doing business in Alaska. (ABCA 10.05.021).
- .040. RESERVATION OF CORPORATE NAME. This section allows a person or corporation to reserve a specific name for a general stock ownership corporation for a period of two years with a renewal period of one year. Reservation of a name might be used where an individual seeks to establish a GSOCs by initiative petition or where an existing GSOC seeks to change its name upon the approval of its shareholders. The name may be reserved by this section during the period in which the necessary activities are undertaken to make the name effective. (ABCA 10.05.024, .027, and .033).
- .045. FOREIGN GENERAL STOCK OWNERSHIP CORPORATIONS. General stock ownership corporations chartered in another state and doing business in Alaska are subject to the rules of the Alaska Business Corporations Act (AS 10.05).
- .050. REGISTERED OFFICE AND REGISTERED AGENT. The registered agent is the agent for the corporation upon whom legal papers may be served. This provision requires that the corporation maintain a registered office and agent within the state. (AS 10.05.045)

- .055. FILING LIST OF REGISTERED CORPORATIONS WITH SUPERIOR COURT.
- .060. CHANGE OF REGISTERED OFFICE OR AGENT.
- .065. REGISTRATION OF REGISTERED AGENT.

These three sections set out the rules for registration of the registered agent with the Commissioner of Commerce, the listing of registered agents and offices with the superior courts throughout the state, and the method by which a registered agent may change the registered office or resign his position. These provisions are carried over intact from AS 10.05.048, .051, and .054 respectively.

- .070. SERVICE OF PROCESS ON CORPORATION. In addition to designating the registered agent as agent for service of legal papers on the corporation this section allows the Commissioner of Commerce to be served on behalf of the corporation when the registered agent cannot be found. (AS 10.05.057).

- .075. CREATION AND ISSUANCE OF SHARES. This section allows the corporation to create and issue shares of no par value stock. The total number of shares available for issue must be stated in the articles of incorporation. GSOCs are prohibited from issuing "par value" stock since that concept, developed for the protection of shareholders, has no application in a corporation such as the GSOC where shares are to be distributed initially without payment by the shareholders.

- .080. CONSIDERATION FOR SHARES. The federal GSOC legislation requires that a GSOC have a charter providing for the issuance of "at least one share (of stock) to each eligible individual." In order to fulfill this requirement it appears that the first share of GSOC stock must be issued without charge to the shareholders. However, there does not appear to be any restriction in the federal legislation upon subsequent sales of stock by GSOCs except for the general limitations upon share ownership. In keeping with the Committee's desire for a generally applicable GSOC chapter provision is made for the subsequent sale of stock by GSOCs. Thus, this section allows the GSOC to issue shares without consideration or for a payment fixed in advance by a vote of the shareholders.

Sales of corporation stock by the corporation may not be made at a price in excess of book value if the shares sold are treasury shares, that is shares which have been issued and repurchased by the corporation. (AS 10.05.096).

- .085. PAYMENT FOR SHARES. Payment for shares may be made in cash, other property or services, but not in notes or future services. (AS 10.05.099).
- .090. JUDGMENT OF BOARD OR SHAREHOLDER AS TO VALUE OF CONSIDERATION CONCLUSIVE. This section allows the directors or the shareholders to conclusively determine the value of payment for shares in the absence of fraud. (AS 10.05.102).



- .095. EXPENSES OF ORGANIZATION, REORGANIZATION AND FINANCING. In sales of stock by a corporation shares entitled to the full protections of limited liability must be fully paid and nonassessable. This means that the full sales price for the stock has been received by the corporation. However, if the stock is sold through an underwriter the fees will come out of the sales proceeds before they are paid to the corporation. Likewise, the organizational expenses of the corporation may be paid out of stock sales before the proceeds are remitted to the corporation. This section clarifys that in such cases the shares are deemed to be fully paid. (AS 10.05.111).
- .100. CERTIFICATES REPRESENTING SHARES. This provisions sets out the requirements as to form of stock certificates which must be signed by the corporate officers. (AS 10.05.114)
- .105. INFORMATION REQUIRED TO BE STATED ON CERTIFICATE. The stock certificates or other evidences of ownership must include information regarding the person to whom they are issued, that they are no par value shares, and that the corporation is organized in Alaska. (AS 10.05.117).
- .110. FULL PAYMENT REQUIRED FOR CERTIFICATE. If payment is required for shares they may not be issued until full payment is received. (AS 10.05.120).
- .115. ISSUANCE OF FRACTIONAL SHARES. GSOCs may issue fractional shares of stock and these fractional shares hold dividend, voting and distribution rights equal to their fractional interest. It may be necessary for a GSOC to issue fractional shares in the situation where a shareholder leaves his stock to his heirs and there is more than one child beneficiary. (AS 10.05.123).
- .120. LIABILITY OF SUBSCRIBERS AND SHAREHOLDERS. This section, adopted directly from ABCA, limits the liability of shareholders and those who have agreed to purchase share to the amount which they agreed to pay to the corporation for the shares. Subsequent holders of the stock are protected if they received the stock in good faith. (AS 10.05.126).
- .125. BYLAWS. The board of directors adopts the initial bylaws of a GSOC subject to review and rejection by the legislature under section 335 of the bill. Subsequent bylaws may be adopted, amended or repealed by a vote of either the shareholders or directors.
- .130. MEETINGS OF SHAREHOLDERS. The time and location of the annual shareholders meeting is established in the bylaws. The specific place is set by the board. Special shareholder meetings may be called by the president of the GSOC, the board or the holders of at least 1,000 shares. Shareholder meetings may be teleconferenced. (AS 10.05.138).



- .135. NOTICE OF SHAREHOLDER'S MEETINGS. This section requires written notice of shareholder's meetings mailed to shareholders not less than 60 days before the meeting. In addition, notice of shareholders' rights to add ballot issues or nominate directors must be made by publication at least once a week for four weeks beginning at least 150 days before the meeting. (AS 10.05.141).
- .140. CLOSING OF TRANSFER BOOKS AND FIXING RECORD DATE. To determine the shareholders of the corporation for purposes of a dividend distribution or voting rights the transfer books of the corporation may be closed prior to the date of the proposed activity or a "record date" may be established and the shareholders determined as of that date. Time limits are provided beyond which the transfer books may not be closed in order to protect shareholder voting rights and to allow interested parties to inspect the share records of the corporation prior to shareholders' meetings. (AS 10.05.144).
- .145. VOTING LIST. The responsible officer of the corporation must make available at the registered office of the corporation beginning at least 60 days before any shareholders' meeting a list of the shareholders eligible to vote at the meeting and access to this list must be provided to all shareholders. (AS 10.05.147).
- .150. QUORUM OF SHAREHOLDERS. 1/3 of the shares constitute a quorum for action by the shareholders and a majority vote of a quorum is sufficient to bind the shareholders in most cases. (AS 10.05.153).
- .155. PROXY VOTING PROHIBITED. Because of the ballot mechanism whereby each shareholder is allowed to vote in person through his ballot proxies are unnecessary in general stock ownership corporations and are therefore prohibited.
- .160. VOTING FOR DIRECTORS. Each shareholder may vote his shares for directors but cumulative voting is prohibited. This means that each share can cast only one vote for director in any contested election for a directorship position.
- .165. VOTING OF SHARES IN THE NAME OF ANOTHER.
- .170. VOTING OF PLEDGED SHARES.
- These sections allow shares held by an administrator, executor or guardian to be voted by him without a transfer of the shares into his name. Shares held by a pledgee may be voted by the pledgor until transferred into the pledgee's name. (AS 10.05.165 and . 168).

- .175. CORPORATION BALLOT. Voting at meetings of shareholders will be by ballot rather than through the normal corporate vehicle of proxies. The ballot will be prepared by the corporation subject to review for fairness by the Commissioner of Commerce. It will be mailed to each shareholder with the notice of the shareholders' meeting and voted by mailing it back to the corporation before the date of the meeting.

Shareholders may, by petition of 1,000 or more, nominate directors and place issues on the corporate ballot. In addition, the directors may place issues and candidates on the ballot by a majority vote. Information on board candidates and ballot issues is to be provided to the shareholders by the corporation and these materials will be filed with the Commissioner of Commerce and subject to the regulations and criminal penalties applicable thereto.

- .180. BOARD OF DIRECTORS. The board of directors is charged with management responsibility for the corporation and their compensation is to be fixed in the bylaws. The chairman and at least 3/4 of the board must be residents of Alaska insuring that outside directors may never constitute a quorum of directors except when meeting to fill vacancies in directors seats until the next shareholder meeting. Officers or employees of the corporation may not serve on the board of directors. (AS 10.05.174).

- .185. NUMBER OF DIRECTORS. The minimum number of directors is three and the number is to be fixed in the bylaws except that the original number is fixed by the enabling legislation. If the bylaws are silent the number fixed in the enabling legislation is the proper number. The number of directors can be changed through a bylaw amendment.

The board members serve for two year terms and they are to be divided into classes with only half the board standing for election at any one annual meeting. This staggering of the board members' terms provides for some continuity of management on the board of directors. (AS 10.05.177).

- .190. ELECTION OF DIRECTORS. Directors are to be elected at the annual meetings and each director hold office until his successor is elected and qualified. This prevents gaps in board membership except upon death or incompetance of a board member. (AS 10.05.183).

- .195. VACANCIES. Vacancies in the board caused by death, resignation or incompetance may be filled by a majority vote of the remaining directors. Directors elected by the board to fill a vacancy must stand for election by the shareholders at the next shareholders' meeting and are elected to fill the remaining portion of the directors position originally filled by vote of the board. No vacancy may continue for more than 6 months or until the next shareholders' meeting. (AS 10.05.189).

- .200. QUORUM OF DIRECTORS. A majority of the total number of directors fixed in the bylaws, articles or enabling legislation constitutes a quorum and action may be taken by a majority vote of a quorum. By allowing only  $\frac{1}{2}$  of the board to be outsiders Alaskan control of the board is assured. One-quarter of the board can never constitute a majority of a quorum except in the event of a vacancy in which case the board must act to fill the vacancy. (AS 10.05.192).
- .205. PLACE AND NOTICE OF DIRECTORS' MEETINGS. Directors meetings may be held only in Alaska and regular meetings of the board may be held without notice. Special board meetings require notice specifying the purpose of the meeting. (AS 10.05.198).
- .210. PARTICIPATION BY TELEPHONE. Directors may participate in directors meetings by telephone if all the participants may hear and be heard by each other. (AS 10.05.199).
- .215. DISTRIBUTIONS. Some restrictions on corporate distributions are necessary because the limited liability feature of corporations prohibits creditors from levying against shareholders if the corporation distributes its way to insolvency. The traditional restraints which have been used to protect creditors of corporations are the devices of stated capital, capital surplus, earned surplus and retained earnings. Through these devices corporations are required to keep at least something in the till for creditors.

However, the traditional restraints never ensured that cash would be on hand for creditors and they have been eroded by numerous exceptions allowing the corporation to designate capital surplus and create surplus by reduction of capital. As a result corporations have been able to make distributions beyond the point where liabilities to third parties were protected.

Under the ABCA dividends may generally be declared only out of earned surplus. (AS 10.05.204). There are several exceptions to this rule. Dividends may be paid in cash out of depletion reserves by natural resource companies and in stock out of capital surplus. (AS 10.05.204). However, a dividend may not be declared if the corporation would thereby be rendered insolvent. (AS 10.05.201). These restrictions provide some protection to creditors in that at least 75% of the amount received for shares must be allocated to stated capital, but the remaining 25% may be allocated to capital surplus available for distribution under certain circumstances.

Similarly, the ABCA provides that a corporation may acquire shares issued by it only from earned surplus except in special situations. (AS 10.05.012). This distinction between the sources from which shares may be purchased and those from which dividends may be paid does not make much sense since a purchase of shares on a prorata basis has the same effect as a dividend with regard to the protection of creditors.



To protect the creditors and shareholders of general stock ownership corporations and to rationalize restrictions upon the payment of dividends and repurchase of shares, this section provides restrictions on shareholder distributions based upon the current financial condition of the corporation. This section, adapted from a 1977 California amendment to the California Corporations Code, eliminates the concepts of stated capital and capital surplus in favor of a simple balance sheet test.

Under this section the corporation may always make the distribution required by subchapter "U" of the Internal Revenue Code. Thus, the corporation may always distribute to its shareholders an amount equal to 90% of its taxable income.

For distributions in excess of 90% of taxable income the corporation must fulfill either of two tests:

- 1) The corporation may make a distribution out of retained earnings.
- 2) If there are no retained earnings the corporation may make a distribution only if it meets a two pronged test:
  - a) The assets of the corporation, after the distribution are at least equal to  $1\frac{1}{2}$  times its liabilities, AND
  - b) The current assets, after the distribution, are at least equal to the current liabilities (a "liquidity test").

If the average pretax income plus interest expense for the two preceeding fiscal years is not at least equal to the average interest expense for those years the current assets must be at least  $1\frac{1}{2}$  times current liabilities.

If the corporation does not classify its assets into current and fixed in accordance with generally accepted accounting principles the current assets or liquidity test does not apply.

- .220. DISTRIBUTIONS IN PARTIAL LIQUIDATION. Distributions in partial liquidation are special distributions which reduce the capital value of the corporation. They are distributions out of capital rather than earnings. These distributions may be made only upon a 2/3 vote of the shareholders and must be identified as distributions in partial liquidation. (AS 10.05.207).
- .225. CERTAIN LOANS PROHIBITED. Loans by the corporation to its officers or directors are prohibited. (AS 10.05.213).



- .230. LIABILITY OF DIRECTORS IN CERTAIN CASES. This section carried over from ABCA makes directors personally liable for distributions and stock purchases by the corporation in violation of the distribution limitations. (AS 10.05.216).
- .235. EFFECT OF GOOD FAITH RELIANCE ON FINANCIAL STATEMENTS OR BOOK VALUE. Directors are not liable under the preceeding section if they relied upon financial statements of the corporation represented to him to be correct. (AS 10.05.219).
- .240. PRESUMPTION OF CONSENT OF DIRECTOR AND FILING OF DISSENT. A director present at a meeting is presumed to consent to the action taken by the board at such a meeting unless he files a dissent in accordance with this section. (AS 10.05.222).
- .245. DIRECTOR'S RIGHT TO CONTRIBUTION. A director sued for violation of the distribution rules is entitled to contribution (a sharing of the damages) from all directors assenting to or voting for the action. (AS 10.05.225).
- .250. OFFICERS. Officers of the corporation are elected by the board of directors and serve at their pleasure. (AS 10.05.228).
- .255. DUTIES OF OFFICERS. The board and the bylaws establish the duties of the corporate officers. (AS 10.05.231)
- .260. REMOVAL OF OFFICERS. Officers may be removed by the board but removal does not prejudice contract rights. (AS 10.05.234).
- .265. BOOKS AND RECORDS. GSOCs are required to keep complete books and records and make them available for inspection by shareholders and the Dept. of Commerce at the principal place of corporate business or the registered office. (AS 10.05.237).
- .270. SHAREHOLDER'S RIGHT TO EXAMINE BOOKS AND RECORDS. Shareholders have the right to examine books of the corporation at a reasonable time upon written demand. Access to the books of the corporation can be denied if sought for an "improper" purpose. The proper purpose restriction is a carryover from common law where the restriction insured that the examination was for an honest purpose and not to gratify curiosity or for speculative or vexatious purposes. It was designed to make certain that the purpose of the shareholder desiring to make examinations must be germane to his interests as a shareholder, that it was proper and lawful in character, and that it was not inimical to the interests of the corporation.

To clarify the applicability of this common law doctrine a number of states, including Alaska, have adopted into their corporation codes an inspection of records provision requiring the proper purpose. Under these provisions the shareholder is presumed to have the right of inspection and the lack of a proper purpose can only be asserted as a defense to a claim of wrongful denial of inspection. There is no comprehensive definition of what constitutes a proper purpose since there are innumerable valid reasons for a shareholder to inspect the books of his corporation. However, case law has indicated many such purposes a partial list of which would include:

- 1) To ascertain the value of a shareholder's stock.
- 2) To acquire knowledge to enable him to vote understandingly at a shareholder's meeting.
- 3) To investigate into consideration actually paid for stock and the failure to distribute dividends.
- 4) To investigate irregularities resulting in secret profits to officers of the corporation.
- 5) To determine correctness of financial statements and the existence of collateral for notes.
- 6) To determine whether a shareholder is being discriminated against in relation to his shares. (AS 10.05.237).

.275. LIABILITY FOR REFUSAL OF EXAMINATION. Any agent of the corporation wrongfully refusing shareholder access to the books and records of the corporation is subject to a fine of \$1,000 per day for each day of wrongful refusal. (AS 10.05.243).

.280. COURT MAY COMPEL INSPECTION. Courts have the power to compel inspection of the corporations books. (AS 10.05.249).

.285. SHAREHOLDERS' RIGHT TO FINANCIAL STATEMENT. The corporation must provide the shareholders with a financial statement upon request. (AS 10.05.249).

.290. REMOVAL OF DIRECTORS BY SUPERIOR COURT. This new provision allows a court, upon the suit of the attorney general or 100 shareholders 18 or older, to remove a director for fraudulent or dishonest acts or gross abuse of authority and bar such director from reelection.

This provision is not a simple removal clause, but gives standing to the shareholders and the attorney general to ask a court to remove a director for specific reasons. In order to have the court remove the director the shareholders or the attorney general bringing suit must still prove the director guilty of the offenses charged.

.295. SHAREHOLDER REMOVAL OF DIRECTORS. This section allows the shareholders to remove the entire board by a majority vote or any single director by a vote at least as large as that which elected him at his last election.

- .300. SHAREHOLDERS' DERIVATIVE ACTION. Shareholders may file suit on behalf of the corporation if those responsible inside the corporation fail to do so. Alaska Supreme Court Rule 23.1 provides for such an action, but does not specify treatment of security for expenses and other details. This section allows the court discretion to require security for expenses incurred in the prosecution of the suit. The court must approve of any settlement to insure that those prosecuting the suit are not simply bought off. The proceeds of any successful action or settlement must be accounted for to the court which may authorize reasonable expenses to the parties.
- .305. FRAUDULENT TRANSFERS OF SHARES. Transferring or obtaining shares of the corporation by fraud is a felony.
- .310. POLITICAL ACTIVITIES. GSOCs may not endorse candidates or ballot issues nor spend money in support or opposition of either. They are also prohibited from spending any monies to lobby the legislature. Violations are a misdemeanor punishable by a jail term and a \$10,000 fine.

## ARTICLE 2. FORMATION OF CORPORATIONS.

- .315. INCORPORATORS. Incorporators are those persons who file the articles of incorporation to begin the corporation's existence. This must be done by at least three people over the age of 18. (AS 10.05.252).
- .320. ARTICLES OF INCORPORATION. This section sets out the minimum requirements of the articles of a GSOC including the provisions required by subchapter "U" of the Internal Revenue Code that the corporation have only one class of stock, issued only to individuals, with the right to elect not to receive a share, and subject to transfer restrictions for five years. Other provisions are carried over from the ABCA. (AS 10.05.255).
- .325. FILING OF ARTICLES OF INCORPORATION. Articles of incorporation are to be filed with the Commissioner of Commerce who shall certify the filing and return one original of the articles to the corporation. (AS 10.05.258).
- .330. EFFECT OF ISSUANCE OF CERTIFICATE OF INCORPORATION. Upon issuing the certificate corporate life begins. (AS 10.05.261).
- .335. ARTICLES OF INCORPORATION AND INITIAL BYLAWS. The articles and initial bylaws must be submitted to the legislature within 30 days of issuing the certificate of incorporation and, if not disapproved within 60 legislative days by concurrent resolution, they are approved. Legislative disapproval may not abrogate any contract obligations of the corporation and may be overridden by a shareholder vote.



- .340. ORGANIZATION MEETING OF DIRECTORS. The incorporators shall call an organizational meeting of directors in the state for the purpose of adopting bylaws, electing officers and conducting other business necessary to the organization of the corporation. (AS 10.05.267).

#### ARTICLE 3. APPLICATION FOR SHARES.

- .345. NOTIFICATION OF ELIGIBLE SHAREHOLDERS. Since stock is to be distributed free of charge initially all Alaska residents must be notified of its availability. This section sets out the minimum notice requirements of weekly broadcast and publication for at least three month before stock distribution and monthly broadcast and publication for eleven months after distribution. These are minimum requirements only and the board of directors may determine that the corporation should take other steps to identify and notify potential shareholders.
- .350. CORPORATION NOT LIABLE TO SHAREHOLDERS. Although GSOCs are required to take reasonable steps to notify potential shareholders of their right to stock the burden of applying for stock lies with the resident and the corporation is not liable for failure to notify or issue stock to a potential shareholder. If a resident makes application for stock after the distribution of one or more dividends he loses his right to those dividends and is entitled to receive only those dividends declared and paid after the date upon which his stock was issued to him.
- .355. LATE APPLICATION FOR SHARES. Any individual who is eligible to receive an initial distribution of shares but who fails to apply for issuance of stock may be issued a share without charge at any time within one year of the original issue. The one year period coincides with the period during which a shareholder may elect not to receive his stock and have his share cancelled. For one additional year a person who would have been eligible to receive an initial share but did not get one may purchase his share at book value. Original issue is cut off completely after the two year period.
- .360. PENALTIES FOR MISREPRESENTATION OF ELIGIBILITY AS SHAREHOLDER. The superior court is given jurisdiction to void stock issued to an ineligible individual who obtained his shares by fraud and allows the corporation to recover any distributions paid to such a shareholder.

#### ARTICLE 4. AMENDMENT.

- .365. RIGHT TO AMEND ARTICLES OF INCORPORATION. The articles of the corporation may be amended to include any legal provision. (AS 10.05.270).



- .370. PURPOSES FOR WHICH ARTICLES MAY BE AMENDED. This section lists some, but not all, of the legal purposes for which the articles may be amended. (AS 10.05.273).
- .375. PROCEDURE TO AMEND ARTICLES OF INCORPORATION. The board of directors or the shareholders can propose amendments to the articles of incorporation, but the articles may only be amended upon a 2/3 majority vote of a quorum of shareholders.
- .380. ARTICLES OF AMENDMENT.
- .385. FILING OF ARTICLES OF AMENDMENT.
- .390. EFFECT OF CERTIFICATE OF AMENDMENT.  
These three sections provide that an amendment approved by the shareholders to the articles of incorporation must be filed with the Commissioner of Commerce in the same manner as the original articles of incorporation and once certified by the Commissioner the amendment becomes effective. These sections are adopted directly from AS 10.05.285, .288, and .291 respectively.
- .395. RESTATED ARTICLES OF INCORPORATION.
- .400. EXECUTION OF RESTATED ARTICLES OF INCORPORATION.
- .405. CONTENTS OF RESTATED ARTICLES OF INCORPORATION.
- .410. FILING OF RESTATED ARTICLES OF INCORPORATION.
- .415. EFFECT OF ISSUANCE OF RESTATED CERTIFICATE OF INCORPORATION.  
These five section deal with restated articles of incorporation. Restated articles of incorporation for purposes of GSOCs are simply a consolidation and updating of the articles of incorporation with current amendments. This allows the corporation to have on file with the Commissioner a current copy of the articles of incorporation incorporating all amendments. The provisions are adopted essentially from ABCA except that GSOCs are not allowed to amend the articles of incorporation through filing restated articles and for that reason are allowed to file restated articles upon motion of the board of directors. (AS 10.05.294, .297, .300, .303, and .306 respectively).

#### ARTICLE 5. SALE OF ASSETS.

- .420. SALE OR MORTGAGE OF ASSETS IN REGULAR COURSE OF BUSINESS.  
The board of directors may sell or dispose of all the assets of the corporation if it is in the ordinary course of the corporation's business. (AS 10.05.435).
- .425. SALE OR MORTGAGE OF ASSETS OTHER THAN IN REGULAR COURSE OF BUSINESS. Sale of all the assets of the corporation other than in the ordinary course of business requires a vote of the shareholders. (AS 10.05.438).

- .430. APPROVAL OF PLAN BY SHAREHOLDERS. A 2/3 vote of the shareholders is required to approve a sale of all the assets of the corporation outside the ordinary course of business. (AS 10.05. 441).
- .435. ABANDONMENT OF PLAN BY BOARD OF DIRECTORS. Even though a vote of the shareholders is required to approve a sale of all the assets the sale may be abandon by the board since such sales are unusual and may require quick decisions which cannot be effectively put to the shareholders. If the shareholders are unhappy about the abandonment they have the power to remove the board and it is to be expected that the board would not abandon such a sale without good cause. (AS 10.05.444).
- .440. RIGHTS OF DISSENTING SHAREHOLDERS UPON SALE OR EXCHANGE OF ASSETS.
- .445. NOTICE TO DISSENTING SHAREHOLDER.
- .450. PAYMENT TO DISSENTING SHAREHOLDER AFTER AGREEMENT ON VALUE OF SHARES.
- .455. ACTION BY DISSENTING SHAREHOLDER TO COMPEL PAYMENT UPON FAILURE TO AGREE ON VALUE.
- .460. EFFECT OF ABANDONMENT OR REVOCATION OF SALE OR EXCHANGE ON SHAREHOLDER'S RIGHTS.
- .465. STATUS OF SHARES ACQUIRED FROM DISSENTING SHAREHOLDER.  
These section deal with the shareholder who does not wish to be a part of the sale of substantially all the assets of the corporation in spite of the 2/3 majority vote of the shareholders. Such a shareholder can dissent from the sale and have the corporation purchase his shares. There are notice provisions and opportunity for the shareholder and the corporation to agree upon a purchase price for the shares. If the shareholder and the corporation cannot agree upon a price the matter can be decided by a court. If the sale is abandoned the dissenting shareholder loses his right to receive payment from the corporation for his share and he remains a shareholder. Shares acquired from a dissenting shareholder become treasury shares.

#### ARTICLE 6. DISSOLUTION.

GSOCs may be dissolved voluntarily by a 2/3 vote of a quorum of shareholders (.475) or by the Commissioner of Commerce (.530). In a voluntary dissolution the question may be put to the shareholders upon action of the board or a petition of 1,000 shareholders (.475). On affirmative vote of the shareholders a statement of intent to dissolve signed by corporate officers (.480) is filed with the commissioner of Commerce (.485). When the statement is officially filed by the Commissioner the corporation must cease doing business and wind up its operations (.470). However, the corporate existence continues while the corporation notifies creditors,

collects and liquidates assets and pays off its obligations (.490)(.495). When the business of the corporation has been wound up articles of dissolution (.515) are filed with the Commissioner (.520) and when certified the corporate existence ceases (.525). Voluntary dissolutions may be revoked at any time by a 2/3 vote of the shareholders (.500) in which case the corporation files a statement of revocation (.505) and the dissolution process is terminated (.510).

A GSOC may be dissolved involuntarily by the Commissioner of Commerce with 60 days notice for failure to file reports or pay fees, failure to maintain a registered agent or office or change either without notice, and unfilled board vacancies continuing beyond the allowable time (.530). A corporation can be reinstated within two years upon remedy of the violation.

The superior court may dissolve a GSOC (.530) and has jurisdiction to liquidate the corporation's assets (.540). The Attorney General may bring suit to dissolve the corporation where there was fraudulent incorporation or continual abuse of corporate authority (.530).

In addition a suit for liquidation of the corporations assets may be brought by:

- 1) A shareholder where the board is deadlocked; the board is action in an illegal, oppressive, or fraudulent manner; the shareholders are deadlocked for two annual meetings; or, the corporation's assets are being misapplied (.545).
- 2) A creditor when the creditor's claim is unsatisfied and the corporation is insolvent (.550).
- 3) The corporation upon request to have a voluntary dissolution continued under court supervision(.555).
- 4) The Attorney General in conjunction with a suit for dissolution (.560).

The shareholders need not be a party to the action for liquidation (.565). The court has authority to appoint a qualified receiver (.605) for the corporation with power defined by the court (.585) to collect and sell its assets (.570)(.575). Proceeds are to be used to pay expenses allowed by the court (.590) and debts of the corporation with the remainder distributed to the shareholders (.580).

The receiver may sue and be sued (.595) and all claims against the corporation must be filed in a timely manner with the court or the receiver (.610). Liquidation may be terminated by the court (.615) but upon completion the court must enter a decree of dissolution (.620).

The article on dissolution is carried over substantially intact from ABCA (AS 10.05.465 - .594).

## ARTICLE 7. GENERAL PROVISIONS.

- .625. AS 10.05 INCORPORATED BY REFERENCE. In order to reduce duplication this section incorporates by reference Sections .699 through .819 of ABCA (AS 10.05.699 - .819). These sections deal with requirements for annual reports to be filed with the Commissioner of Commerce, filing fees and charges, procedural provisions and forms, and powers of the Commissioner of Commerce.
- .630. FALSE STATEMENTS AFFECTING VALUE OF SHARES. An agent of a corporation who makes fraudulent statements regarding the value of shares is guilty of a misdemeanor.
- .635. DIRECTOR MAKING UNLAWFUL DIVIDEND OR DISTRIBUTION OF ASSETS. A director who concurs in a distribution designed to deceive creditors or shareholders is guilty of a misdemeanor.
- .640. RESERVATION OF POWER. Amendments to this chapter apply to all existing and future corporations organized under it, but an amendment may not abrogate the contractual obligations of any corporation.
- .645. DEFINITIONS. Many of the definitions in this section are carried over from ABCA and may also be found in AS 10.05.825. However, there are two significant new definitions:
- Certificate as used in the context of "stock certificate" may mean something other than the actual certificate such as a receipt evidencing ownership. This definition has been broadened in order to allow for the possibility that the stock certificates themselves may never be issued, but that the stock records may be kept by the corporation itself as the evidence of ownership in a particular shareholder which ownership would be represented in the hands of the shareholder by a receipt. Such a receipt would be required to carry all the same information as is required on the certificate itself.
- Resident is defined as a person who lives in Alaska and intends to remain here permanently. The definition allows for temporary travel or employment outside without loss of residency. If a dispute arises over residency all of the facts and circumstances indicative of permanent residency must be considered.





## MEMORANDUM

TO: All Legislators

FROM: Mike Miller, Chairman, House State Affairs Committee

DATE: April 26, 1979

APR 27 1979

Because of a high degree of interest and in response to a number of specific requests I am providing each legislator with a copy of the State Affairs Committee substitute for House Bill 240 (Creating the Alaska General Stock Ownership Corporation). The bill is of course quite hefty however we will be providing a sectional analysis and synopsis very shortly.

REP. MIKE MILLER  
ALASKA STATE LEGISLATURE

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APR 27 1979

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Original sponsors: Duncan, Cotten  
Hurlbert, et al

1 IN THE HOUSE

BY THE STATE AFFAIRS COMMITTEE

2

CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 240

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

ELEVENTH LEGISLATURE - FIRST SESSION

5

A BILL

6

For an Act entitled: "An Act relating to general stock ownership corpora-  
tions and creating the Alaska General Stock Ownership  
Corporation; changing Rule 23.1, Rules of Civil Proce-  
dure; and providing for an effective date."

10

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

11

\* Section 1. AS 10 is amended by adding a new chapter to read:

12

CHAPTER 50. GENERAL STOCK OWNERSHIP CORPORATIONS.

13

ARTICLE 1. SUBSTANTIVE PROVISIONS.

14

Sec. 10.50.005. PURPOSES. A general stock ownership corporation  
may be organized under this chapter for any lawful purpose unless  
limited by the chartering legislation of a corporation.

17

Sec. 10.50.010. GENERAL STOCK OWNERSHIP CORPORATIONS. (a) A  
corporation organized under this chapter is a general stock ownership  
corporation and shall be formed in accordance with subchapter U, chapter  
1 of the Internal Revenue Code of 1954, as amended (26 U.S.C. secs.  
1391 - 1397), and with this chapter. A corporation is subject to the  
provisions of this chapter and 26 U.S.C. sec. 1391 - 1397.

23

(b) A corporation is not an agency, instrumentality, or political  
subdivision of the state for any purpose.

25

Sec. 10.50.015. GENERAL POWERS. A corporation may

26

(1) have perpetual succession in its corporate name unless a  
limited period of duration is stated in its articles of incorporation;

28

(2) sue and be sued in its corporate name;

29

(3) adopt a corporate seal and alter it, and use it by having

1 it or a facsimile of it impressed, affixed or reproduced;

2 (4) buy, lease, or otherwise acquire, own, hold, improve, use  
3 and otherwise deal in, real or personal property or any interest in  
4 property, except that the corporation may not invest in property ac-  
5 quired by it, or for its benefit, through the right of eminent domain;

6 (5) sell or otherwise dispose of all or any part of its  
7 property and assets;

8 (6) lend money to its employees other than its officers and  
9 directors, and otherwise assist its employees, officers and directors;

10 (7) buy or otherwise acquire, own, hold, vote, use, sell,  
11 mortgage, lend, pledge, or otherwise dispose of, and otherwise use and  
12 deal in shares or other interests in, or obligations of, other corpora-  
13 tions, associations, partnerships or individuals, or in direct or in-  
14 direct obligations of the United States or of any other government,  
15 state, territory, or municipality or of any instrumentality of them;

16 (8) make contracts and incur liabilities, borrow money at the  
17 rates of interest the corporation determines, issue notes, bonds, and  
18 other obligations, and secure its obligations by mortgage or pledge of  
19 all or any of its property, franchise and income;

20 (9) lend money for its corporate purposes, invest and rein-  
21 vest its funds, and take and hold real and personal property as security  
22 for the payment of funds loaned or invested;

23 (10) conduct business, carry on operations, and have offices  
24 and exercise the powers granted by this chapter in a state, territory,  
25 district, or possession of the United States, or in a foreign country;

26 (11) elect or appoint officers and agents of the corporation,  
27 define their duties, and fix their compensation;

28 (12) make and alter bylaws not inconsistent with its articles  
29 of incorporation or with the laws of the state, for the administration

1 and regulation of the affairs of the corporation;

2 (13) donate for the public welfare or for charitable, scienti-  
3 fic or educational purposes, and in time of war donate in aid of war  
4 activities;

5 (14) transact lawful business in time of war in aid of the  
6 United State in the prosecution of the war;

7 (15) pay pensions and establish pension plans, pension trusts,  
8 profit-sharing plans, and other incentive plans for its directors,  
9 officers and employees;

10 (16) cease its corporate activities and surrender its corporate  
11 franchise;

12 (17) have and exercise the powers of a limited or general  
13 partner or a joint adventurer in association with one or more persons,  
14 corporations, partnerships or associations;

15 (18) have and exercise lawful powers necessary to carry out  
16 the purposes for which the corporation is organized.

17 Sec. 10.50.020. INDEMNIFICATION OF OFFICERS, DIRECTORS, EMPLOYEES  
18 AND AGENTS; INSURANCE. (a) A corporation may indemnify a person who  
19 was or is a party or is threatened to be made a party to a threatened,  
20 pending, or completed action or proceeding, whether civil, criminal,  
21 administrative, or investigative, other than an action by or in the right  
22 of the corporation, by reason of the fact that he is or was a director,  
23 officer, employee or agent of the corporation, or is or was serving at  
24 the request of the corporation as a director, officer, employee or agent  
25 of another corporation, partnership, joint venture, trust or other  
26 enterprise. Indemnification may be against expenses including attorney  
27 fees, judgments, fines, and amounts paid in settlement actually and  
28 reasonably incurred by him in connection with the action or proceeding  
29 if he acted in good faith and in a manner he reasonably believed to be



1 in or not opposed to the best interests of the corporation, and, with  
2 respect to a criminal action or proceeding, had no reasonable cause to  
3 believe his conduct was unlawful. The termination of an action or  
4 proceeding by judgment, order, settlement, conviction, or upon a plea of  
5 nolo contendere or its equivalent, does not, of itself, create a presump-  
6 tion that the person did not act in good faith and in a manner which he  
7 reasonably believed to be in or not opposed to the best interests of the  
8 corporation, and, with respect to a criminal action or proceeding, had  
9 reasonable cause to believe that his conduct was unlawful.

10 (b) A corporation may indemnify a person who was or is a party or  
11 is threatened to be made a party to a threatened, pending or completed  
12 action by or in the right of the corporation to procure a judgment in  
13 its favor by reason of the fact that he is or was a director, officer,  
14 employee, or agent of the corporation, or is or was serving at the re-  
15 quest of the corporation as a director, officer, employee, or agent of  
16 another corporation, partnership, joint venture, trust or other enter-  
17 prise. Indemnification may be against expenses, including attorney  
18 fees, actually and reasonably incurred by him in connection with the  
19 defense or settlement of the action if he acted in good faith and in a  
20 manner he reasonably believed to be in or not opposed to the best inter-  
21 ests of the corporation. However, indemnification may not be made for  
22 any claim, issue or matter as to which the person has been adjudged to  
23 be liable for negligence or misconduct in the performance of his duty to  
24 the corporation except to the extent that the court in which the action  
25 was brought determines upon application that, despite the adjudication  
26 of liability, in view of all the circumstances of the case the person is  
27 fairly and reasonably entitled to indemnity for the expenses which the  
28 court considers proper.

29 (c) To the extent that a director, officer, employee or agent of a

1 corporation has been successful on the merits or otherwise in defense of  
2 an action or proceeding referred to in (a) or (b) of this section, or in  
3 defense of any claim, issue or matter in the action or proceeding, he  
4 shall be indemnified against expenses, including attorney fees, actually  
5 and reasonably incurred by him in connection with it.

6 (d) Indemnification under (a) or (b) of this section, unless  
7 ordered by a court, shall be made by the corporation only as authorized  
8 in the specific case upon a determination that indemnification of the  
9 director, officer, employee or agent is proper in the circumstances  
10 because he has met the applicable standard of conduct set out in (a) and  
11 (b) of this section. This determination shall be made

12 (1) by the board of directors by a majority vote of a quorum  
13 consisting of directors who were not parties to the action or proceed-  
14 ing, or

15 (2) if such a quorum is not obtainable, or, even if obtain-  
16 able if a quorum of disinterested directors so directs, by independent  
17 legal counsel in a written opinion, or

18 (3) by the stockholders.

19 (e) Expenses incurred in defending a civil or criminal action or  
20 proceeding may be paid by the corporation in advance of the final dis-  
21 position of the action or proceeding as authorized by the board of  
22 directors in the specific case upon receipt of an undertaking by or on  
23 behalf of the director, officer, employee or agent to repay the amount  
24 unless it is ultimately determined that he is entitled to be indemni-  
25 fied by the corporation as authorized in this section.

26 (f) The indemnification provided by this section is not exclusive  
27 of any other rights to which a person seeking indemnification may be  
28 entitled under any bylaw, agreement, vote of stockholders or disinter-  
29 ested directors or otherwise, both as to action in his official capacity

1 and as to action in another capacity while holding the office, and  
2 continues as to a person who has ceased to be a director, officer,  
3 employee or agent, and inures to the benefit of the heirs, executors and  
4 administrators of that person.

5 (g) A corporation may purchase and maintain insurance on behalf of  
6 a person who is or was a director, officer, employee or agent of the  
7 corporation, or is or was serving at the request of the corporation as a  
8 director, officer, employee or agent of another corporation, partner-  
9 ship, joint venture, trust or other enterprise against any liability  
10 asserted against him and incurred by him in such a capacity, or arising  
11 out of his status as such, whether or not the corporation would have the  
12 power to indemnify him against the liability under the provisions of  
13 this section.

14 Sec. 10.50.030. DEFENSE OF ULTRA VIRES. No act of a corporation  
15 and no conveyance or transfer of real or personal property to or by a  
16 corporation is invalid because the corporation did not have capacity or  
17 power to perform the act or to convey or receive the property. However,  
18 lack of capacity or power may be asserted as follows.

19 (1) The assertion may be made in a proceeding by a share-  
20 holder against the corporation to enjoin the performance of any act or  
21 the transfer of real or personal property by or to the corporation. If  
22 the unauthorized act or transfer sought to be enjoined is being or to be  
23 performed or made under a contract to which the corporation is a party,  
24 the court may, if the parties to the contract are parties to the pro-  
25 ceeding and if the court considers it equitable, set aside and enjoin  
26 the performance of the contract, and in so doing may allow compensation  
27 to the corporation or to the other parties to the contract for the loss  
28 or damage sustained by either of them resulting from the action of the  
29 court in setting aside and enjoining the performance of the contract.

1 The court may not award anticipated profits to be derived from the  
2 performance of the contract as a loss or damage sustained.

3 (2) The assertion may be made in a proceeding by the corpora-  
4 tion, whether acting directly or through a receiver, trustee, or other  
5 legal representative, or through shareholders in a representative suit,  
6 against the incumbent or former officers or directors of the corpora-  
7 tion.

8 (3) The assertion may be made in a proceeding by the attorney  
9 general to dissolve the corporation, or to enjoin the corporation from  
10 the transaction of unauthorized business.

11 Sec. 10.50.035. CORPORATE NAME. The corporate name shall contain  
12 the words "general stock ownership corporation" or an abbreviation of  
13 these words. It may not contain a word or phrase which indicates or  
14 implies that it is organized for a purpose other than the purpose con-  
15 tained in the articles of incorporation. It may not be the same as, or  
16 deceptively similar to, the name of a domestic corporation existing  
17 under the laws of the state or a foreign corporation authorized to  
18 transact business in the state, or a name which has been reserved or  
19 registered as provided in this chapter.

20 Sec. 10.50.040. RESERVATION OF CORPORATE NAME. (a) The exclusive  
21 right to the use of a corporate name may be reserved by

22 (1) a person intending to organize a corporation under this  
23 chapter;

24 (2) a corporation intending to change its name.

25 (b) Reservation of a corporate name is made by filing an applica-  
26 tion with the commissioner. If the commissioner finds that the name is  
27 available for corporate use, and not a reserved or registered business  
28 name as set out in AS 10.35.010 - 10.35.090, he shall reserve it for the  
29 exclusive use of the applicant for a period of two years. A reservation



1 of corporate name may be renewed for one year.

2 (c) The holder of a reserved corporate name may transfer the right  
3 to the exclusive use of the corporate name to another person by filing a  
4 notice of transfer with the commissioner, signed by the holder and  
5 specifying the name and address of the transferee.

6 Sec. 10.50.045. FOREIGN GENERAL STOCK OWNERSHIP CORPORATIONS.  
7 Corporations organized under the laws of another state shall be governed  
8 according to AS 10.05.

9 Sec. 10.50.050. REGISTERED OFFICE AND REGISTERED AGENT. A corpor-  
10 ation shall continuously maintain in the state a registered office which  
11 may be, but need not be, the same as its place of business, and a regis-  
12 tered agent. The registered agent may be either an individual resident  
13 of the state whose business office is the same as the registered office,  
14 or a corporation organized under AS 10.05 whose business office is the  
15 same as the registered office.

16 Sec. 10.50.055. FILING LIST OF REGISTERED CORPORATIONS WITH SUPER-  
17 IOR COURT. The commissioner shall file a list of the name of each  
18 corporation, the address of the registered office, and the name and  
19 address of the registered agent with each clerk of the superior court.  
20 The commissioner shall provide a periodic supplement to the list indicat-  
21 ing additions, deletions and changes at least once every six months.  
22 The commissioner shall make the list available to the public for a fee  
23 prescribed by him.

24 Sec. 10.50.060. CHANGE OF REGISTERED OFFICE OR AGENT. (a) A  
25 corporation may change its registered office, agent, or both, by filing  
26 with the department a verified statement signed by the president or  
27 vice-president setting out

28 (1) the name of the corporation;

29 (2) the address of its registered office;

1 (3) the address of its new registered office if the regis-  
2 tered office is to be changed;

3 (4) the name of its registered agent;

4 (5) the name of its new registered agent, if its registered  
5 agent is to be changed;

6 (6) that the change is authorized by resolution of its board  
7 of directors.

8 (b) If the commissioner finds that the verified statement complies  
9 with this chapter, he shall file it in his office. The change becomes  
10 effective when the statement is filed.

11 Sec. 10.50.065. REGISTRATION OF REGISTERED AGENT. (a) If the  
12 registered agent of a corporation changes the location of his office  
13 from one address to another within a city or town, or from one city or  
14 town in the state to another, he may change the registered office for  
15 each corporation for whom he is acting as registered agent by filing in  
16 the office of the commissioner a statement setting out

17 (1) the name of the agent;

18 (2) the address of his office before change;

19 (3) the address to which the office is changed; and

20 (4) a list of corporations for whom he is furnishing a regis-  
21 tered office.

22 (b) The statement in (a) of this section must be executed by the  
23 registered agent in his individual name and, if the agent is a corpora-  
24 tion it must be executed by its president or a vice-president and veri-  
25 fied by him. The statement must be delivered to the commissioner and if  
26 he finds that the statement complies with this chapter, he shall file it  
27 in his office. The change becomes effective when the statement is  
28 filed.

29 (c) A registered agent may resign by filing a written notice,

1       executed in duplicate, with the commissioner. The written notice of  
2       resignation shall set out the latest address of the principal office of  
3       the corporation and the names, addresses and titles of the most recent  
4       officers of the corporation known by the agent. The commissioner shall  
5       immediately mail a copy of the notice to the corporation at its princi-  
6       pal office. The appointment of the agent terminates 30 days after  
7       receipt of the notice by the commissioner.

8       Sec. 10.50.070. SERVICE OF PROCESS ON CORPORATION. (a) The  
9       registered agent of a corporation is an agent upon whom process, notice  
10      or demand required or permitted by law to be served upon the corporation  
11      may be served.

12      (b) When a corporation fails to appoint or maintain a registered  
13      agent in the state, or when its registered agent cannot, with reasonable  
14      diligence, be found at the registered office, the commissioner is an  
15      agent of the corporation upon whom the process, notice, or demand may be  
16      served. Service is made upon the commissioner as agent by leaving with  
17      him, or with a clerk having charge of the corporation department of his  
18      office, duplicate copies of the process, notice or demand. When process,  
19      notice or demand is served on the commissioner, he shall immediately  
20      forward a copy of it by registered mail to the corporation at its regis-  
21      tered office. Service on the commissioner is returnable in not less  
22      than 30 days.

23      (c) The commissioner shall keep a record of processes, notices and  
24      demands served upon him showing the time of service and his action with  
25      reference to the service. This chapter does not limit or affect the  
26      right to serve process, notice or demand required or permitted by law to  
27      be served upon a corporation in any other manner permitted by law.

28      Sec. 10.50.075. CREATION AND ISSUANCE OF SHARES. A corporation  
29      may create and issue the number of shares stated in its articles of

1 incorporation and as provided in AS 10.50.320(a)(5) - (7). The shares  
2 shall be without par value.

3 Sec. 10.50.080. CONSIDERATION FOR SHARES. (a) Shares may be  
4 issued without consideration or for consideration fixed by the share-  
5 holders before the issuance. Consideration for shares shall be fixed by  
6 a vote of a majority of the shares voting on the issue.

7 (c) Treasury shares may be disposed of by the corporation for  
8 consideration not more than the book value of the shares.

9 Sec. 10.50.085. PAYMENT FOR SHARES. (a) Consideration for the  
10 issuance of shares if required may be paid, in whole or in part, in  
11 money, in other property, tangible or intangible, or in labor or ser-  
12 vices actually performed for the corporation. When payment of the  
13 consideration for shares is received by the corporation, the shares are  
14 considered fully paid and nonassessable.

15 (b) A promissory note or future service does not constitute pay-  
16 ment or part payment for shares of a corporation.

17 Sec. 10.50.090. JUDGMENT OF BOARD OR SHAREHOLDER AS TO VALUE OF  
18 CONSIDERATION CONCLUSIVE. In the absence of fraud in the transaction,  
19 the judgment of the board of directors or the shareholders as to the  
20 value of the consideration received for shares is conclusive.

21 Sec. 10.50.095. EXPENSES OF ORGANIZATION, REORGANIZATION AND  
22 FINANCING. The reasonable charges and expenses of organization or  
23 reorganization of a corporation, and the reasonable expenses of and  
24 compensation for the sale or underwriting of its shares, may be paid or  
25 allowed by the corporation out of the consideration received by it in  
26 payment for its shares without rendering the shares not fully paid and  
27 nonassessable.

28 Sec. 10.50.100. CERTIFICATES REPRESENTING SHARES. The shares of a  
29 corporation shall be represented by certificates signed by the president



1 or vice-president and the secretary or an assistant secretary of the  
2 corporation, and may be sealed with the seal of the corporation or a  
3 facsimile of the seal. The signatures of the president or vice-presi-  
4 dent and the secretary or assistant secretary on a certificate may be  
5 facsimiles if the certificate is countersigned by a transfer agent, or  
6 registered by a registrar, other than the corporation itself or an  
7 employee of the corporation. If an officer who has signed or whose  
8 facsimile signature has been placed on a certificate ceases to be an  
9 officer before the certificate is issued, it may be issued by the cor-  
10 poration with the same effect as if he were an officer at the date of  
11 its issue.

12 Sec. 10.50.105. INFORMATION REQUIRED TO BE STATED ON CERTIFICATE.  
13 Each certificate representing shares shall state on the face

14 (1) that the corporation is organized under the laws of the  
15 state;

16 (2) the name of the person to whom issued;

17 (3) the number of shares which the certificate represents;

18 (4) a statement that the shares are without par value.

19 Sec. 10.50.110. FULL PAYMENT REQUIRED FOR CERTIFICATE. A certi-  
20 ficate may not be issued for a share until the share is fully paid if  
21 consideration is required.

22 Sec. 10.50.115. ISSUANCE OF FRACTIONAL SHARES. (a) A corporation  
23 may issue a certificate for a fractional share.

24 (b) A certificate for a fractional share entitles the holder to  
25 exercise voting rights, to receive dividends, and to participate in the  
26 assets of the corporation in the event of liquidation.

27 Sec. 10.50.120. LIABILITY OF SUBSCRIBERS AND SHAREHOLDERS. (a) A  
28 holder of or subscriber to shares of a corporation is under no obliga-  
29 tion to the corporation or its creditors with respect to the shares

1 other than the obligation to pay to the corporation the full considera-  
2 tion for which the shares were issued or to be issued.

3 (b) An assignee or transferee of shares or of a subscription for  
4 shares in good faith and without knowledge or notice that the full  
5 consideration has not been paid is not personally liable to the corpora-  
6 tion or its creditors for any unpaid portion of the consideration.

7 (c) An executor, administrator, conservator, guardian, trustee,  
8 assignee for the benefit of creditors, or receiver is not personally  
9 liable to the corporation as a holder of or subscriber to shares of a  
10 corporation but the estate and funds held by him are liable.

11 (d) A pledgee or other holder of shares as collateral security is  
12 not personally liable as a shareholder.

13 Sec. 10.50.125. BYLAWS. The board of directors shall adopt the  
14 initial bylaws of a corporation in accordance with AS 10.50.335. The  
15 power to alter, amend or repeal the bylaws or to adopt new bylaws is  
16 vested in the board of directors and the shareholders. The bylaws may  
17 contain provisions for the regulation and management of the affairs of  
18 the corporation consistent with law and the articles of incorporation.

19 Sec. 10.50.130. MEETINGS OF SHAREHOLDERS. (a) Meetings of share-  
20 holders shall be held in the state, as may be provided in the bylaws.  
21 The board of directors shall designate the place of the meeting.

22 (b) An annual meeting of the shareholders shall be held at the  
23 time provided in the bylaws. Failure to hold the annual meeting at the  
24 designated time does not work a forfeiture or dissolution of the corpora-  
25 tion.

26 (c) Special meetings of the shareholders may be called by the  
27 president, by the board of directors, by the holders of not less than  
28 1,000 shares, or by the other officers or persons provided in the  
29 articles of incorporation or the bylaws.

1 (d) The shareholders of a corporation may participate in a meeting  
2 of the shareholders by communicating simultaneously with the other  
3 shareholders from places designated in the notice of meeting by means of  
4 conference telephones or other communications equipment, so long as all  
5 shareholders participating in the meeting can hear one another.

6 Sec. 10.50.135. NOTICE OF SHAREHOLDERS' MEETINGS. (a) Beginning  
7 not less than 150 days before a meeting of shareholders, the corporation  
8 shall, at least weekly, notify the shareholders of the time and manner  
9 in which (1) nominations for the board of directors of the corporation  
10 may be made and (2) issues may be placed on the corporation ballot for  
11 consideration by the shareholders. Notice shall be by publication in  
12 newspapers in all regions of the state and shall appear at least weekly  
13 for not less than four weeks.

14 (b) Written or printed notice stating the place, day and hour of  
15 the meeting and, in case of a special meeting, the purpose for which the  
16 meeting is called, shall be delivered not less than 60 nor more than 90  
17 days before the date of the meeting, either personally or by mail, by or  
18 at the direction of the president, the secretary, or the officer or  
19 persons calling the meeting, to each shareholder of record entitled to  
20 vote at the meeting. If mailed, the notice is considered delivered when  
21 deposited in the United States mail addressed to the shareholder at his  
22 address as it appears on the stock transfer books of the corporation,  
23 with postage prepaid.

24 Sec. 10.50.140. CLOSING OF TRANSFER BOOKS AND FIXING RECORD DATE.

25 (a) To determine the shareholders entitled to notice of or to vote at a  
26 meeting of shareholders or an adjournment of a meeting, or entitled to  
27 receive payment of a dividend, or in order to make a determination of  
28 shareholders for any other proper purpose, the board of directors of a  
29 corporation may provide that the stock transfer books shall be closed

1 for a stated period not exceeding 90 days. If the stock transfer books  
2 are closed to determine shareholders entitled to notice of or to vote at  
3 a meeting of shareholders, they shall be closed for at least 60 days  
4 immediately preceding the meeting.

5 (b) Instead of closing the stock transfer books, the bylaws, or in  
6 the absence of an applicable bylaw the board of directors, may fix in  
7 advance a date as the record date for the determination of shareholders.  
8 This record date shall be not more than 90 days and, in case of a meeting  
9 of shareholders, not less than 60 days before the date on which the  
10 particular action requiring the determination of shareholders is to be  
11 taken. If the stock transfer books are not closed and no record date is  
12 fixed for the determination of shareholders entitled to notice of or to  
13 vote at a meeting of shareholders, or shareholders entitled to receive  
14 payment of a dividend, the date on which notice of the meeting is mailed  
15 or the date on which the resolution of the board of directors declaring  
16 the dividend is adopted is, as the case may be, the record date for the  
17 determination of shareholders. When a determination of shareholders  
18 entitled to vote at a meeting of shareholders is made, the determination  
19 applies to an adjournment of the meeting except when the determination  
20 has been made through the closing of the stock transfer books and the  
21 stated period of closing has expired.

22 Sec. 10.50.145. VOTING LIST. (a) At least 60 days before each  
23 meeting of shareholders, the officer or agent having charge of the stock  
24 transfer books for shares of a corporation shall make a list of the  
25 shareholders entitled to vote at the meeting or an adjournment of the  
26 meeting, arranged in alphabetical order, with the address of and the  
27 number of shares held by each. The list shall be kept on file at the  
28 registered office of the corporation and is subject to inspection by a  
29 shareholder at any time during usual business hours for a period of 60



1 days before the meeting. The list shall also be produced and kept open  
2 at the time and place of the meeting and shall be subject to the inspec-  
3 tion of a shareholder during the meeting. The original stock transfer  
4 books are prima facie evidence as to who are the shareholders entitled  
5 to examine the list or transfer books or to vote at a meeting of share-  
6 holders.

7 (b) Failure to comply with the requirements of this section does  
8 not affect the validity of the action taken at the meeting.

9 Sec. 10.50.150. QUORUM OF SHAREHOLDERS. One-third of the shares  
10 entitled to vote, represented in person or by ballots, constitutes a  
11 quorum at a meeting of shareholders. Each outstanding share is entitled  
12 to one vote on each matter submitted to a vote at a meeting of share-  
13 holders. If a quorum is present, the affirmative vote of the majority  
14 of the shares represented at the meeting and entitled to vote on the  
15 subject matter is the act of the shareholders, unless the vote of a  
16 great number is required by this chapter or the articles of incorpora-  
17 tion or the bylaws.

18 Sec. 10.50.155. PROXY VOTING PROHIBITED. A shareholder may not  
19 vote by proxy.

20 Sec. 10.50.160. VOTING FOR DIRECTORS. At an election for directors  
21 every shareholder entitled to vote may vote the number of shares owned  
22 by him for as many persons as there are directors to be elected and for  
23 whose election he has a right to vote. Shareholders may not cumulate  
24 their votes.

25 Sec. 10.50.165. VOTING OF SHARES IN THE NAME OF ANOTHER. (a)  
26 Shares held by an administrator, executor, guardian or conservator may  
27 be voted by him, either in person or by ballot, without a transfer of  
28 the shares into his name.

29 (b) Shares standing in the name of a receiver may be voted by him,

1 and shares held by or under the control of a receiver may be voted by  
2 him without the transfer of the shares into his name if authority to do  
3 so is contained in an appropriate order of the court by which the  
4 receiver was appointed.

5 Sec. 10.50.170. VOTING OF PLEDGED SHARES. A shareholder whose  
6 shares are pledged may vote the shares until they have been transferred  
7 into the name of the pledgee, and thereafter the pledgee may vote the  
8 shares so transferred.

9 Sec. 10.50.175. CORPORATION BALLOT. (a) The corporation shall  
10 prepare one ballot for each meeting of the shareholders. The ballot  
11 shall be mailed to the shareholders with the notice of meeting. Candi-  
12 dates for the board of directors and proposals for shareholder consider-  
13 ation shall be included in the ballot as provided in this section.

14 (b) A candidate for director shall be nominated by

15 (1) a resolution adopted by the board of directors; or

16 (2) a petition signed by at least 1,000 shareholders and  
17 filed with the secretary of the corporation at least 120 days before the  
18 meeting at which the election is to be held.

19 (c) A proposal for amendment of the bylaws or other proper corpor-  
20 ate purpose shall be included on the ballot if authorized by

21 (1) a resolution adopted by the board of directors setting  
22 out the proposal and directing that it be submitted to a vote at the  
23 meeting of shareholders; or

24 (2) a petition, setting out the proposal and directing that  
25 it be submitted to a vote at the next meeting of shareholders, signed by  
26 at least 1,000 shareholders and filed with the secretary of the corpora-  
27 tion at least 120 days before the next meeting of shareholders.

28 (d) A written or printed notice setting out the candidates' quali-  
29 fications for office or the proposals to be put to a vote of the share-

1 holders and any materials in opposition to the proposals shall be given  
2 to each shareholder of record entitled to vote within the time and in  
3 the manner provided in this chapter for the giving of notice of meetings  
4 of shareholders.

5 Sec. 10.50.180. BOARD OF DIRECTORS. (a) The business and affairs  
6 of a corporation shall be managed by a board of directors. At least  
7 three-quarters of the board of directors including the chairman of the  
8 board of directors must be residents of the state. The articles of  
9 incorporation or bylaws may prescribe other qualifications for direc-  
10 tors. The compensation of directors shall be fixed by the bylaws.

11 (b) A director is entitled to attend any meeting of a committee of  
12 the board of directors whether or not he is a member of the committee.  
13 A director is entitled to inspect all records of any committee of the  
14 board of directors.

15 (c) An officer or employee of the corporation may not serve as a  
16 member of the board of directors.

17 Sec. 10.50.185. NUMBER OF DIRECTORS. (a) The number of directors  
18 of a corporation shall be at least three. The number of directors shall  
19 be fixed by the bylaws, except that the number constituting the initial  
20 board of directors shall be fixed by the chartering legislation.

21 (b) The number of directors may be increased or decreased by  
22 amendment to the bylaws, but a decrease may not shorten the term of an  
23 incumbent director.

24 (c) In the absence of a bylaw fixing the number of directors, the  
25 number shall be the same as that stated in the chartering legislation.

26 (d) The board of directors shall be divided into two classes, each  
27 class to be as nearly equal in number as possible, with the term of  
28 office of directors of the first class to expire at the first annual  
29 meeting of shareholders after their election, that of the second class

1 to expire at the second annual meeting after their election. At each  
2 annual meeting after the classification the number of directors equal to  
3 the number of the class whose term expires at the time of the meeting  
4 shall be elected to hold office until the second succeeding annual  
5 meeting if there are two classes. No classification of directors is  
6 effective prior to the first annual meeting of shareholders.

7 Sec. 10.50.190. ELECTION OF DIRECTORS. At the first annual meet-  
8 ing of shareholders and at each annual meeting thereafter the share-  
9 holders shall elect directors. Each director holds office for the term  
10 for which he is elected and until his successor is elected and quali-  
11 fied.

12 Sec. 10.50.195. VACANCIES. A vacancy occurring in the board of  
13 directors may be filled by the affirmative vote of a majority of the  
14 remaining directors though the majority is less than a quorum of the  
15 board. A director elected by the board of directors to fill a vacancy  
16 shall serve until the next annual meeting. The shareholders shall elect  
17 a director for the unexpired term, if any, of the director's position to  
18 which the board elected his predecessor. A directorship to be filled by  
19 reason of an increase in the number of directors shall be filled by  
20 election at an annual meeting or at a special meeting of shareholders  
21 called for that purpose. In no case may a vacancy continue for longer  
22 than six months or until the next annual meeting, whichever occurs  
23 first.

24 Sec. 10.50.200. QUORUM OF DIRECTORS. A majority of the number of  
25 directors fixed by the bylaws, or in the absence of a bylaw fixing the  
26 number of directors, then of the number stated in the articles of incor-  
27 poration, constitutes a quorum for the transaction of business unless a  
28 greater number is required by the articles of incorporation or the  
29 bylaws. The act of the majority of the directors present at a meeting



1 at which a quorum is present is the act of the board of directors,  
2 unless the act of a greater number is required by the articles of incor-  
3 poration or the bylaws.

4 Sec. 10.50.205. PLACE AND NOTICE OF DIRECTORS' MEETINGS. (a)  
5 Regular or special meetings of the board of directors maybe held only in  
6 the state.

7 (b) Regular meetings of the board of directors may be held with or  
8 without notice as prescribed in the bylaws. Special meetings of the  
9 board of directors shall be held after the notice prescribed in the  
10 bylaws. Attendance of a director at a meeting constitutes a waiver of  
11 notice of the meeting, except when a director attends a meeting for the  
12 express purpose of objecting to the transaction of any business because  
13 the meeting is not lawfully called or convened. The business to be  
14 transacted or the purpose of a special meeting of the board of directors  
15 must be specified in the notice or waiver of notice of the meeting.

16 Sec. 10.50.210. PARTICIPATION BY TELEPHONE. The members of the  
17 board of directors of a corporation, or a committee designated by it,  
18 may participate in a meeting of the board or committee by communicating  
19 simultaneously with each other by means of conference telephones or  
20 similar communications equipment, so long as all members participating  
21 in the meeting can hear one another. Participation in a meeting under  
22 this section constitutes presence in person at the meeting.

23 Sec. 10.50.215. DISTRIBUTIONS. (a) Except for distributions  
24 required to comply with subchapter U, chapter 1 of the Internal Revenue  
25 Code of 1954, as amended (26 U.S.C. secs. 1391 - 1397), a corporation  
26 may not make a distribution to its shareholders unless

27 (1) the amount of the retained earning of the corporation  
28 immediately before the proposed distribution equals or exceeds the  
29 amount of the proposed distribution; or

1 (2) immediately after giving effect to the proposed distribu-  
2 tion

3 (A) the sum of the assets of the corporation, exclusive  
4 of goodwill, capitalized research and development expenses and  
5 deferred charges would be at least equal to one and one-fourth  
6 times its liabilities, not including deferred taxes, deferred  
7 income and other deferred credits; and

8 (B) the current assets of the corporation would be at  
9 least equal to its current liabilities or, if the average of the  
10 earnings of the corporation before taxes on income and before  
11 interest expense for the two preceding fiscal years was less than  
12 the average of the interest expense of the corporation for those  
13 fiscal years, at least equal to one and one-fourth times its current  
14 liabilities.

15 (b) In determining the amount of the assets of the corporation, no  
16 appreciation in value not yet realized may in any event be included,  
17 except for readily marketable securities, and profits derived from an  
18 exchange of assets may not be included unless the assets received are  
19 currently realizable in cash.

20 (c) For the purpose of this section "current assets" may include  
21 net amounts which the board has determined in good faith may reasonably  
22 be expected to be received from customers during the 12-month period  
23 used in calculating current liabilities under existing contractual  
24 relationships obligating the customers to make fixed or periodic pay-  
25 ments during the term of the contract, after giving effect to future  
26 costs not then included in current liabilities but reasonably expected  
27 to be incurred by the corporation in performing the contracts.

28 (d) The amount of a distribution payable in property shall, for  
29 the purpose of this chapter, be determined on the basis of the value at

1 which the property is carried on the corporation's financial statements  
2 in accordance with generally accepted accounting principles.

3 (e) Subparagraph (a)(2)(B) of this section does not apply to a  
4 corporation which does not classify its assets into current and fixed  
5 assets under generally accepted accounting principles.

6 Sec. 10.50.220. DISTRIBUTIONS IN PARTIAL LIQUIDATION. The board  
7 of directors may, from time to time, distribute to its shareholders in  
8 partial liquidation a portion of its assets, subject to the following  
9 provisions:

10 (1) A distribution may not be made at a time when the corpor-  
11 ation is insolvent or when the distribution would render the corporation  
12 insolvent.

13 (2) A distribution may not be made unless the distribution is  
14 authorized by the affirmative vote of the holders of at least two-thirds  
15 of the shares voting on the issue at a meeting of shareholders.

16 (3) Each distribution, when made, shall be identified as a  
17 distribution in partial liquidation and the amount per share disclosed  
18 to the shareholders concurrently with the distribution.

19 Sec. 10.50.225. CERTAIN LOANS PROHIBITED. A loan may not be made  
20 by a corporation to its officers or directors, and a loan may not be  
21 made by a corporation secured by its shares.

22 Sec. 10.50.230. LIABILITY OF DIRECTORS IN CERTAIN CASES. (a)  
23 Directors who vote for or assent to the declaration of a dividend or  
24 other distribution of the assets of a corporation to its shareholders  
25 contrary to the provisions of this chapter or contrary to restrictions  
26 contained in the articles of incorporation are jointly and severally  
27 liable to the corporation for the amount of the dividend paid, or the  
28 value of assets distributed in excess of the amount of the dividend or  
29 distribution which could have been paid or distributed without a viola-

1 tion of the provisions of this chapter or the restrictions in the arti-  
2 cles of incorporation.

3 (b) Directors who vote for or assent to the purchase by a corpora-  
4 tion of its own shares contrary to the provisions of this chapter are  
5 jointly and severally liable to the corporation for the amount of consi-  
6 deration paid in excess of the maximum amount which could have been paid  
7 without a violation of the provisions of this chapter.

8 (c) The directors who vote for or assent to the distribution of  
9 assets of a corporation to its shareholders during the liquidation of  
10 the corporation without the payment and discharge of, or making adequate  
11 provision for, all known debts, obligations, and liabilities of the  
12 corporation are jointly and severally liable to the corporation for the  
13 value of the assets distributed, to the extent that the debts, obliga-  
14 tions and liabilities of the corporation are not paid and discharged.

15 (d) The directors who vote for or assent to the making of a loan  
16 to an officer or director of the corporation, or the making of a loan  
17 secured by shares of the corporation, are jointly and severally liable  
18 to the corporation for the amount of the loan until it is repaid.

19 Sec. 10.50.235. EFFECT OF GOOD FAITH RELIANCE ON FINANCIAL STATE-  
20 MENTS OR BOOK VALUE. A director is not liable under AS 10.50.230(a),  
21 (b) or (c) if

22 (1) he relied and acted in good faith upon financial state-  
23 ments of the corporation represented to him to be correct by the presi-  
24 dent or the officer of the corporation having charge of its books of  
25 account, or certified by an independent public or certified public  
26 accountant or firm of certified public accountants fairly to reflect the  
27 financial condition of the corporation; or

28 (2) in good faith in determining the amount available for a  
29 dividend or distribution he considered the assets to be of their book



1 value.

2 Sec. 10.50.240. PRESUMPTION OF CONSENT OF DIRECTOR AND FILING OF  
3 DISSENT. A director present at a meeting of the board of directors at  
4 which action on a corporate matter is taken is presumed to have assented  
5 to the action taken unless his dissent is entered in the minutes of the  
6 meeting or unless he files his written dissent to the action with the  
7 person acting as secretary of the meeting before its adjournment or  
8 forwards his dissent by registered mail to the secretary of the corpora-  
9 tion within five days after the adjournment of the meeting. The right  
10 to dissent does not apply to a director who voted in favor of the  
11 action.

12 Sec. 10.50.245. DIRECTOR'S RIGHT TO CONTRIBUTION. A director  
13 against whom a claim is asserted under AS 10.50.230 - 10.50.240 is  
14 entitled to contribution from the other directors who voted for or  
15 assented to the action upon which the claim is asserted.

16 Sec. 10.50.250. OFFICERS. The officers of a corporation consist  
17 of a president, one or more vice-presidents as prescribed by the bylaws,  
18 a secretary, and a treasurer. Each of the officers shall be elected by  
19 the board of directors at the time and in the manner prescribed by the  
20 bylaws. Other necessary officers and assistant officers and agents may  
21 be elected or appointed by the board of directors or chosen in the  
22 manner prescribed by the bylaws. Two or more offices may be held by the  
23 same person, except the offices of president and secretary.

24 Sec. 10.50.255. DUTIES OF OFFICERS. Officers and agents of the  
25 corporation, as between themselves and the corporation, may perform  
26 duties in the management of the corporation as provided in the bylaws,  
27 or as determined by resolution of the board of directors not inconsis-  
28 tent with the bylaws.

29 Sec. 10.50.260. REMOVAL OF OFFICERS. An officer or agent may be

1 removed by the board of directors when, in its judgment, the best inter-  
2 ests of the corporation will be served. Removal is without prejudice to  
3 the contract rights of the person removed. Election or appointment of  
4 an officer or agent does not of itself create contract rights.

5 Sec. 10.50.265. BOOKS AND RECORDS. (a) A corporation organized  
6 under this chapter shall keep correct and complete books and records of  
7 account, minutes of the proceedings of its shareholders and board of  
8 directors, and a record of its shareholders, containing the names and  
9 addresses of all shareholders and the number and class of the shares  
10 held by each.

11 (b) A corporation organized under this chapter shall make these  
12 books and records, or certified copies of them, reasonably available for  
13 inspection at the registered office or principal place of business in  
14 the state by the Department of Commerce and Economic Development or a  
15 shareholder described by AS 10.50.270.

16 Sec. 10.50.270. SHAREHOLDER'S RIGHT TO EXAMINE BOOKS AND RECORDS.  
17 A shareholder, upon written demand stating the purpose of the demand,  
18 may, in person or by agent or attorney, at a reasonable time for a  
19 proper purpose, examine and make extracts from its books and records of  
20 account, minutes and record of shareholders.

21 Sec. 10.50.275. LIABILITY FOR REFUSAL OF EXAMINATION. An officer  
22 or agent who, or a corporation which, refuses to allow a shareholder, or  
23 his agent or attorney, to examine and make extracts from its books and  
24 records of account, minutes, and record of shareholders, for a proper  
25 purpose, is liable to the shareholder in a penalty of \$1,000 for each  
26 day, in addition to other damages or remedy given him by law. It is a  
27 defense to an action for penalties under this section that the person  
28 suing has within two years sold or offered for sale a list of share-  
29 holders of the corporation or any other corporation or has aided or

1 abetted a person in procuring a list of shareholders for this purpose,  
2 or has improperly used information secured through a prior examination  
3 of the books and records of account, or minutes, or record of share-  
4 holders of the corporation or any other corporation, or was not acting  
5 in good faith or for a proper purpose in making his demand.

6 Sec. 10.50.280. COURT MAY COMPEL INSPECTION. AS 10.50.265 - 10.-  
7 50.285 do not impair the power of a competent court, upon proof by a  
8 shareholder of proper purpose, to compel the production for examination  
9 by the shareholder of the books and records of account, minutes, and  
10 record of shareholders of a corporation.

11 Sec. 10.50.285. SHAREHOLDERS' RIGHT TO FINANCIAL STATEMENT. Upon  
12 the written request of a shareholder of a corporation, the corporation  
13 shall mail to the shareholder its most recent financial statements  
14 showing in reasonable detail its assets and liabilities and the results  
15 of its operations.

16 Sec. 10.50.290. REMOVAL OF DIRECTORS BY SUPERIOR COURT. The  
17 superior court may upon an action filed by the attorney general or at  
18 least 100 shareholders of at least 18 years of age, remove from office  
19 any director in case of fraudulent or dishonest acts or gross abuse of  
20 authority or discretion with reference to the corporation and may bar  
21 from reelection a director so removed for a period prescribed by the  
22 court. The corporation shall be made a party to the action.

23 Sec. 10.50.295. SHAREHOLDER REMOVAL OF DIRECTORS. (a) The entire  
24 board of directors an initial director, or a director elected by the  
25 board of directors may be removed from office by the affirmative vote of  
26 the holders of a majority of the shares voting at an annual or special  
27 meeting for which notice of the proposal has been given.

28 (b) An individual director may be removed if the number of votes  
29 cast for his removal exceeds the number of votes he received at the last

1 preceding election during which he was a candidate for the office of  
2 director.

3 Sec. 10.50.300. SHAREHOLDERS' DERIVATIVE ACTION. (a) An action  
4 may be brought on behalf of a corporation, by a shareholder of the  
5 corporation, for a judgment in its favor.

6 (b) A person bringing suit under this section must be a share-  
7 holder at the time of bringing the action, and must have been a share-  
8 holder at the time of the transaction of which he complains or have  
9 received his shares by operation of law at that time.

10 (c) In an action under this section, the complaint shall set out  
11 with particularity the efforts of the plaintiff to secure the initiation  
12 of an action by the board of directors or the reasons for not making  
13 those efforts.

14 (d) An action under this section may not be discontinued, com-  
15 promised or settled, without the approval of the court having jurisdic-  
16 tion of the action. If the court determines that the interests of the  
17 shareholders will be substantially affected by a discontinuance, com-  
18 promise, or settlement, the court, in its discretion, may direct that  
19 notice, by publication or otherwise, be given to the shareholders whose  
20 interests it determines will be affected. If notice is required, the  
21 court may determine which one or more of the parties to the action must  
22 bear the expense of giving the notice, in an amount the court determines  
23 and finds to be reasonable, and the amount determined shall be awarded  
24 as special costs of the action and recoverable by the prevailing party.

25 (e) If the action on behalf of the corporation is successful, in  
26 whole or in part, or if anything is received by the plaintiff as the  
27 result of a judgment, compromise or settlement of an action, the court  
28 may award the plaintiff reasonable expenses, including reasonable  
29 attorney fees, and shall direct the plaintiff to account to the corpora-



1 tion for the remainder of the proceeds received by him. This subsection  
2 does not apply to a judgment rendered only for the benefit of an injured  
3 shareholder and limited to a recovery of the loss or damage sustained by  
4 him.

5 (f) In an action under this section, at any time within 30 days  
6 after service of summons upon the corporation or upon any defendant who  
7 is an officer or director of the corporation, or who held such office at  
8 the time of the transaction complained of, the corporation or other  
9 defendant may move the court for an order, upon notice and hearing,  
10 requiring the plaintiff to furnish security. The motion shall be based  
11 upon one or both of the following grounds:

12 (1) that there is no reasonable possibility that the prosecu-  
13 tion of the cause of action alleged in the complaint will benefit the  
14 corporation or its shareholders; or

15 (2) that the moving party, if other than the corporation, did  
16 not participate in the transaction complained of in any capacity.

17 (g) If the court determines, after hearing the evidence adduced by  
18 the parties, that the moving party has established by a preponderance of  
19 the evidence any of the grounds upon which the motion is based, the  
20 court shall fix the nature and amount of security, not to exceed \$50,000,  
21 to be furnished by the plaintiff for reasonable expenses, including  
22 attorney fees, which may be incurred by the moving party or the corpora-  
23 tion in connection with the action, including expenses for which the  
24 corporation may become liable under this chapter. A ruling by the court  
25 on the motion is not considered a determination of any issue in the  
26 action or of its merits. The amount of the security may be increased or  
27 decreased in the discretion of the court upon a showing that the secur-  
28 ity provided has or may become inadequate or excessive, but the court  
29 may not increase the total amount of the security beyond \$50,000 in the

1 aggregate for all defendants. If the court, upon motion, decides that  
2 security must be furnished by the plaintiff as to any one or more defen-  
3 dants, the action shall be dismissed as to the defendant or defendants,  
4 unless the security required by the court is furnished within a reason-  
5 able time fixed by the court. The corporation and the moving party have  
6 recourse to the security in the amount the court determines upon the  
7 termination of the action.

8 (h) If the plaintiff, before an order or determination pursuant to  
9 a motion under (f) of this section, posts bond in the aggregate amount  
10 of \$50,000 to secure the reasonable expenses of the parties entitled to  
11 make the motion, the plaintiff has complied with the requirements of  
12 this section and with any order for security. A pending motion under  
13 (f) of this section shall be dismissed and no further or additional bond  
14 or other security may be required.

15 (i) If a motion is filed under (f) of this section, no pleadings  
16 need be filed by the corporation or any other defendant and the prosecu-  
17 tion of the action shall be stayed until 10 days after the motion has  
18 been disposed of.

19 Sec. 10.50.305. FRAUDULENT TRANSFERS OF SHARES. An individual who  
20 transfers or obtains shares of the corporation, or in his capacity as  
21 legal guardian obtains shares of the corporation for another, through  
22 fraud, misrepresentation, or any deceitful or illegal means is guilty of  
23 a felony.

24 Sec. 10.50.310. POLITICAL ACTIVITIES. (a) A corporation may not

25 (1) make contributions or spend money to influence the nomina-  
26 tion or election of a candidate for office or the outcome of a ballot  
27 proposition or question;

28 (2) endorse a candidate for office or any side of a ballot  
29 proposition or question;

1 (3) make any expenditures, including reimbursement for travel  
2 and living expenses, or employ any person for the purpose of influencing  
3 legislative action.

4 (b) A corporation that knowingly violates this section or that  
5 knowingly causes, participates in, aids, or confirms a violation of this  
6 section is, upon conviction, punishable by a fine of not more than  
7 \$10,000 for each offense.

8 (c) An individual who knowingly violates this section, whether  
9 acting for himself, on behalf of an employer, or in concert with another  
10 person, is, upon conviction, guilty of a misdemeanor.

11 (d) An individual who knowingly causes, participates in, aids, or  
12 confirms any violation of this section is, upon conviction, guilty of a  
13 misdemeanor.

14 ARTICLE 2. FORMATION OF CORPORATIONS.

15 Sec. 10.50.315. INCORPORATORS. Three or more natural persons at  
16 least 18 years of age may act as incorporators of a corporation by  
17 signing, verifying and delivering in duplicate to the commissioner  
18 articles of incorporation for the corporation.

19 Sec. 10.50.320. ARTICLES OF INCORPORATION. (a) The articles of  
20 incorporation of a corporation shall set out

- 21 (1) the name of the corporation;  
22 (2) the period of duration, which may be perpetual;  
23 (3) the purpose or purposes for which the corporation is  
24 organized;  
25 (4) the aggregate number of shares which the corporation may  
26 issue;  
27 (5) that only one class of stock may be issued by the cor-  
28 poration;  
29 (6) that shares of stock may be issued only to individuals

1 who were residents of the state on the effective date of its chartering  
2 legislation and who continued to be residents until the date of issuance  
3 of the shares;

4 (7) that at least one share of stock shall be issued to each  
5 individual eligible under (6) of this subsection, unless that individual  
6 elects within one year after the date of issuance not to receive the  
7 share;

8 (8) that no share of stock may be voluntarily or involun-  
9 tarily transferred

10 (A) or encumbered by a shareholder, other than by will  
11 or under the laws relating to intestate succession, until five  
12 years after the date of issuance of the share, except if the share-  
13 holder ceases to be a resident of the state;

14 (B) to an individual other than one who is a resident on  
15 the date of transfer;

16 (C) to an individual who, after the transfer, would own  
17 more than 10 shares of stock of the corporation;

18 (D) or encumbered by a shareholder under 18 years of age  
19 or encumbered by that shareholder's parent or legal guardian;

20 (9) that the corporation must qualify as a general stock  
21 ownership corporation under subchapter U of the Internal Revenue Code of  
22 1954, as amended (26 U.S.C. secs. 1391 - 1397);

23 (10) any other provision consistent with law which the incor-  
24 porators elect to set out in the articles of incorporation for the  
25 regulation of the internal affairs of the corporation, including a  
26 provision which, under this chapter, is required or permitted to be set  
27 out in the bylaws;

28 (11) the address of its initial registered office, and the  
29 name of its initial registered agent at that address;



1 (12) the number of directors constituting the initial board of  
2 directors and the names and addresses of the persons who are to serve as  
3 directors until their successors are elected and qualify;

4 (13) the name and address of each incorporator.

5 (b) It is not necessary to set out in the articles of incorpora-  
6 tion any of the corporate powers enumerated in this chapter.

7 Sec. 10.50.325. FILING OF ARTICLES OF INCORPORATION. (a) Dupli-  
8 cate originals of the articles of incorporation shall be delivered to  
9 the commissioner. If the commissioner finds that the articles of incor-  
10 poration conform to law, he shall, when all fees prescribed in AS 10.05.-  
11 708 - 10.05.774 have been paid,

12 (1) endorse on each duplicate original the word "filed" and  
13 the date of the filing;

14 (2) file one duplicate original in his office;

15 (3) issue a certificate of incorporation and affix the other  
16 duplicate original to it.

17 (b) The certificate of incorporation, together with the duplicate  
18 original of the articles of incorporation affixed by the commissioner,  
19 shall be returned to the incorporators or their representative.

20 Sec. 10.50.330. EFFECT OF ISSUANCE OF CERTIFICATE OF INCORPORA-  
21 TION. Upon the issuance of the certificate of incorporation, the cor-  
22 porate existence begins. The certificate of incorporation is conclusive  
23 evidence that all conditions required to be performed by the incorpora-  
24 tors have been complied with and that the corporation has been incor-  
25 porated. The issuance of the certificate does not affect the right of  
26 the state to bring a proceeding to cancel or revoke the certificate of  
27 incorporation or for involuntary dissolution of the corporation.

28 Sec. 10.50.335. ARTICLES OF INCORPORATION AND INITIAL BYLAWS. (a)  
29 The corporation shall submit copies of the original articles of incor-

1       poration and the initial bylaws adopted under AS 10.05.340 to the legis-  
2       lature within 30 days of the issuance of the certificate of incorpora-  
3       tion.

4       (b) The legislature, within 60 legislative days after receipt of a  
5       copy of the original articles of incorporation and the initial bylaws,  
6       may disapprove any provision of the articles of incorporation or bylaws  
7       by concurrent resolution. Disapproval by the legislature of a provision  
8       of the articles of incorporation or the bylaws of a corporation does not  
9       alter or impair the power of a corporation to fulfill the terms of a  
10      contractual agreement or impair the rights of a person with whom a  
11      corporation has entered into a contractual agreement.

12      (c) A provision of the articles of incorporation or the bylaws is  
13      suspended upon disapproval by the legislature and is of no effect unless  
14      approved by a majority of the shares voting on the issue at the next  
15      meeting of the shareholders.

16      Sec. 10.50.340. ORGANIZATION MEETING OF DIRECTORS. After the  
17      issuance of the certificate of incorporation an organizational meeting  
18      of the board of directors named in the articles of incorporation shall  
19      be held in the state, at the call of a majority of the incorporators,  
20      for the purpose of adopting bylaws, electing officers, and the trans-  
21      action of other business as may come before the meeting. The incor-  
22      porators calling the meeting shall give at least 10 days notice of the  
23      meeting by mail to each director named. The notice shall state the time  
24      and place of the meeting.

25      ARTICLE 3. APPLICATION FOR SHARES.

26      Sec. 10.50.345. NOTIFICATION OF ELIGIBLE SHAREHOLDERS. Beginning  
27      not less than 90 days before the initial issue of stock, the corporation  
28      shall at least weekly notify the public of its intention to issue stock  
29      and the method for qualifying and applying for shares. The notice shall

1 be by publication in newspapers of all regions of the state, by radio  
2 and television announcements, and by other means the corporation deter-  
3 mines to be appropriate and reasonable, and shall be continued at least  
4 one each month for 11 months following the date of issuance of shares.

5 Sec. 10.50.350. CORPORATION NOT LIABLE TO SHAREHOLDERS. Regis-  
6 tration for issuance of the initial shares of the corporation is a  
7 responsibility solely of an individual eligible under AS 10.50.320(a)(6)  
8 to receive the initial shares of the corporation. The corporation may  
9 not be held liable for

10 (1) any loss resulting directly or indirectly from the  
11 failure of an individual to apply for shares of the corporation; or

12 (2) payment of a declared or paid dividend to an individual  
13 who would have been entitled to receive the dividend had he been a  
14 shareholder at the time of declaration or payment.

15 Sec. 10.50.355. LATE APPLICATION FOR SHARES. An individual eli-  
16 gible under AS 10.50.320(a)(6) to receive the initial shares of the  
17 corporation who failed to apply for the shares within one year after  
18 their issuance may apply for and receive the shares any time after one  
19 year and within two years after the date of issuance if he is otherwise  
20 qualified to own stock of the corporation and upon the payment of the  
21 book value of the shares.

22 Sec. 10.50.360. PENALTIES FOR MISREPRESENTATION OF ELIGIBILITY AS  
23 SHAREHOLDER. The ownership interest in shares of the corporation's  
24 stock issued to an individual ineligible to receive the initial shares,  
25 who has presented fraudulent or misleading information regarding his  
26 eligibility to own those shares, is void upon the issuance of an appro-  
27 priate order by the superior court. The ineligible individual is also  
28 liable for the full amount of dividends, or other distributions to  
29 shareholders received by him plus interest from the date of distribu-

1 tion, and legal fees and costs of recovery incurred by the corporation.  
2 This section applies to an individual who has presented fraudulent or  
3 misleading information regarding the eligibility of another person for  
4 whom he acts in the capacity of legal guardian.

5 ARTICLE 4. AMENDMENT.

6 Sec. 10.50.365. RIGHT TO AMEND ARTICLES OF INCORPORATION. A cor-  
7 poration may amend its articles of incorporation so long as its articles  
8 of incorporation as amended contain provisions which could be lawfully  
9 contained in original articles of incorporation at the time the amend-  
10 ment is made.

11 Sec. 10.50.370. PURPOSES FOR WHICH ARTICLES MAY BE AMENDED. With-  
12 out limitation on the general power of amendment, a corporation may  
13 amend its articles of incorporation to

- 14 (1) change its corporate name;
- 15 (2) change its period of duration;
- 16 (3) change, enlarge or diminish its corporate purposes;
- 17 (4) increase or decrease the aggregate number of shares, or  
18 shares of a class, which the corporation may issue;
- 19 (5) exchange or cancel its shares, whether issued or un-  
20 issued.

21 Sec. 10.50.375. PROCEDURE TO AMEND ARTICLES OF INCORPORATION.  
22 Amendments to the articles of incorporation shall be made in the follow-  
23 ing manner.

24 (1) The board of directors may adopt a resolution setting out  
25 the proposed amendment and directing that it be submitted to a vote at  
26 the next meeting of shareholders.

27 (2) A proposed amendment shall be submitted to a vote at the  
28 next meeting of shareholders if the secretary of the corporation re-  
29 ceives a petition setting out the proposed amendment and is signed by at



1 least 1,000 shareholders.

2 (3) Written or printed notice setting out the proposed amend-  
3 ment or a summary of the changes to be effected shall be given to each  
4 shareholder of record entitled to vote within the time and in the manner  
5 provided in this chapter for the giving of notice of meetings of share-  
6 holders. If the meeting is an annual meeting, the proposed amendment or  
7 summary may be included in the notice of the annual meeting.

8 (4) At the meeting a vote of the shareholders entitled to  
9 vote shall be taken on the proposed amendment. The proposed amendment  
10 shall be adopted if it receives the affirmative vote of the holders of  
11 at least two-thirds of the shares voting.

12 (5) More than one amendment may be submitted to the share-  
13 holders and voted upon at one meeting.

14 Sec. 10.50.380. ARTICLES OF AMENDMENT. The articles of amendment  
15 shall be executed in duplicate by the corporation by its president or  
16 vice-president and by its secretary or an assistant secretary, and  
17 verified by one of the officers signing the articles, and shall set out

18 (1) the name of the corporation;

19 (2) the amendment adopted;

20 (3) the date of the adoption of the amendment by the share-  
21 holders;

22 (4) the number of shares outstanding and the number of shares  
23 voting;

24 (5) the number of shares voted for and against the amendment,  
25 respectively;

26 (6) if the amendment provides for an exchange or cancellation  
27 of issued shares, and if the manner in which this is carried out is not  
28 set out in the amendment, a statement of the manner in which it is to be  
29 carried out.

1           Sec. 10.50.385. FILING OF ARTICLES OF AMENDMENT. (a) Duplicate  
2 originals of the articles of amendment shall be delivered to the commis-  
3 sioner. If the commissioner finds that the articles of amendment con-  
4 form to law, he shall, when all fees and franchise taxes prescribed in  
5 this chapter have been paid,

6           (1) endorse on each duplicate original the word "filed" and  
7 the date of the filing;

8           (2) file one duplicate original in his office;

9           (3) issue a certificate of amendment and affix the other  
10 duplicate original to it.

11           (b) The certificate of amendment, together with the duplicate  
12 original of the articles of amendment affixed by the commissioner, shall  
13 be returned to the corporation or its representative.

14           Sec. 10.50.390. EFFECT OF CERTIFICATE OF AMENDMENT. (a) Upon the  
15 issuance of the certificate of amendment by the commissioner, the amend-  
16 ment becomes effective and the articles of incorporation are considered  
17 amended accordingly.

18           (b) No amendment may affect an existing cause of action in favor  
19 of or against the corporation, or a pending suit to which the corpora-  
20 tion is a party, or the existing rights of persons other than share-  
21 holders. In the event the corporate name is changed by amendment, no  
22 suit brought by or against the corporation under its former name abates  
23 for that reason.

24           Sec. 10.50.395. RESTATED ARTICLES OF INCORPORATION. A corporation  
25 may at any time, by resolution adopted by the board of directors, re-  
26 state its articles of incorporation as amended up to that time. Upon  
27 the adoption of the resolution, restated articles of incorporation shall  
28 be executed in duplicate by the corporation by its president or a vice-  
29 president and by its secretary or assistant secretary and verified by

1 one of the officers signing the articles and shall set out all of the  
2 operative provisions of the articles of incorporation as amended up to  
3 that time together with a statement that the restated articles of incor-  
4 poration correctly set out without change the corresponding provisions  
5 of the articles of incorporation as amended up to that time and that the  
6 restated articles of incorporation supersede the original articles of  
7 incorporation and all amendments to them.

8 Sec. 10.50.400. EXECUTION OF RESTATED ARTICLES OF INCORPORATION.

9 Upon approval of the restated articles of incorporation, they shall be  
10 executed in duplicate by the corporation by its president or vice-presi-  
11 dent and by its secretary or assistant secretary, and verified by one of  
12 the officers signing the articles.

13 Sec. 10.50.405. CONTENTS OF RESTATED ARTICLES OF INCORPORATION.

14 The restated articles of incorporation shall set out

- 15 (1) the name of the corporation;
- 16 (2) the period of its duration;
- 17 (3) the purpose or purposes which the corporation is autho-  
18 rized to pursue;
- 19 (4) the aggregate number of shares which the corporation may  
20 issue;
- 21 (5) any provisions, not inconsistent with law, which are set  
22 out in the articles of incorporation as amended, for the regulation of  
23 the internal affairs of the corporation;
- 24 (6) a statement that the restated articles of incorporation  
25 correctly set out without change the corresponding provisions of the  
26 articles of incorporation as amended, and that the restated articles of  
27 incorporation supersede the original articles of incorporation and all  
28 amendments to the original articles of incorporation.

29 Sec. 10.50.410. FILING OF RESTATED ARTICLES OF INCORPORATION WITH

1 COMMISSIONER. (a) Duplicate originals of the restated articles of  
2 incorporation shall be delivered to the commissioner. If the commis-  
3 sioner finds that the restated articles of incorporation conform to law,  
4 he shall, when all fees and franchise taxes prescribed in this chapter  
5 have been paid,

6 (1) endorse on each duplicate original the word "filed" and  
7 the date of the filing;

8 (2) file one duplicate original in his office;

9 (3) issue a restated certificate of incorporation and affix  
10 the other duplicate original to it.

11 (b) The restated certificate of incorporation, together with the  
12 duplicate original of the restated articles of incorporation affixed by  
13 the commissioner, shall be returned to the corporation or its repre-  
14 sentative.

15 Sec. 10.50.415. EFFECT OF ISSUANCE OF RESTATED CERTIFICATE OF  
16 INCORPORATION. Upon the issuance of the restated certificate of incor-  
17 poration, the restated articles of incorporation become effective and  
18 supersede the original articles of incorporation and all amendments.

19 ARTICLE 5. SALE OF ASSETS.

20 Sec. 10.50.420. SALE OR MORTGAGE OF ASSETS IN REGULAR COURSE OF  
21 BUSINESS. The sale, lease, exchange, mortgage, pledge, or other dispo-  
22 sition of all, or substantially all, the property and assets of a cor-  
23 poration, when made in the usual and regular course of the business of  
24 the corporation, may be made upon the terms and conditions and for the  
25 consideration, which may consist in whole or in part of money or pro-  
26 perty, real or personal, including shares of another corporation, domes-  
27 tic or foreign, authorized by the board of directors. No authorization  
28 or consent of the shareholders is required.

29 Sec. 10.50.425. SALE OR MORTGAGE OF ASSETS OTHER THAN IN REGULAR



1 COURSE OF BUSINESS. A sale, lease, exchange, mortgage, pledge, or other  
2 disposition of all, or substantially all, the property and assets, with  
3 or without the good will, of a corporation, if not made in the usual and  
4 regular course of its business, may be made upon the terms and condi-  
5 tions and for the consideration, which may consist in whole or in part  
6 of money or property, real or personal, including shares of another  
7 corporation, as authorized in the following manner.

8 (1) The board of directors shall adopt a resolution recom-  
9 mending the sale, lease, exchange, mortgage, pledge, or other disposi-  
10 tion and directing the submission of the resolution to a vote at the  
11 next meeting of shareholders.

12 (2) Written or printed notice shall be given to each share-  
13 holder of record entitled to vote at the meeting within the time and in  
14 the manner provided in this chapter for the giving of notice of meetings  
15 of shareholders, and, whether the meeting is an annual or a special  
16 meeting, shall state that the purpose, or one of the purposes, of the  
17 meeting is to consider the proposed sale, lease, exchange, mortgage,  
18 pledge, or other disposition.

19 Sec. 10.50.430. APPROVAL OF PLAN BY SHAREHOLDERS. At the meeting  
20 the shareholders may authorize the sale, lease, exchange, mortgage,  
21 pledge, or other disposition and may fix, or may authorize the board of  
22 directors to fix the terms and conditions and the consideration to be  
23 received by the corporation. Each outstanding share of the corporation  
24 is entitled to vote. The authorization requires the affirmative vote of  
25 the holders of at least two-thirds of the shares voting.

26 Sec. 10.50.435. ABANDONMENT OF PLAN BY BOARD OF DIRECTORS. After  
27 authorization by a vote of shareholders, the board of directors may,  
28 nevertheless, abandon the sale, lease, exchange, mortgage, pledge, or  
29 other disposition of assets, subject to the rights of third parties

1 under contracts relating to the disposition, without further action or  
2 approval by shareholders.

3 Sec. 10.50.440. RIGHTS OF DISSENTING SHAREHOLDERS UPON SALE OR  
4 EXCHANGE OF ASSETS. If a sale or exchange of all or substantially all  
5 of the property and assets of a corporation other than in the usual and  
6 regular course of its business, or in connection with the dissolution  
7 and liquidation of the corporation, is authorized by a vote of the  
8 shareholders of the corporation, a shareholder who files a written  
9 objection with the corporation, before or at the meeting of shareholders  
10 at which the sale or exchange is authorized, and who does not vote in  
11 its favor may, within 10 days after the date on which the vote was  
12 taken, make written demand on the corporation for the payment to him of  
13 the fair value of his shares as of the day before the date on which the  
14 vote was taken. If the sale or exchange is effected, the corporation  
15 shall pay to the shareholder, upon surrender of his certificate or other  
16 evidence of ownership representing the shares, their fair value. The  
17 demand shall state the number of shares owned by the dissenting share-  
18 holder. A shareholder failing to make demand within the 10-day period  
19 is bound by the terms of the sale or exchange.

20 Sec. 10.50.445. NOTICE TO DISSENTING SHAREHOLDER. Within 10 days  
21 after the sale or exchange is effected, the corporation shall give  
22 notice that it is effected to each dissenting shareholder who has made  
23 demand as provided in AS 10.50.440 for the payment of the fair value of  
24 his shares.

25 Sec. 10.50.450. PAYMENT TO DISSENTING SHAREHOLDER AFTER AGREEMENT  
26 ON VALUE OF SHARES. If within 60 days after the date on which the sale  
27 or exchange was effected the value of the shares is agreed upon between  
28 the dissenting shareholder and the corporation, payment shall be made  
29 within 90 days after the date the sale or exchange was effected, upon

1 the surrender of his certificate or certificates representing the shares.  
2 Upon payment of the agreed value, the dissenting shareholder ceases to  
3 have an interest in the shares or in the corporation.

4 Sec. 10.50.455. ACTION BY DISSENTING SHAREHOLDER TO COMPEL PAYMENT  
5 UPON FAILURE TO AGREE ON VALUE. If within the 60-day period the share-  
6 holder and the corporation do not agree, the dissenting shareholder may,  
7 within 60 days after the expiration of the 60-day period, file a peti-  
8 tion in the superior court asking for a finding and determination of the  
9 fair value of the shares, and is entitled to judgment against the cor-  
10 poration for the amount of the fair value as of the day before the date  
11 on which the vote was taken approving the sale or exchange, together  
12 with interest to the date of the judgment. The judgment is payable only  
13 upon and simultaneously with the surrender to the corporation of the  
14 certificate or other evidence of ownership representing the shares.  
15 Upon payment of the judgment, the dissenting shareholder ceases to have  
16 an interest in the shares or in the corporation. Unless the dissenting  
17 shareholder files the petition within the 60-day period, he and all  
18 persons claiming under him are bound by the terms of the sale or ex-  
19 change.

20 Sec. 10.50.460. EFFECT OF ABANDONMENT OR REVOCATION OF SALE OR  
21 EXCHANGE ON SHAREHOLDER'S RIGHTS. The right of a dissenting shareholder  
22 to be paid the fair value of his shares ceases when the corporation  
23 abandons the sale or exchange or the shareholders revoke the authority  
24 to make the sale or exchange.

25 Sec. 10.50.465. STATUS OF SHARES ACQUIRED FROM DISSENTING SHARE-  
26 HOLDER. Shares acquired by the corporation pursuant to the payment of  
27 the agreed value or to payment of the judgment entered for the agreed  
28 value may be held and disposed of by the corporation as treasury shares.

29 ARTICLE 6. DISSOLUTION.

1           Sec. 10.50.470. EFFECT OF CERTIFICATE OF DISSOLUTION. Upon the  
2 issuance of the certificate of dissolution, the existence of the cor-  
3 poration ceases.

4           Sec. 10.50.475. VOLUNTARY DISSOLUTION BY ACT OF CORPORATION. (a)  
5 A corporation may be dissolved by the act of the corporation when autho-  
6 rized in the manner provided in this section and in AS 10.50.485.

7           (b) The board of directors shall adopt a resolution recommending  
8 that the corporation be dissolved, and directing that the question of  
9 dissolution be submitted to a vote at the next meeting of shareholders.

10          (c) A proposed dissolution of the corporation shall be submitted  
11 to a vote at the next meeting of shareholders if the secretary of the  
12 corporation receives a petition proposing dissolution signed by at least  
13 100 shareholders.

14          (d) Written or printed notice shall be given to each shareholder  
15 of record entitled to vote at the meeting within the time and in the  
16 manner provided in this chapter for the giving of notice of meetings of  
17 shareholders, and, whether the meeting is an annual or special meeting,  
18 the notice shall state that the purpose of the meeting is to consider  
19 the advisability of dissolving the corporation.

20          (e) At the meeting a vote of shareholders entitled to vote shall  
21 be taken on the resolution to dissolve the corporation. Each outstand-  
22 ing share of the corporation may vote on the resolution. The resolution  
23 is adopted if it receives the affirmative vote of the holders of at  
24 least one-third of the shares entitled to vote.

25          Sec. 10.50.480. EXECUTION OF STATEMENT OF INTENT TO DISSOLVE.  
26 Upon the adoption of the resolution, a statement of intent to dissolve  
27 shall be executed in duplicate by the corporation by its president or  
28 vice-president and by the secretary or an assistant secretary, and  
29 verified by one of the officers signing the statement. The statement of



1 intent to dissolve shall set out

- 2 (1) the name of the corporation;  
3 (2) the names and addresses of its officers;  
4 (3) the names and addresses of its directors;  
5 (4) a copy of the resolution adopted by the shareholders  
6 authorizing the dissolution of the corporation;  
7 (5) the number of shares outstanding;  
8 (6) the number of shares voted for and against the resolu-  
9 tion.

10 Sec. 10.50.485. FILING OF STATEMENT OF INTENT TO DISSOLVE. Dupli-  
11 cate originals of the statement of intent to dissolve shall be delivered  
12 to the commissioner. If the commissioner finds that the statement  
13 conforms to law, he shall, when all fees and franchise taxes prescribed  
14 in this chapter have been paid,

- 15 (1) endorse on each duplicate original the word "filed" and  
16 the date of the filing;  
17 (2) file one duplicate original in his office;  
18 (3) return the other duplicate original to the corporation or  
19 its representative.

20 Sec. 10.50.490. EFFECT OF STATEMENT OF INTENT TO DISSOLVE. On the  
21 filing by the commissioner of a statement of intent to dissolve, the  
22 corporation shall cease to carry on business, except that necessary for  
23 the winding up of its business. However, corporate existence continues  
24 until a certificate of dissolution has been issued by the commissioner  
25 or until a decree dissolving the corporation has been entered by a  
26 competent court as provided in this chapter.

27 Sec. 10.50.495. PROCEDURE AFTER FILING OF STATEMENT OF INTENT TO  
28 DISSOLVE. After the commissioner has filed the statement of intent to  
29 dissolve, the corporation

1 (1) shall immediately mail notice of the filing to each known  
2 creditor of the corporation;

3 (2) shall proceed to collect its assets, convey and dispose  
4 of its property which is not to be distributed in kind to its share-  
5 holders, pay, satisfy and discharge its liabilities and obligations and  
6 do all other acts required to liquidate its business and affairs, and,  
7 after paying or adequately providing for the payment of its obligations,  
8 distribute the remainder of its assets, either in cash or in kind, among  
9 its shareholders according to their respective rights and interests;

10 (3) at any time during the liquidation of its business and  
11 affairs may apply to a court of competent jurisdiction in the state to  
12 have the liquidation continued under the supervision of the court;

13 (4) shall, if it has not completed dissolution proceedings  
14 within two years after the date the statement of intent to dissolve is  
15 filed, be involuntarily dissolved by the commissioner after 60 days  
16 notice of his intent to do so has been given to the corporation.

17 Sec. 10.50.500. MANNER OF REVOKING A VOLUNTARY DISSOLUTION PRO-  
18 CEEDING. (a) The board of directors may adopt a resolution recommend-  
19 ing that the voluntary dissolution proceedings be revoked, and directing  
20 that the question of revocation be submitted to a vote at a special  
21 meeting of shareholders.

22 (b) A proposed revocation of a voluntary dissolution of the cor-  
23 poration shall be submitted to a vote at the next meeting of share-  
24 holders if the secretary of the corporation receives a petition pro-  
25 posing revocation signed by at least 1,000 shareholders.

26 (c) Written or printed notice, stating that the purpose of the  
27 meeting is to consider the advisability of revoking the voluntary dis-  
28 solution proceedings, shall be given to each shareholder of record  
29 entitled to vote at the meeting within the time and in the manner pro-

1 vided in this chapter for the giving of notice of special meetings of  
2 shareholders.

3 (d) At the meeting a vote of the shareholders entitled to vote  
4 shall be taken on the resolution to revoke the voluntary dissolution  
5 proceeding. Adoption of the resolution requires the affirmative vote of  
6 the holders of at least two-thirds of the shares voting.

7 (e) Upon the adoption of the resolution, a statement of revocation  
8 of voluntary dissolution proceedings shall be executed in duplicate by  
9 the corporation by its president or vice-president and by its secretary  
10 or an assistant secretary, and verified by one of the officers signing  
11 the statement. The statement of revocation of voluntary dissolution  
12 shall set out

- 13 (1) the name of the corporation;
- 14 (2) the names and addresses of its officers;
- 15 (3) the names and addresses of its directors;
- 16 (4) a copy of the resolution adopted by the shareholders  
17 revoking the voluntary dissolution proceedings;
- 18 (5) the number of shares outstanding;
- 19 (6) the number of shares voted for and against the resolu-  
20 tion.

21 Sec. 10.50.505. FILING OF STATEMENT OF REVOCATION OF A VOLUNTARY  
22 DISSOLUTION PROCEEDING. Duplicate originals of the statement of revo-  
23 cation of voluntary dissolution proceedings shall be delivered to the  
24 commissioner. If the commissioner finds that the statement conforms to  
25 law, he shall, when all fees and franchise taxes prescribed in this  
26 chapter have been paid,

27 (1) endorse on each duplicate original the word "filed" and  
28 the date of the filing;

29 (2) file one duplicate original in his office;

1 (3) return the other duplicate original to the corporation or  
2 its representative.

3 Sec. 10.50.510. EFFECT OF STATEMENT OF REVOCATION OF A VOLUNTARY  
4 DISSOLUTION PROCEEDING. Upon the filing by the commissioner of a state-  
5 ment of revocation of a voluntary dissolution proceeding, the revocation  
6 of the proceeding becomes effective and the corporation may again carry  
7 on its business.

8 Sec. 10.50.515. EXECUTION OF ARTICLES OF DISSOLUTION. If a volun-  
9 tary dissolution proceeding has not been revoked, then when all debts,  
10 liabilities, and obligations of the corporation have been paid and  
11 discharged, or adequate provision has been made for payment, and all of  
12 the remaining property and assets of the corporation have been distri-  
13 buted to its shareholders, articles of dissolution shall be executed in  
14 duplicate by the corporation by its president or vice-president and by  
15 its secretary or an assistant secretary, and verified by one of the  
16 officers signing the articles. The articles of dissolution shall set  
17 out

18 (1) the name of the corporation;

19 (2) that the commissioner has filed a statement of intent to  
20 dissolve the corporation, and the date on which the statement was filed;

21 (3) that all debts, obligations and liabilities of the cor-  
22 poration have been paid and discharged or that adequate provision has  
23 been made for payment;

24 (4) that the remaining property and assets of the corporation  
25 have been distributed among its shareholders in accordance with their  
26 respective rights and interests;

27 (5) that there are no suits pending against the corporation,  
28 or that adequate provision has been made for the satisfaction of a judg-  
29 ment, order or decree which may be entered against the corporation in a



1 pending suit.

2 Sec. 10.50.520. FILING OF ARTICLES OF DISSOLUTION. (a) Duplicate  
3 originals of the articles of dissolution shall be delivered to the  
4 commissioner. If the commissioner finds that the articles of dissolu-  
5 tion conform to law, he shall, when all fees and franchise taxes pre-  
6 scribed in this chapter have been paid,

7 (1) endorse on each duplicate original the word "filed" and  
8 the date of the filing;

9 (2) file one duplicate original in his office;

10 (3) issue a certificate of dissolution and affix the other  
11 duplicate original to it.

12 (b) The certificate of dissolution, together with the duplicate  
13 original of the articles of dissolution affixed, shall be returned to  
14 the representative of the dissolved corporation.

15 Sec. 10.50.525. EFFECT OF CERTIFICATE OF DISSOLUTION. Upon the  
16 issuance of the certificate of dissolution the existence of the corpora-  
17 tion ceases, except for the purpose of suits, other proceedings and  
18 appropriate corporate action by shareholders, directors and officers as  
19 provided in this chapter.

20 Sec. 10.50.530. INVOLUNTARY DISSOLUTION. (a) A corporation may  
21 be dissolved involuntarily by the commissioner when

22 (1) the corporation is delinquent six months in filing its  
23 annual report or in paying a license filing fee or penalty;

24 (2) the corporation has failed for 30 days to appoint and  
25 maintain a registered agent in this state; or

26 (3) the corporation has failed for 30 days after change of  
27 its registered office or registered agent to file in the office of the  
28 commissioner a statement of the change;

29 (4) the corporation has failed for two years to complete

1 dissolution under a statement of intent to dissolve; or

2 (5) a vacancy in the board of directors of a corporation is  
3 not filled within six months or the time of the next annual meeting,  
4 whichever occurs first.

5 (b) A corporation may not be involuntarily dissolved unless the  
6 commissioner has given the corporation at least 60 days notice of its  
7 delinquency or omission by certified mail addressed to its registered  
8 office or in care of one of its principal officers or directors, at the  
9 last known address of the officer or director, as shown by the records  
10 of the commissioner, and the corporation has failed to correct the  
11 neglect, omission or delinquency before involuntary dissolution.

12 (c) When a corporation has given cause for involuntary dissolution  
13 and has failed to correct the neglect, omission or delinquency as pro-  
14 vided in this section, the commissioner shall dissolve the corporation  
15 by issuing a certificate of involuntary dissolution containing a state-  
16 ment that the corporation has been dissolved, the date, and the reason  
17 for which it was dissolved. The original certificate of dissolution  
18 shall be placed in the department files and a copy of it mailed to the  
19 corporation at its registered office or in care of one of its principal  
20 officers or directors, at the last known address of the officer or  
21 director, as shown by the records of the commissioner. Upon the issu-  
22 ance of the certificate of involuntary dissolution, the existence of the  
23 corporation shall cease, except as otherwise provided in this section,  
24 and its name shall be available to and may be adopted by another cor-  
25 poration no less than six months after the dissolution.

26 (d) A corporation dissolved by the commissioner under the provi-  
27 sions of this section may be reinstated by the commissioner at any time  
28 within two years from the date of the certificate of involuntary disso-  
29 lution whenever it is established to the satisfaction of the commis-

1 sioner that in fact there was no cause for the dissolution, or whenever  
2 the neglect or delinquency resulting in dissolution has been corrected  
3 and payment made of double the amount delinquent along with the amount  
4 the corporation would have paid had it not been dissolved during the  
5 two-year period. Reinstatement may not be authorized if the same or a  
6 deceptively similar corporate, limited partnership, reserved or regis-  
7 tered name is currently on file with the commissioner, unless the cor-  
8 poration being reinstated contemporaneously amends its articles of incor-  
9 poration to change its name to conform with the provisions of this  
10 chapter.

11 (e) Nothing in this section relieves a corporation reinstated  
12 under this section from penalty of forfeiture of its powers as a corpora-  
13 tion in case of failure to pay subsequently accruing licenses and taxes  
14 imposed by a law of this state.

15 (f) An action arising out of a contract assigned by a corporation  
16 dissolved under this section may be brought in the name of the assignee.  
17 The fact of assignment and of purchase by the plaintiff shall be set out  
18 in the complaint or other process. The defendant may avail himself of  
19 any matter of defense of which he might have availed himself in a suit  
20 upon the claim by the corporation, had it not been dissolved under this  
21 section.

22 (g) Service of process on a corporation dissolved under this  
23 section shall be made in the same manner prescribed by law as if the  
24 corporation had not been dissolved.

25 (h) In addition to any other remedies provided by law a corpora-  
26 tion may be dissolved involuntarily by a decree of the superior court in  
27 an action filed by the attorney general when it is established that

28 (1) the corporation procured its certificate of incorporation  
29 through fraud; or

1 (2) the corporation has continued to exceed or abuse the  
2 authority conferred upon it by law.

3 Sec. 10.50.535. VENUE AND PROCESS. (a) An action for the invol-  
4 untary dissolution of a corporation shall be commenced by the attorney  
5 general in the superior court.

6 (b) Summons shall issue and be served as in other civil actions.  
7 If process is returned not found, the attorney general shall publish  
8 notice as in other civil cases in a newspaper published in the judicial  
9 district where the registered office of the corporation is situated,  
10 containing a notice of the pendency of the action, the title of the  
11 court, the title of the action, and the date on or after which default  
12 may be entered. The attorney general may include in one notice the  
13 names of any number of corporations against which actions are pending in  
14 the same court.

15 (c) The attorney general shall have a copy of the notice mailed to  
16 the corporation at its registered office within 10 days after the first  
17 publication of it.

18 (d) Notice shall be published at least once each week for two  
19 successive weeks, and the first publication may begin at any time after  
20 the summons has been returned.

21 (e) Unless a corporation is served with summons, no default may be  
22 taken against it earlier than 30 days after the first publication of the  
23 notice.

24 Sec. 10.50.540. JURISDICTION OF COURT TO LIQUIDATE ASSETS AND  
25 BUSINESS OF CORPORATION. The superior court may liquidate the assets  
26 and business of a corporation in the cases provided in AS 10.50.545 -  
27 10.50.560.

28 Sec. 10.50.545. ACTION BY SHAREHOLDER FOR LIQUIDATION. In an  
29 action by a shareholder, the superior court may liquidate the assets and



1 business of a corporation when it is established

2 (1) that the directors are deadlocked in the management of  
3 the corporate affairs and the shareholders are unable to break the  
4 deadlock, and that irreparable injury to the corporation is being  
5 suffered or is threatened by reason of the deadlock;

6 (2) that the acts of the directors or those in control of the  
7 corporation are illegal, oppressive or fraudulent;

8 (3) that the shareholders are deadlocked in voting power, and  
9 have failed, for a period which includes at least two consecutive annual  
10 meeting dates, to elect successors to directors whose terms have expired  
11 or would have expired upon the election of their successors; or

12 (4) that the corporate assets are being misapplied or wasted.

13 Sec. 10.50.550. ACTION BY CREDITOR FOR LIQUIDATION. In an action  
14 by a creditor, the superior court may liquidate the assets and business  
15 of a corporation when

16 (1) the claim of the creditor has been reduced to judgment  
17 and an execution on the judgment has been returned unsatisfied and it is  
18 established that the corporation is insolvent; or

19 (2) the corporation has admitted in writing that the claim of  
20 the creditor is due and owing and it is established that the corpora-  
21 tion is insolvent.

22 Sec. 10.50.555. LIQUIDATION ON APPLICATION BY CORPORATION. Upon  
23 application by a corporation which has filed a statement of intent to  
24 dissolve, as provided in this chapter, to have its liquidation continued  
25 under the supervision of the court, the superior court may liquidate the  
26 assets and business of the corporation.

27 Sec. 10.50.560. LIQUIDATION IN ACTION BY ATTORNEY GENERAL FOR  
28 DISSOLUTION. When an action has been filed by the attorney general to  
29 dissolve a corporation and it is established that liquidation of its

1 business and affairs should precede the entry of a decree of dissolu-  
2 tion, the superior court may liquidate the assets and business of a  
3 corporation.

4 Sec. 10.50.565. JOINDER OF SHAREHOLDERS NOT MANDATORY. It is not  
5 necessary to make shareholders parties to an action or proceeding for  
6 liquidation of the assets and business of a corporation unless relief is  
7 sought against them personally.

8 Sec. 10.50.570. PROCEDURE IN LIQUIDATION OF CORPORATION BY COURT.  
9 In a proceeding to liquidate the assets and business of a corporation,  
10 the superior court may issue injunctions, appoint a receiver pendente  
11 lite with powers and duties as the court may direct, and take other  
12 proceedings necessary to preserve the corporate assets wherever situated  
13 and carry on the business of the corporation until a full hearing is  
14 had.

15 Sec. 10.50.575. APPOINTMENT OF RECEIVER. After a hearing held  
16 upon such notice as the court may direct to be given to all parties to  
17 the proceedings and to any other parties in interest designated by the  
18 court, the court may appoint a liquidating receiver with authority to  
19 collect the assets of the corporation, including amounts owing to the  
20 corporation by shareholders on an unpaid portion of the consideration  
21 for the issuance of shares. The liquidating receiver may, subject to  
22 the order of the court, sell, convey and dispose of all or a part of the  
23 assets of the corporation wherever situated, either at public or private  
24 sale.

25 Sec. 10.50.580. DISPOSITION OF ASSETS OR PROCEEDS FROM SALE OF  
26 ASSETS. The assets of the corporation or the proceeds from a sale,  
27 conveyance or other disposition of assets shall be applied to the ex-  
28 penses of liquidation and to the payment of the liabilities and obli-  
29 gations of the corporation. Remaining assets or proceeds shall be

1 distributed among shareholders according to their respective rights and  
2 interests.

3 Sec. 10.50.585. STATED POWERS AND DUTIES OF RECEIVER. The order  
4 appointing the liquidating receiver shall state his powers and duties.  
5 The powers and duties may be increased or diminished at any time during  
6 the liquidation proceedings.

7 Sec. 10.50.590. COMPENSATION OF RECEIVER AND ATTORNEYS. The court  
8 may allow from time to time as expenses of the liquidation compensation  
9 to the receiver and to attorneys in the proceeding, and direct the  
10 payment of compensation out of the assets of the corporation or the  
11 proceeds of a sale or disposition of assets.

12 Sec. 10.50.595. POWER OF RECEIVER TO SUE AND BE SUED. A receiver  
13 of a corporation appointed under AS 10.50.570 - 10.50.600 may sue and  
14 defend in all courts in his own name as receiver of the corporation.

15 Sec. 10.50.600. APPOINTING COURT HAS EXCLUSIVE JURISDICTION. The  
16 court appointing the receiver has exclusive jurisdiction of the corpora-  
17 tion and its property, wherever situated.

18 Sec. 10.50.605. QUALIFICATIONS OF RECEIVERS. A receiver shall be  
19 a citizen of the United States or a corporation authorized to act as  
20 receiver, which corporation may be a domestic corporation or a foreign  
21 corporation authorized to transact business in the state. A receiver  
22 shall give the bond the court directs with sureties the court requires.

23 Sec. 10.50.610. FILING OF CLAIMS IN LIQUIDATION PROCEEDINGS. (a)  
24 In a proceeding to liquidate the assets and business of a corporation,  
25 the court may require creditors of the corporation to file with the  
26 clerk of the court or with the receiver, in the form the court pre-  
27 scribes, proof under oath of their respective claims.

28 (b) If the court requires the filing of claims, it shall fix a  
29 date, not less than four months from the date of the order, as the last

1 day for the filing of claims, and shall prescribe the notice to be given  
2 to creditors and claimants of the date fixed. Before the date fixed,  
3 the court may extend the time for the filing of claims.

4 (c) A creditor who fails to file proof of his claim on or before  
5 the date fixed may be barred by order of the court from participating in  
6 the distribution of the assets of the corporation.

7 Sec. 10.50.615. DISCONTINUANCE OF LIQUIDATION PROCEEDINGS. The  
8 liquidation of the assets and business of a corporation may be discon-  
9 tinued at any time during the liquidation proceeding when it is estab-  
10 lished that cause for liquidation no longer exists. In this event, the  
11 court shall dismiss the proceeding and direct the receiver to redeliver  
12 to the corporation its remaining property and assets.

13 Sec. 10.50.620. DECREE OF INVOLUNTARY DISSOLUTION. In a pro-  
14 ceeding to liquidate the assets and business of a corporation, when the  
15 costs and expenses of the proceeding and the debts, obligations and  
16 liabilities of the corporation have been paid and discharged and the  
17 remaining property and assets are not sufficient to satisfy and dis-  
18 charge the costs, expenses, debts and obligations, and all the property  
19 and assets have been applied to their payment, the court shall enter a  
20 decree dissolving the corporation.

21 ARTICLE 7. GENERAL PROVISIONS.

22 Sec. 10.50.625. AS 10.05 INCORPORATED BY REFERENCE. The provi-  
23 sions of AS 10.05.699 - 10.05.819 apply to a corporation organized under  
24 this chapter and are incorporated by reference as a part of this chapter,  
25 except when inconsistent with this chapter.

26 Sec. 10.50.630. FALSE STATEMENTS AFFECTING VALUE OF SHARES. A  
27 director, officer or agent of a corporation who knowingly concurs in  
28 making, publishing or posting either generally or privately to the  
29 shareholders or other persons (1) a written report, exhibit, statement



1 of its affairs or pecuniary condition or notice containing any material  
2 statement which is false, or (2) an untrue or wilfully or fraudulently  
3 exaggerated report, prospectus, account, statement of operations, values,  
4 business, profits, expenditures or prospects, or (3) any other paper or  
5 document intended to produce or give, or having a tendency to produce or  
6 give, the shares of stock in the corporation a greater value or a less  
7 apparent or market value than they really possess, or who refuses to  
8 make any book entry or post any notice required by law in the manner  
9 required by law, upon conviction, is guilty of a misdemeanor.

10 Sec. 10.50.635. DIRECTOR MAKING UNLAWFUL DIVIDEND OR DISTRIBUTION  
11 OF ASSETS. A director of a corporation who concurs in any vote or act  
12 of the directors of the corporation to knowingly and with dishonest or  
13 fraudulent purpose make a dividend or distribution of assets either with  
14 the design of defrauding creditors or shareholders or of giving a false  
15 appearance to the value of the stock and thereby defrauding subscribers  
16 or purchasers, upon conviction, is guilty of a misdemeanor.

17 Sec. 10.50.640. RESERVATION OF POWER. The legislature reserves  
18 the power to make amendments to this chapter to apply to all existing  
19 and future corporations organized under this chapter. An amendment to  
20 this chapter may not alter or impair the power of a corporation to  
21 fulfill the terms of a contractual agreement or impair the rights of a  
22 person with whom a corporation has entered into a contractual agreement.

23 Sec. 10.50.645. DEFINITIONS. In this chapter,

24 (1) "articles of incorporation" means the original or re-  
25 stated articles of incorporation and all amendments;

26 (2) "authorized shares" means the shares which the corpora-  
27 tion may issue;

28 (3) "certificate" means any evidences of ownership of shares  
29 of a corporation;

1 (4) "chartering legislation" means the Act of the legislature  
2 or an initiative approval by the voters that creates a general stock  
3 ownership corporation;

4 (5) "commisssioner" means the commissioner of commerce and  
5 economic development;

6 (6) "corporation" means a general stock ownership corpora-  
7 tion;

8 (7) "department" means the Department of Commerce and Econo-  
9 mic Development;

10 (8) "franchise tax" means the annual corporation tax imposed  
11 under Alaska law on corporations (AS 10.05.717);

12 (9) "insolvent" means inability of a corporation to pay its  
13 debts as they become due in the usual course of its business;

14 (10) "net assets" means the amount by which the total assets  
15 of a corporation, excluding treasury shares, exceed the total debts of  
16 the corporation;

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

1 while residing upon an Indian or military reservation; a minor takes the  
2 residence of his parent or of his legal guardian; a married woman may  
3 establish her own residence and does not presumptively take the resi-  
4 dence of her husband;

5 (12) "shareholder" means one who is a holder of record of a  
6 share in a corporation;

7 (13) "shares" means the units into which the proprietary  
8 interest in a corporation is divided;

9 (14) "subscriber" means one who subscribes for a share in a  
10 corporation before or after incorporation;

11 (15) "treasury shares" means shares which have been issued,  
12 have been subsequently acquired by and belong to the corporation, and  
13 have not either by reason of the acquisition or thereafter, been can-  
14 celled or restored to the status of authorized but unissued shares;  
15 treasury shares are "issued" shares, but not "outstanding" shares.

16 Sec. 10.50.650. SHORT TITLE. This chapter may be cited as the  
17 Alaska General Stock Ownership Corporation Act.

18 \* Sec. 2. AS 37.10.070(a)(6) is amended to read:

19 (6) other securities, including [CORPORATE] securities of  
20 corporations other than general stock ownership corporations;

21 \* Sec. 3. AS 45.55.130 is amended by adding a new subsection to read:

22 (b) A copy of all annual reports, ballots, consent authorizations  
23 and other materials relating to the shareholder ballots, published or  
24 made available by any person to the shareholders of a general stock  
25 ownership corporation, shall be filed with the administrator concur-  
26 rently with its distribution to the shareholders. The administrator  
27 shall have authority to review all documents submitted and make regula-  
28 tions regarding content of shareholder materials to insure fairness,  
29 completeness, and nondiscrimination.

1     \* Sec. 4. (a) The governor, the speaker of the house of representatives,  
2 and the president of the senate, shall each appoint one person to act as  
3 incorporators of the Alaska General Stock Ownership Corporation which shall  
4 be formed in accordance with subchapter U, chapter 1, of the Internal Revenue  
5 Code of 1954, as amended (26 U.S.C. secs. 1391 - 1397) and AS 10.50. The  
6 incorporators shall select nine persons to act as the initial board of direc-  
7 tors of the corporation and shall submit their names to the governor, to the  
8 speaker of the house of representatives, and to the president of the senate.  
9 A majority of the governor, the speaker of the house of representatives, and  
10 the president of the senate may disapprove a candidate for the initial board  
11 of directors within 15 days of receipt of the incorporators' nominations.

12     (b) The articles of incorporation of the Alaska General Stock Ownership  
13 Corporation shall provide that all shareholders of the corporation shall be  
14 residents of the state as defined in AS 10.50.640(11), and that if a share-  
15 holder ceases to be a resident of the state or his shares pass by operation  
16 of law to a nonresident,

17         (1) within five years of the date of issuance of his shares the  
18 corporation shall purchase the shares at book value;

19         (2) more than five years after the date of issuance of his shares  
20 the shareholder or his executor, administrator or guardian shall have the  
21 right to sell the shares to the corporation at book value.

22     (c) There is a special fund of the state known as the "Alaska General  
23 Stock Ownership Corporation loan guarantee fund", which may not exceed  
24 \$5,000,000, which shall be completely segregated from all other funds of the  
25 state, and which shall be used by the commissioner of revenue to guarantee  
26 loans made to the Alaska General Stock Ownership Corporation by lenders other  
27 than the state solely for initial costs of the corporation and not for the  
28 acquisition by the corporation of major investments. In guaranteeing a loan,  
29 the commissioner of revenue shall review the loan for the purposes of ascer-



1 taining the general soundness of the proposed loan and guarding against fraud  
2 and misrepresentation. The guarantee of a loan may not be for an amount in  
3 excess of the unobligated balance of the fund at the time the guarantee is  
4 made.

5 \* Sec. 5. In sec. 1 of this Act, AS 10.50.300 has the effect of changing  
6 Rule 23.1, Rules of Civil Procedure, with respect to shareholder derivative  
7 suits brought by the shareholders of a general stock ownership corporation.  
8 The changes

9 (1) make provision for notification of shareholders in the event  
10 of dismissal or settlement of the suit;

11 (2) require that the plaintiff account to the corporation for  
12 proceeds received by him if the suit is successful; and

13 (3) provide that the court may require the plaintiff to furnish  
14 security for the suit.

15 \* Sec. 6. This Act takes effect immediately in accordance with AS 01.10.-  
16 070(c).

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## COMMITTEE SUBSTITUTE FOR HB 240

The general stock ownership corporation (GSOC) bill provided for the creation of a GSOC in Alaska. The corporation, taking advantage of new federal law, would be exempt from corporate income taxes. Income would be distributed annually to the shareholders and they would pay tax at their personal rate. The shareholders would be all the residents of Alaska as of the effective date of the bill and stock would be distributed to them free of charge. The GSOC would borrow funds to finance investment acquisitions.

House State Affairs Committee made extensive changes in the bill. The Committee Substitute creates an Alaskan GSOC and a new chapter of Alaska law to regulate it. The Committee addressed several policy problems with specific amendments described below.

### CORPORATE DEMOCRACY

Alaska corporate law was perceived as inadequate for regulation of GSOCs because it tends to concentrate power in the corporate directors and, with the GSOCs broad stock ownership, provisions which insure director response to shareholders were required. To assure shareholder input to and control over the corporation and the board the Committee provided that:

1) Proxies are prohibited and in their place a corporate ballot and shareholder's pamphlet will be prepared, under regulations insuring fairness, and mailed to each shareholder. Shareholders vote their ballot and return it by mail. This prevents proxy battles and allows each shareholder to act on his own behalf.

2) Shareholders may amend the articles of incorporation and bylaws and may place issues on the corporate ballot and nominate board candidates through a petition signed by 1,000 shareholders.

3) Board and shareholder meeting must be held in Alaska and may be teleconferenced.

4) Materials mailed to shareholders must be filed with the Commissioner of Commerce and penalties are provided for false or misleading information.

5) Derivative suits may be filed by the shareholders on behalf of the corporation where the directors fail to act.

6) The chairman and 3/4 of the board must be Alaskans.

7) The entire board may be removed by a majority vote of the shareholders and any director by a vote of one more than elected him.

8) The superior court may remove a director for fraud or dishonesty upon suit by the attorney general or 100 shareholders.

9) It is a crime for directors to make unlawful distributions or false statements regarding share values and stiff penalties are provided for wrongful denial of shareholder access to GSOC books.

### POLITICAL INFLUENCE

Concerns were expressed that the GSOC could become a major political influence in Alaska. To reduce potential GSOC political activity the Committee provided that:

- 1) The articles and bylaws of the GSOC must be submitted to the legislature for approval.
- 2) The legislature retains the right to amend laws affecting GSOCs subject only to protections for GSOC creditors.
- 3) Endorsement of candidates or issues and expenditures of money by GSOCs for political activities including lobbying of the legislature is prohibited.
- 4) Incorporators are appointed by the Governor, Speaker and Senate President with the original board, named by the incorporators, standing for election at the first shareholder's meeting.

### FINANCING

Concerns were expressed that the state might be committed to supply monies for GSOC financial support. To limit the financial commitment of the state the Committee provided that:

- 1) There is no commitment to finance GSOC investments and no special treatment for GSOC requests for financial aid from the state. Like any private corporation state financial assistance to the GSOC would require a full legislative act.
- 2) The fund to guarantee private credit for GSOC startup expenses is limited to \$5 million with review of commitments by the Commissioner of Revenue.
- 3) The Commissioner of Revenue does not have authority to invest surplus state funds in the GSOC nor may the permanent fund be so invested.

### OWNERSHIP OF SHARES

HB 240 allowed an Alaskan to take his shares along upon leaving the state permanently. The only restriction was that when he sold the stock it must be sold to an Alaskan resident. This allowed outside shareholders.

Because of high residency turnover the Committee provided that shares may not be retained when a shareholder leaves Alaska, but must be sold. Federal law prohibits sales during the first five years unless the shareholder leaves Alaska. To discourage shareholders from leaving Alaska just to sell their shares all sales during this period must be made to the GSOC at book value. After five years shares of the GSOC may be freely traded within Alaska.

These amendments assure that only Alaskans will be shareholders of the Alaska General Stock Ownership Corporation.

## GENERAL SUMMARY

The proposed Committee substitute creates a new chapter 50, Title X, of Alaska Statutes entitled "General Stock Ownership Corporations." This chapter governs the creation, operation and termination of all general stock ownership corporations organized in Alaska. Many of the provisions have been carried over or adapted from existing Alaska corporate law. The bill is divided into 10 sections.

- Section 1: This section contains the provisions of the new chapter 50 of Alaska Statutes, Title X, and constitutes the core of the Committee bill. It contains six articles which deal with shareholder rights and internal operation of the corporations (Article 1: Substantive Provisions), formation of general stock ownership corporations (Article 2: Formation of Corporations), amendment of articles of incorporation (Article 3: Amendment of Articles), sale of corporation assets outside the ordinary course of business (Article 4: Sale of Assets), voluntary and involuntary termination of the corporate existence (Article 5: Dissolution), and miscellaneous provisions such as filing fees, criminal penalties, and amendment of the legislation (Article 6: General Provisions).
- Section 2: This section prohibits the Commissioner of Revenue from investing surplus state funds in securities of general stock ownership corporations.
- Section 3: This section requires that all shareholder materials be filed with the Commissioner of Commerce at the time of distribution to the shareholders. In addition, the Commissioner is given authority to regulate concerning fairness, completeness and nondiscrimination of shareholder materials. The filing provisions coordinate with other sections of the Alaska securities laws making it a crime to file false or misleading materials with the Commissioner.
- Section 4: These three sections amend the criminal penalties provisions of section 1 of the bill to conform to the new criminal code which becomes effective January 1, 1980. The provisions of section 1 are applicable upon signature by the governor and must therefor be amended as of January 1, 1980 to parallel the rest of the new criminal code.



- Section 7: This section authorizes the governor to appoint nine persons to act as incorporators and the initial board of directors of the Alaska General Stock Ownership Corporation. This is the section which actually provides for the creation of a GSOC in Alaska. The section restricts share ownership of this corporation to Alaska residents and requires that shares be sold when a shareholder leaves the state or dies leaving his stock to an outsider. It also creates a special fund, not to exceed five million dollars, in the Dept. of Revenue to be used in guaranteeing private loans for the corporation's startup expenses.
- Section 8: Section 1 of the bill amends Rule 23.1 of the Rules of Civil Procedure, dealing with derivative suits by shareholders of a general stock ownership corporation. Because it is amending a rule of the courts this provision must be approved by a 2/3 vote of each house. To allow separation of the vote section 8 amends the court rule.
- Section 9: This section provides for an immediate effective date for the Committee bill.
- Section 10: This section provides for a January 1, 1980 effective date for sections 4-6 which amend the criminal sanctions in the bill to parallel the treatment provided in the new criminal code which also becomes effective January 1, 1980.

## SECTION BY SECTION ANALYSIS

This analysis of House State Affairs Committee action on the Alaska General Stock Ownership Corporation legislation describes the provisions of Section 1 of the Committee draft as of April 19, 1979. Since many of the provisions of the draft are carried over wholly or in part from the Alaska Business Corporations Act (ABCA) there is included at the end of each section description a reference to the corresponding section of the ABCA, if any.

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### ARTICLE 1. SUBSTANTIVE PROVISIONS.

- .005. PURPOSES. This section makes it clear that, unless the enabling legislation for a GSOC provides otherwise, the corporation may engage in any legal business. (ABCA 10.05.003).
- .010. GENERAL STOCK OWNERSHIP CORPORATIONS. This section makes it clear that corporation organized under chapter 50, Title 10, are general stock ownership corporations subject to Internal Revenue Code Subchapter "U" and are not agencies of the state for any purpose.
- .015. GENERAL POWER. This section grants to GSOCs the powers of normal corporations to conduct business. Two changes have been made in adapting the ABCA provisions to GSOCs.
  - 1) There is a limitations in (4) preventing a GSOC from investing in property "acquired by it, or for its benefit, through the right of eminent domain . . . ." This limitation prevents GSOCs from acting in collusion with an agency or local government to acquire a going business from an unwilling seller. GSOCs are not prevented from investing in projects where some minor portion of the project is acquired through condemnation if the local government determines that the exercise of its condemnation power is appropriate.
  - 2) The power to establish stock bonus plans is deleted from subsection (15) because of the special nature of GSOCs and the limitations on share ownership would make it difficult for a GSOC to adopt a qualified stock bonus plan for its employees. If the GSOC desires to have its employees benefit from growth in the value of GSOC stock the corporation could adopt a funded "phantom stock" program. (ABCA 10.05.009).

- .020. INDEMNIFICATION OF OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS; INSURANCE. This section is carried over unchanged from the ABCA and allows the corporation to indemnify its directors or employees for expenses and fines incurred as a result of their actions on behalf of the corporation if they acted in good faith. Indemnification is disallowed in derivative suits where the defendant is guilty of negligence or misconduct in his duties unless the court determines the indemnification is proper. The corporation may purchase insurance on behalf of its directors and employees for claims against them arising out of their corporate positions. (ABCA 10.05.010).
- .030. DEFENSE OF ULTRA VIRES. Meaning "beyond the power" an ultra vires act is one which the corporation did not have authority to perform. This section, carried over from the ABCA, provides that this lack of corporate power can be asserted by a shareholder, the corporation, or the attorney general. It may not, however, be asserted by another party to a transaction with the corporation as grounds for failing to perform. (ABCA 10.05.018).
- .035. CORPORATE NAME. This section requires that a GSOC include in its corporate name the words "general stock ownership corporation" or an abbreviation thereof. In addition, the name may not be misleading or deceptively similar to the name of another corporation doing business in Alaska. (ABCA 10.05.021).
- .040. RESERVATION OF CORPORATE NAME. This section allows a person or corporation to reserve a specific name for a general stock ownership corporation for a period of two years with a renewal period of one year. Reservation of a name might be used where an individual seeks to establish a GSOCs by initiative petition or where an existing GSOC seeks to change its name upon the approval of its shareholders. The name may be reserved by this section during the period in which the necessary activities are undertaken to make the name effective. (ABCA 10.05.024, .027, and .033).
- .045. FOREIGN GENERAL STOCK OWNERSHIP CORPORATIONS. General stock ownership corporations chartered in another state and doing business in Alaska are subject to the rules of the Alaska Business Corporations Act (AS 10.05).
- .050. REGISTERED OFFICE AND REGISTERED AGENT. The registered agent is the agent for the corporation upon whom legal papers may be served. This provision requires that the corporation maintain a registered office and agent within the state. (AS 10.05.045)

- .055. FILING LIST OF REGISTERED CORPORATIONS WITH SUPERIOR COURT.
- .060. CHANGE OF REGISTERED OFFICE OR AGENT.
- .065. REGISTRATION OF REGISTERED AGENT.

These three sections set out the rules for registration of the registered agent with the Commissioner of Commerce, the listing of registered agents and offices with the superior courts throughout the state, and the method by which a registered agent may change the registered office or resign his position. These provisions are carried over intact from AS 10.05.048, .051, and .054 respectively.

- .070. SERVICE OF PROCESS ON CORPORATION. In addition to designating the registered agent as agent for service of legal papers on the corporation this section allows the Commissioner of Commerce to be served on behalf of the corporation when the registered agent cannot be found. (AS 10.05.057).
- .075. CREATION AND ISSUANCE OF SHARES. This section allows the corporation to create and issue shares of no par value stock. The total number of shares available for issue must be stated in the articles of incorporation. GSOCs are prohibited from issuing "par value" stock since that concept, developed for the protection of shareholders, has no application in a corporation such as the GSOC where shares are to be distributed initially without payment by the shareholders.
- .080. CONSIDERATION FOR SHARES. The federal GSOC legislation requires that a GSOC have a charter providing for the issuance of "at least one share (of stock) to each eligible individual." In order to fulfill this requirement it appears that the first share of GSOC stock must be issued without charge to the shareholders. However, there does not appear to be any restriction in the federal legislation upon subsequent sales of stock by GSOCs except for the general limitations upon share ownership. In keeping with the Committee's desire for a generally applicable GSOC chapter provision is made for the subsequent sale of stock by GSOCs. Thus, this section allows the GSOC to issue shares without consideration or for a payment fixed in advance by a vote of the shareholders.  
  
Sales of corporation stock by the corporation may not be made at a price in excess of book value if the shares sold are treasury shares, that is shares which have been issued and repurchased by the corporation. (AS 10.05.096).
- .085. PAYMENT FOR SHARES. Payment for shares may be made in cash, other property or services, but not in notes or future services. (AS 10.05.099).
- .090. JUDGMENT OF BOARD OR SHAREHOLDER AS TO VALUE OF CONSIDERATION CONCLUSIVE. This section allows the directors or the shareholders to conclusively determine the value of payment for shares in the absence of fraud. (AS 10.05.102).



- .095. EXPENSES OF ORGANIZATION, REORGANIZATION AND FINANCING. In sales of stock by a corporation shares entitled to the full protections of limited liability must be fully paid and nonassessable. This means that the full sales price for the stock has been received by the corporation. However, if the stock is sold through an underwriter the fees will come out of the sales proceeds before they are paid to the corporation. Likewise, the organizational expenses of the corporation may be paid out of stock sales before the proceeds are remitted to the corporation. This section clarifies that in such cases the shares are deemed to be fully paid. (AS 10.05.111).
- .100. CERTIFICATES REPRESENTING SHARES. This provisions sets out the requirements as to form of stock certificates which must be signed by the corporate officers. (AS 10.05.114)
- .105. INFORMATION REQUIRED TO BE STATED ON CERTIFICATE. The stock certificates or other evidences of ownership must include information regarding the person to whom they are issued, that they are no par value shares, and that the corporation is organized in Alaska. (AS 10.05.117).
- .110. FULL PAYMENT REQUIRED FOR CERTIFICATE. If payment is required for shares they may not be issued until full payment is received. (AS 10.05.120).
- .115. ISSUANCE OF FRACTIONAL SHARES. GSOCs may issue fractional shares of stock and these fractional shares hold dividend, voting and distribution rights equal to their fractional interest. It may be necessary for a GSOC to issue fractional shares in the situation where a shareholder leaves his stock to his heirs and there is more than one child beneficiary. (AS 10.05.123).
- .120. LIABILITY OF SUBSCRIBERS AND SHAREHOLDERS. This section, adopted directly from ABCA, limits the liability of shareholders and those who have agreed to purchase share to the amount which they agreed to pay to the corporation for the shares. Subsequent holders of the stock are protected if they received the stock in good faith. (AS 10.05.126).
- .125. BYLAWS. The board of directors adopts the initial bylaws of a GSOC subject to review and rejection by the legislature under section 330 of the draft bill. Subsequent bylaws may adopted, amended or repealed only by a vote of the shareholders.
- .130. MEETINGS OF SHAREHOLDERS. The time and location of the annual shareholders meeting is to be established in the bylaws. The specific place for the meeting may be set by the board. Special meetings of the shareholders may be called by the president of the corporation, the board or the holders of at least 500 shares. Shareholder meetings may be teleconferenced. (AS 10.05.138).

- .135. NOTICE OF SHAREHOLDER'S MEETINGS. This section requires written notice of shareholder's meetings mailed to shareholders not less than 60 days before the meeting. In addition, notice of shareholders' rights to add ballot issues or nominate directors must be made by publication at least once a week for four weeks beginning at least 150 days before the meeting. (AS 10.05.141).
- .140. CLOSING OF TRANSFER BOOKS AND FIXING RECORD DATE. To determine the shareholders of the corporation for purposes of a dividend distribution or voting rights the transfer books of the corporation may be closed prior to the date of the proposed activity or a "record date" may be established and the shareholders determined as of that date. Time limits are provided beyond which the transfer books may not be closed in order to protect shareholder voting rights and to allow interested parties to inspect the share records of the corporation prior to shareholders' meetings. (AS 10.05.144).
- .145. VOTING LIST. The responsible officer of the corporation must make available at the registered office of the corporation beginning at least 60 days before any shareholders' meeting a list of the shareholders eligible to vote at the meeting and access to this list must be provided to all shareholders. (AS 10.05.147).
- .150. QUORUM OF SHAREHOLDERS. 1/3 of the shares constitute a quorum for action by the shareholders and a majority vote of a quorum is sufficient to bind the shareholders in most cases. (AS 10.05.153).
- .155. PROXY VOTING PROHIBITED. Because of the ballot mechanism whereby each shareholder is allowed to vote in person through his ballot proxies are unnecessary in general stock ownership corporations and are therefore prohibited.
- .160. VOTING FOR DIRECTORS. Each shareholder may vote his shares for directors but cumulative voting is prohibited. This means that each share can cast only one vote for director in any contested election for a directorship position.
- .165. VOTING OF SHARES IN THE NAME OF ANOTHER.
- .170. VOTING OF PLEDGED SHARES. These sections allow shares held by an administrator, executor or guardian to be voted by him without a transfer of the shares into his name. Shares held by a pledgee may be voted by the pledgor until transferred into the pledgee's name. (AS 10.05.165 and . 168).

- .175. CORPORATION BALLOT. Voting at meetings of shareholders will be by ballot rather than through the normal corporate vehicle of proxies. The ballot will be prepared by the corporation subject to review for fairness by the Commissioner of Commerce. It will be mailed to each shareholder with the notice of the shareholders' meeting and voted by mailing it back to the corporation before the date of the meeting.

Shareholders may, by petition of 100 or more, nominate directors and place issues on the corporate ballot. In addition, the directors may place issues and candidates on the ballot by a majority vote. Shareholder information on board candidates and ballot issues is to be provided to the shareholders by the corporation and these materials will be filed with the Commissioner of Commerce and subject to the regulations and criminal penalties applicable thereto.

The directors may not propose to amend any proposal sponsored and approved by the shareholders within one year of the meeting at which the proposal was approved.

- .180. BOARD OF DIRECTORS. The board of directors is charged with management responsibility for the corporation and their compensation is to be fixed in the bylaws. At least 3/4 of the board must be residents of Alaska insuring that outside directors may never constitute a quorum of directors except when meeting to fill vacancies in directors seats until the next annual meeting of shareholders. (AS 10.05.174).

- .185. NUMBER OF DIRECTORS. The minimum number of directors is three and the number is to be fixed in the bylaws except that the original number is fixed by the enabling legislation. If the bylaws are silent the number fixed in the enabling legislation is the proper number. The number of directors can be changed through a bylaw amendment.

The board members serve for two year terms and they are to be divided into classes with only half the board standing for election at any one annual meeting. This staggering of the board members' terms provides for some continuity of management on the board of directors. (AS 10.05.177).

- .190. ELECTION OF DIRECTORS. Directors are to be elected at the annual meetings and each director hold office until his successor is elected and qualified. This prevents gaps in board membership except upon death or incompetance of a board member. (AS 10.05.183).

- .195. VACANCIES. Vacancies in the board caused by death, resignation or incompetance may be filled by a majority vote of the remaining directors. Directors elected by the board to fill a vacancy must stand for election by the shareholders at the next shareholders' meeting and are elected to fill the remaining portion of the directors position originally filled by vote of the board. No vacancy may continue for more than 6 months or until the next shareholders' meeting. (AS 10.05.189).



- .200. QUORUM OF DIRECTORS. A majority of the total number of directors fixed in the bylaws, articles or enabling legislation constitutes a quorum and action may be taken by a majority vote of a quorum. By allowing only  $\frac{1}{4}$  of the board to be outsiders Alaskan control of the board is assured. One-quarter of the board can never constitute a majority of a quorum except in the event of a vacancy in which case the board must act to fill the vacancy. (AS 10.05.192).
- .205. PLACE AND NOTICE OF DIRECTORS' MEETINGS. Directors meetings may be held only in Alaska and regular meetings of the board may be held without notice. Special board meetings require notice specifying the purpose of the meeting. (AS 10.05.198).
- .210. PARTICIPATION BY TELEPHONE. Directors may participate in directors meetings by telephone if all the participants may hear and be heard by each other. (AS 10.05.199).
- .215. DISTRIBUTIONS. Some restrictions on corporate distributions are necessary because the limited liability feature of corporations prohibits creditors from levying against shareholders if the corporation distributes its way to insolvency. The traditional restraints which have been used to protect creditors of corporations are the devices of stated capital, capital surplus, earned surplus and retained earnings. Through these devices corporations are required to keep at least something in the till for creditors.

However, the traditional restraints never ensured that cash would be on hand for creditors and they have been eroded by numerous exceptions allowing the corporation to designate capital surplus and create surplus by reduction of capital. As a result corporations have been able to make distributions beyond the point where liabilities to third parties were protected.

Under the ABCA dividends may generally be declared only out of earned surplus. (AS 10.05.204). There are several exceptions to this rule. Dividends may be paid in cash out of depletion reserves by natural resource companies and in stock out of capital surplus. (AS 10.05.204). However, a dividend may not be declared if the corporation would thereby be rendered insolvent. (AS 10.05.201). These restrictions provide some protection to creditors in that at least 75% of the amount received for shares must be allocated to stated capital, but the remaining 25% may be allocated to capital surplus available for distribution under certain circumstances.

Similarly, the ABCA provides that a corporation may acquire shares issued by it only from earned surplus except in special situations. (AS 10.05.012). This distinction between the sources from which shares may be purchased and those from which dividends may be paid does not make much sense since a purchase of shares on a prorata basis has the same effect as a dividend with regard to the protection of creditors.



To protect the creditors and shareholders of general stock ownership corporations and to rationalize restrictions upon the payment of dividends and repurchase of shares, this section provides restrictions on shareholder distributions based upon the current financial condition of the corporation. This section, adapted from a 1977 California amendment to the California Corporations Code, eliminates the concepts of stated capital and capital surplus in favor of a simple balance sheet test.

Under this section the corporation may always make the distribution required by subchapter "U" of the Internal Revenue Code. Thus, the corporation may always distribute to its shareholders an amount equal to 90% of its taxable income.

For distributions in excess of 90% of taxable income the corporation must fulfill either of two tests:

- 1) The corporation may make a distribution out of retained earnings.
- 2) If there are no retained earnings the corporation may make a distribution only if it meets a two pronged test:
  - a) The assets of the corporation, after the distribution are at least equal to  $1\frac{1}{4}$  times its liabilities, AND
  - b) The current assets, after the distribution, are at least equal to the current liabilities (a "liquidity test").

If the average pretax income plus interest expense for the two preceeding fiscal years is not at least equal to the average interest expense for those years the current assets must be at least  $1\frac{1}{4}$  times current liabilities.

If the corporation does not classify its assets into current and fixed in accordance with generally accepted accounting principles the current assets or liquidity test does not apply.

- .220. DISTRIBUTIONS IN PARTIAL LIQUIDATION. Distributions in partial liquidation are special distributions which reduce the capital value of the corporation. They are distributions out of capital rather than earnings. These distributions may be made only upon a 2/3 vote of the shareholders and must be identified as distributions in partial liquidation. (AS 10.05.207).
- .225. CERTAIN LOANS PROHIBITED. Loans by the corporation to its officers or directors are prohibited. (AS 10.05.213).

- .230. LIABILITY OF DIRECTORS IN CERTAIN CASES. This section carried over from ABCA makes directors personally liable for distributions and stock purchases by the corporation in violation of the distribution limitations. (AS 10.05.216).
- .235. EFFECT OF GOOD FAITH RELIANCE ON FINANCIAL STATEMENTS OR BOOK VALUE. Directors are not liable under the preceeding section if they relied upon financial statements of the corporation represented to him to be correct. (AS 10.05.219).
- .240. PRESUMPTION OF CONSENT OF DIRECTOR AND FILING OF DISSENT. A director present at a meeting is presumed to consent to the action taken by the board at such a meeting unless he files a dissent in accordance with this section. (AS 10.05.222).
- .245. DIRECTOR'S RIGHT TO CONTRIBUTION. A director sued for violation of the distribution rules is entitled to contribution (a sharing of the damages) from all directors assenting to or voting for the action. (AS 10.05.225).
- .250. OFFICERS. Officers of the corporation are elected by the board of directors and serve at their pleasure. (AS 10.05.228).
- .255. DUTIES OF OFFICERS. The board and the bylaws establish the duties of the corporate officers. (AS 10.05.231)
- .260. REMOVAL OF OFFICERS. Officers may be removed by the board but removal does not prejudice contract rights. (AS 10.05.234).
- .265. BOOKS AND RECORDS. GSOCs are required to keep complete books and records and make them available for inspection by shareholders and the Dept. of Commerce at the principal place of corporate business or the registered office. (AS 10.05.237).
- .270. SHAREHOLDER'S RIGHT TO EXAMINE BOOKS AND RECORDS. Shareholders have the right to examine books of the corporation at a reasonable time upon written demand. Access to the books of the corporation can be denied if sought for an "improper" purpose. The proper purpose restriction is a carryover from common law where the restriction insured that the examination was for an honest purpose and not to gratify curiosity or for speculative or vexatious purposes. It was designed to make certain that the purpose of the shareholder desiring to make examinations must be germane to his interests as a shareholder, that it was proper and lawful in character, and that it was not inimical to the interests of the corporation.

To clarify the applicability of this common law doctrine a number of states, including Alaska, have adopted into their corporation codes an inspection of records provision requiring the proper purpose. Under these provisions the shareholder is presumed to have the right of inspection and the lack of a proper purpose can only be asserted as a defense to a claim of wrongful denial of inspection. There is no comprehensive definition of what constitutes a proper purpose since there are innumerable valid reasons for a shareholder to inspect the books of his corporation. However, case law has indicated many such purposes a partial list of which would include:

- 1) To ascertain the value of a shareholder's stock.
- 2) To acquire knowledge to enable him to vote understandingly at a shareholder's meeting.
- 3) To investigate into consideration actually paid for stock and the failure to distribute dividends.
- 4) To investigate irregularities resulting in secret profits to officers of the corporation.
- 5) To determine correctness of financial statements and the existence of collateral for notes.
- 6) To determine whether a shareholder is being discriminated against in relation to his shares. (AS 10.05.237).

.275. LIABILITY FOR REFUSAL OF EXAMINATION. Any agent of the corporation wrongfully refusing shareholder access to the books and records of the corporation is subject to a fine of \$1,000 per day for each day of wrongful refusal. (AS 10.05.243).

.280. COURT MAY COMPEL INSPECTION. Courts have the power to compel inspection of the corporations books. (AS 10.05.249).

.285. SHAREHOLDERS' RIGHT TO FINANCIAL STATEMENT. The corporation must provide the shareholders with a financial statement upon request. (AS 10.05.249).

.290. REMOVAL OF DIRECTORS BY SUPERIOR COURT. This new provision allows a court, upon the suit of the attorney general or 100 shareholders 18 or older, to remove a director for fraudulent or dishonest acts or gross abuse of authority and bar such director from reelection.

This provision is not a simple removal clause, but gives standing to the shareholders and the attorney general to ask a court to remove a director for specific reasons. In order to have the court remove the director the shareholders or the attorney general bringing suit must still prove the director guilty of the offenses charged.

.295. SHAREHOLDER REMOVAL OF DIRECTORS. This section allows the shareholders to remove the entire board by a majority vote or any single director by a vote at least as large as that which elected him at his last election.



- .300. SHAREHOLDERS' DERIVATIVE ACTION. This section allows shareholders to file an action on behalf of the corporation if those responsible inside the corporation fail to do so. Alaska Supreme Court Rule 23.1 provides for such an action, but does not specify the treatment of security for expenses or accounting of settlements. Because this section would amend a rule of court a 2/3 vote is required for passage and the provision is set forth separately in Section 8 of the bill.

This section allows the courts discretion to require security for expenses incurred in the prosecution of the derivative action. It requires court approval of any out of court settlement to insure that those prosecuting the suit may not simply be bought off. The proceeds of any successful action or settlement of a derivative suit must be accounted for to the court and the court is then authorized to award reasonable expenses to the parties.

- .305. FRAUDULENT TRANSFERS OF SHARES. Transferring or obtaining shares of the corporation by fraud is a felony.

## ARTICLE 2. FORMATION OF CORPORATIONS.

- .310. INCORPORATORS. Incorporators are those persons who file the articles of incorporation to begin the corporation's existence. This must be done by at least three people over the age of 19. (AS 10.05.252).
- .315. ARTICLES OF INCORPORATION. This section sets out the minimum requirements of the articles of incorporation for general stock ownership corporations. The article provisions required by subchapter "U" of the Internal Revenue Code are included in this section as requirements for GSOCs organized in Alaska. Other provisions are carried over from ABCA. (AS 10.05.255).
- .320. FILING OF ARTICLES OF INCORPORATION. Articles of incorporation are to be filed with the Commissioner of Commerce who shall certify the filing and return one original of the articles to the corporation. (AS 10.05.258).
- .325. EFFECT OF ISSUANCE OF CERTIFICATE OF INCORPORATION. Upon issuance of the certificate the corporate life begins. (AS 10.05.261).
- .330. ARTICLES OF INCORPORATION AND INITIAL BYLAWS. This section provides for legislative review of the articles and initial bylaws. They must be submitted to the next session of the legislature and, if not disapproved within 60 days by concurrent resolution they are approved. Legislative disapproval may be overridden by a vote of the shareholders.



- .335. ORGANIZATION MEETING OF DIRECTORS. The incorporators shall call an organizational meeting of directors in the state for the purpose of adopting bylaws, electing officers and conducting other business necessary to the organization of the corporation. (AS 10.05.267).
- .340. NOTIFICATION OF ELIGIBLE SHAREHOLDERS. Since stock is to be distributed free of charge initially all Alaska residents must be notified of its availability. This section sets out the minimum notice requirements of weekly broadcast and publication for at least three month before stock distribution and monthly broadcast and publication for eleven months after distribution. These are minimum requirements only and the board of directors may determine that the corporation should take other steps to identify and notify potential shareholders.
- .345. CORPORATION NOT LIABLE TO SHAREHOLDERS. Although GSOCs are required to take reasonable steps to notify potential shareholders of their right to stock the burden of applying for stock lies with the resident and the corporation is not liable for failure to notify or issue stock to a potential shareholder. If a resident makes application for stock after the distribution of one or more dividends he loses his right to those dividends and is entitled to receive only those dividends declared and paid after the date upon which his stock was issued to him.
- .350. LATE APPLICATION FOR SHARES. Any individual who is eligible to receive an initial distribution of shares but who fails to apply for an issuance of stock may be issued a share at any time within one year of the original issue of stock upon application and payment of book value therefor. The one year period coincides with the period during which a shareholder may elect not to receive his stock and have his share cancelled. This cut off period protects the corporation and the other shareholders from those eligible residents who are not identified and who fail to identify themselves hoping to see how the corporation fares before applying for their stock.
- .355. PENALTIES FOR MISREPRESENTATION OF ELIGIBILITY AS SHAREHOLDER. The superior court is given jurisdiction to void stock issued to an ineligible individual who obtained his shares by fraud and allows the corporation to recover any distributions paid to such a shareholder.

### ARTICLE 3. AMENDMENT.

- .360. RIGHT TO AMEND ARTICLES OF INCORPORATION. The articles of the corporation may be amended to include any legal provision. (AS 10.05.270).

- .365. PURPOSES FOR WHICH ARTICLES MAY BE AMENDED. This section lists some, but not all, of the legal purposes for which the articles may be amended. (AS 10.05.273).
- .370. PROCEDURE TO AMEND ARTICLES OF INCORPORATION. The board of directors or the shareholders can propose amendments to the articles of incorporation, but the articles may only be amended upon a 2/3 majority vote of a quorum of shareholders.
- .375. ARTICLES OF AMENDMENT.
- .380. FILING OF ARTICLES OF AMENDMENT.
- .385. EFFECT OF CERTIFICATE OF AMENDMENT.  
These three sections provide that an amendment approved by the shareholders to the articles of incorporation must be filed with the Commissioner of Commerce in the same manner as the original articles of incorporation and once certified by the Commissioner the amendment becomes effective. These sections are adopted directly from AS 10.05.285, .288, and .291 respectively.
- .390. RESTATED ARTICLES OF INCORPORATION.
- .395. EXECUTION OF RESTATED ARTICLES OF INCORPORATION.
- .400. CONTENTS OF RESTATED ARTICLES OF INCORPORATION.
- .405. FILING OF RESTATED ARTICLES OF INCORPORATION.
- .410. EFFECT OF ISSUANCE OF RESTATED CERTIFICATE OF INCORPORATION.  
These five sections deal with restated articles of incorporation. Restated articles of incorporation for purposes of GSOCs are simply a consolidation and updating of the articles of incorporation with current amendments. This allows the corporation to have on file with the Commissioner a current copy of the articles of incorporation incorporating all amendments. The provisions are adopted essentially from ABCA except that GSOCs are not allowed to amend the articles of incorporation through filing restated articles and for that reason are allowed to file restated articles upon motion of the board of directors. (AS 10.05.294, .297, .300, .303, and .306 respectively).

#### ARTICLE 4. SALE OF ASSETS.

- .415. SALE OR MORTGAGE OF ASSETS IN REGULAR COURSE OF BUSINESS.  
The board of directors may sell or dispose of all the assets of the corporation if it is in the ordinary course of the corporation's business. (AS 10.05.435).
- .420. SALE OR MORTGAGE OF ASSETS OTHER THAN IN REGULAR COURSE OF BUSINESS. Sale of all the assets of the corporation other than in the ordinary course of business requires a vote of the shareholders. (AS 10.05.438).

- .425. APPROVAL OF PLAN BY SHAREHOLDERS. A 2/3 vote of the shareholders is required to approve a sale of all the assets of the corporation outside the ordinary course of business. (AS 10.05. 441).
- .430. ABANDONMENT OF PLAN BY BOARD OF DIRECTORS. Even though a vote of the shareholders is required to approve a sale of all the assets the sale may be abandon by the board since such sales are unusual and may require quick decisions which cannot be effectively put to the shareholders. If the shareholders are unhappy about the abandonment they have the power to remove the board and it is to be expected that the board would not abandon such a sale without good cause. (AS 10.05.444).
- .435. RIGHTS OF DISSENTING SHAREHOLDERS UPON SALE OR EXCHANGE OF ASSETS.
- .440. NOTICE TO DISSENTING SHAREHOLDER.
- .445. PAYMENT TO DISSENTING SHAREHOLDER AFTER AGREEMENT ON VALUE OF SHARES.
- .450. ACTION BY DISSENTING SHAREHOLDER TO COMPEL PAYMENT UPON FAILURE TO AGREE ON VALUE.
- .455. EFFECT OF ABANDONMENT OR REVOCATION OF SALE OR EXCHANGE ON SHAREHOLDER'S RIGHTS.
- .460. STATUS OF SHARES ACQUIRED FROM DISSENTING SHAREHOLDER. These section deal with the shareholder who does not wish to be a part of the sale of substantially all the assets of the corporation in spite of the 2/3 majority vote of the shareholders. Such a shareholder can dissent from the sale and have the corporation purchase his shares. There are notice provisions and opportunity for the shareholder and the corporation to agree upon a purchase price for the shares. If the shareholder and the corporation cannot agree upon a price the matter can be decided by a court. If the sale is abandoned the dissenting shareholder loses his right to receive payment from the corporation for his share and he remains a shareholder. Shares acquired from a dissenting shareholder become treasury shares.

#### ARTICLE 5. DISSOLUTION.

GSOCs may be dissolved voluntarily by a 2/3 vote of a quorum of shareholders (.470) or by the Commissioner of Commerce (.525).

In a voluntary dissolution the question may be put to the shareholders upon action of the board or a petition of 100 shareholders (.470). Upon affirmative vote of the shareholders a statement of intent to dissolve signed by corporate officers (.475) is filed with the Commissioner of Commerce (.480). When the statement is officially filed by the Commissioner the corporation must cease doing business and wind up its operations (.465). However, the corporate existence continues while the corporation notifies creditors,



collects and liquidates assets and pays off its obligations (.485)(.490). When the business of the corporation has been wound up articles of dissolution (.510) are filed with the Commissioner (.515) and when certified the corporate existence ceases (.520). Voluntary dissolutions may be revoked at any time by a 2/3 vote of the shareholders (.495) in which case the corporation files a statement of revocation (.500) and the dissolution process is terminated (.505).

A GSOC may be dissolved involuntarily by the Commissioner of Commerce with 60 days notice for failure to file reports or pay fees, failure to maintain a registered agent or office or change either without notice, and unfilled board vacancies continuing beyond the allowable time (.525). A corporation can be reinstated within two years upon remedy of the violation.

The superior court may dissolve a GSOC (.53) and has jurisdiction to liquidate the corporation's assets (.535). The Attorney General may bring suit to dissolve the corporation where there was fraudulent incorporation or continual abuse of corporate authority (.525).

In addition a suit for liquidation of the corporations assets may be brought by:

- 1) A shareholder where the board is deadlocked; the board is action in an illegal, oppressive, or fraudulent manner; the shareholders are deadlocked for two annual meetings; or, the corporation's assets are being misapplied (.540).
- 2) A creditor when the creditor's claim is unsatisfied and the corporation is insolvent (.545).
- 3) The corporation upon request to have a voluntary dissolution continued under court supervision(.550).
- 4) The Attorney General in conjunction with a suit for dissolution (.555).

The shareholders need not be a party to the action for liquidation (.560). The court has authority to appoint a qualified receiver (.600) for the corporation with power defined by the court (.580) to collect and sell its assets (.565)(.570). Proceeds are to be used to pay expenses allowed by the court (.585) and debts of the corporation with the remainder distributed to the shareholders (.575).

The receiver may sue and be sued (.590) and all claims against the corporation must be filed in a timely manner with the court or the receiver (.605). Liquidation may be terminated by the court (.610) but upon completion the court must enter a decree of dissolution (.615).

The article on dissolution is carried over substantially intact from ABCA (AS 10.05.465 - .594).



ARTICLE 6. GENERAL PROVISIONS.

- .620. AS 10.05 INCORPORATED BY REFERENCE. In order to reduce duplication this section incorporates by reference Sections .699 through .819 of ABCA (AS 10.05.699 - .819). These sections deal with requirements for annual reports to be filed with the Commissioner of Commerce, filing fees and charges, procedural provisions and forms, and powers of the Commissioner of Commerce.
- .625. FALSE STATEMENTS AFFECTING VALUE OF SHARES. An agent of a corporation who makes fraudulent statements regarding the value of shares is guilty of a misdemeanor.
- .630. DIRECTOR MAKING UNLAWFUL DIVIDEND OR DISTRIBUTION OF ASSETS. A director who concurs in a distribution designed to deceive creditors or shareholders is guilty of a misdemeanor.
- .635. RESERVATION OF POWER. Amendments to this chapter apply to all existing and future corporations organized under it.
- .640. DEFINITIONS. Many of the definitions in this section are carried over from ABCA and may also be found in AS 10.05.825. However, there are two significant new definitions:

Certificate as used in the context of "stock certificate" may mean something other than the actual certificate such as a receipt evidencing ownership. This definition has been broadened in order to allow for the possibility that the stock certificates themselves may never be issued, but that the stock records may be kept by the corporation itself as the evidence of ownership in a particular shareholder which ownership would be represented in the hands of the shareholder by a receipt. Such a receipt would be required to carry all the same information as is required on the certificate itself.

Resident is defined as a person who lives in Alaska and intends to remain here permanently. The definition allows for temporary travel or employment outside without loss of residency. If a dispute arises over residency all of the facts and circumstances indicative of permanent residency must be considered.



SCHOOL OF LAW

DAVIS, CALIFORNIA 95616

April 4, 1979

The Honorable Mike Miller  
Chairman  
State Affairs Committee  
Alaska State House of Representatives  
Pouch "V" State Capitol Building  
Juneau, Alaska 99811

Dear Chairman Miller:

I am enclosing the promised specific, suggested amendments to SSHB 240 which are addressed to the questions of accountability of the Board, the rights of shareholders, and procedures for Board and Board Committee meetings. In each instance I have attempted to describe the content of the proposed amendment and to offer an explanation of why I hold the view that such an amendment would be desirable. I have then attempted to break the amendment down into its component ideas and to give the Committee an opportunity to vote them up or down. My further function in this regard is then to draft statutory language which carries into effect the decisions of your Committee.

A number of critical questions concerning SSHB 240 are not addressed in this transmission. We have yet to discuss the regulation of proxies, their content and the vexing issue of how they will be financed. If the legislature desires to influence these thorny problems, now is the only opportunity. Another unfinished item is the future political activities of the GSOC. We can anticipate substantial first amendment problems if we embark on a project to muzzle the directors in their individual capacities. If the directors can speak to the public, the limitation on the "corporation's political activities" is, at best, theoretical. Working on this problem should present quite a challenge!

Finally, there are the proposals I advanced on the first evening of my testimony regarding criminal liability of directors in certain instances. I will work on these in the course of the next week.

If I may offer a suggestion: As I spend more and more time with SSHB 240 and the Alaska Business Corporations Act the more I become convinced that the better course is not to amend the existing corporations code to make room for the GSOC, but to begin anew and design a fully developed Code to regulate the GSOC, a set of laws designed with the special attributes of a general stock ownership corporation in mind and not as an afterthought. This project sounds bigger than it will turn out to be. I sincerely believe that working with your staff people it could be accomplished in a matter of weeks, although I would prefer to have the summer months to fine-tune the statute but, in the final analysis, having come this far with you, I am the servant of the Committee.

I hope that this material proves of use to the Committee. When you have reached your decisions simply mail them back to me and I will sit down and draft the content of suggested legislation.

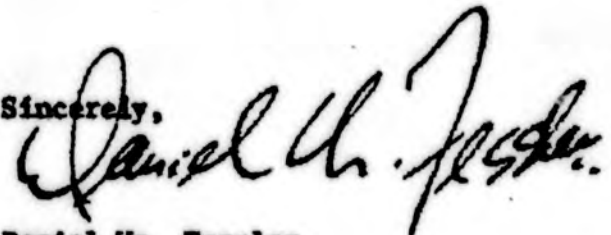
The Honorable Mike Miller  
Chairman  
State Affairs Committee

April 4, 1979

May I take this opportunity to thank you, the other members of the Committee, the various nonmembers who sat in on our discussions and the staff people for a splendid experience. People here have remarked that they have never seen me so energetic. One student commented that I seem to be following the "North Star." In any event, it has been an experience beyond the imagination of the scriptwriters for the "Paper Chase." I thank you all.

Best personal regards,

Sincerely,

A handwritten signature in dark ink, appearing to read "Daniel Wm. Fessler". The signature is fluid and cursive, with a large initial 'D' and 'F'.

Daniel Wm. Fessler  
Professor of Law

DWF:hif

Enclosures

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1 TO: THE STATE AFFAIRS COMMITTEE OF THE ALASKA HOUSE OF  
2 REPRESENTATIVES

3 FROM: Professor Daniel Wm. Fessler, King Hall, the Law School of the  
4 University of California at Davis

5 SUBJECT: Suggested Amendments to Sponsor Substitute for House Bill 240:  
6 "An Act Creating the Alaska General Stock Ownership Corporation;  
7 and providing for an effective date."

8 DATE: April 4, 1979

9 Preliminary statement: At the conclusion of my appearance before the  
10 Committee last week I agreed with the members to prepare a series of written  
11 proposals for your consideration. Depending upon the sentiment of this body I  
12 will be directed in the drafting of amendments to the Sponsor's Substitute for  
13 House Bill No. 240. As will quickly become evident, it is time for the  
14 Committee to make some basic choices concerning the nature of the General Stock  
15 Ownership Corporation which it may wish to pass to the floor for consideration  
16 in the whole House. The suggestions which follow represent nothing beyond the  
17 scope of our discussion last week unless specifically indicated as "NEW." In  
18 each instance I will set forth the proposal and a brief statement illustrating  
19 specifically what it is that I am suggesting be accomplished if you elect to  
20 follow my recommendation.

21 I. SUGGESTIONS DESIGNED TO MAKE THE BOARD OF DIRECTORS MORE RESPONSIVE TO THE  
22 DESIRES OF SHAREHOLDERS OF THE GENERAL STOCK OWNERSHIP CORPORATION:

23  
24 My perception of the need for revision: The pending proposal is that the  
25 legislature create the ACSOC as a "private" corporation essentially regulated  
26 under the terms of Chapter 05 of the Alaska Statutes (The Alaska Business  
27 Corporation Act). As I indicated in my testimony, this general statute is a  
28 bare bones version of the "Model Act" which is, in turn, fashioned after the

1 Illinois Business Corporation Act. Its essential feature is to give a corpora-  
2 tion a license to create a very strong board of directors, a board which is  
3 effectively insulated from shareholder pressure during its tenure in office.

4 This is a crucial assertion. Once this corporation is created and  
5 deemed "private" the legislature will part with its major chance to have an  
6 effective voice in the behavior of such an instrumentality. If the GSOC is a  
7 successful economic venture the power of that unchecked body will rise  
8 dramatically and its ability to pursue conduct which subsequent legislatures  
9 may deplore is a real danger which ought to concern this present body.

10 Why is the board of directors of a corporation organized under a  
11 statutory framework such as the Model Act virtually unchecked in these circum-  
12 stances? To begin our assessment we should think in terms of the content of  
13 three documents: the statutory framework, the articles of incorporation, and  
14 the bylaws. It is no accident that the Kelso Report presents this legislature  
15 with a package containing a recommended content for each of these essential  
16 documents. Here is a point the Kelso Report does not stress: the legislature  
17 has control only over the statutory framework (the enabling legislation now  
18 before the Committee). Once the GSOP is formed by this legislation, the  
19 incorporators (See, Sec. 10.50.010(a), p. 1 SSHB 240) will adopt the articles  
20 of incorporation and it will then be beyond the powers of this or subsequent  
21 legislatures to interfere with the content of that fundamental document. Once  
22 the incorporators have elected themselves as the initial board of directors  
23 (See, Sec. 10.50.030(b), p. 3 SSHB 240), they will act in that capacity to  
24 adopt the content of the bylaws. Again, it will be too late for the legisla-  
25 ture to exert its will. Thus unless changes are made you will have surrendered  
26 to these nine appointed individuals sole determination over the content of the  
27 documents which will become the framework in which the corporation will  
28 actually be structured and function. Your only chance for effective influence

1 is with respect to the content of the statute. If you adopt the current  
2 content of House Bill 240, you will hand these appointed individuals (only a  
3 majority of whom need be Alaskans) a blank check to narrow their accountability  
4 to all of the citizens of this state in their capacities as shareholders in the  
5 GSOC. The express terms of SSAB 240 already give to this Board the strong  
6 power position of "classification" meaning that the directors will serve three  
7 year terms with the nine members segregated into three classes so that only one  
8 third of the membership is up for election by the shareholders at each annual  
9 meeting. (See, 10.50.030(a)(b), pp. 2-3 SSAB 240). There is a pragmatic  
10 advantage in this proposed classification in that insures to the incumbent  
11 board the continuity inherent in the fact that a working majority of the Board  
12 will not be facing election. There is also a grave danger. Such a Board  
13 could ignore the wishes of a majority of the shareholders and yet maintain  
14 effective control and management over the corporation for two years. The  
15 people in their role as shareholders would be powerless. This body in its  
16 role as representative of the people would be equally powerless. True, it  
17 could deny the GSOC cooperation to the extent that it was requesting the  
18 legislature to call for an election to authorize a state guarantee of GSOC debt  
19 instruments (although see the Memorandum of Attorney General Gross under date  
20 of March 20, 1979, raising a question as to whether recourse to the people  
21 would actually be required). Yet this is a very indirect way of attempting to  
22 discipline the Board or correct the excesses of that body as viewed from the  
23 perspective of the legislature. I do not wish to belabor the point: if the  
24 members of this House feel that a different distribution of power as between  
25 the shareholders and the board, and as between the GSOC and the government of  
26 Alaska is desired . . . now is the time to act and the content of the enabling  
27 legislation is the proper forum for that action.

28 // // // //



1 PROPOSALS DESIGNED TO INCREASE THE ACCOUNTABILITY OF INDIVIDUAL DIRECTORS AND  
2 THE BOARD AS AN ENTITY:

3  
4 PROPOSAL NUMBER ONE: THAT DIRECTORS BE SUBJECT TO REMOVAL BY ORDER OF A  
5 SUPERIOR COURT UPON SUIT BY 100 OR MORE SHAREHOLDERS OF THE GENERAL STOCK  
6 OWNERSHIP CORPORATION.

7 I propose that the enabling legislation be amended to  
8 provide that a superior court may, at the suit of 100 share-  
9 holders or more or upon petition of the attorney general,  
10 remove from office any director in case of fraudulent or  
11 dishonest acts or gross abuse of authority or discretion  
12 with reference to the corporation and may bar from reelection  
13 any director so removed for a period prescribed by the court.  
14 In any such proceeding the corporation ~~should be~~ made a  
15 party to the action.

16 Explanation: This proposal is based upon Section 304 of the 1977  
17 California Act with two important modifications: first, I propose that  
18 now alter the "standing requirement" from California's ["... share-  
19 holders holding at least 10 percent of the number of outstanding  
20 shares. . . ."] to one hundred shareholders. To follow the California  
21 percentage would be most unreal given the total diffusion of share-  
22 holdings in the GSOC (one share per resident). It would require a  
23 petition of 40,000 Alaskans or more! In any other private corporation it  
24 is perfectly possible for a single shareholder to own 10% or more of the  
25 outstanding shares and thus have standing under the California Act.  
26 Requiring one hundred Alaskans to join in this suit should ensure that a  
27 single angry shareholder could not inaugurate a vexatious complaint. The  
28 second modification is to specially grant to the Attorney General standing



1 to initiate this removal litigation. I do this because while the attorney  
2 general may well have personal standing as a resident of Alaska to join in  
3 such a suit we must recognize that litigation may be costly and that  
4 frequently only the office of the attorney general may have the human and  
5 financial resources to prosecute a removal suit upon which may depend the  
6 welfare of the corporation (and with that, welfare and interests of  
7 Alaskans).

8 Now it must be immediately evident that this type of removal can only  
9 be for the most gross violations of the fiduciary responsibilities assumed  
10 by a director and that the statute only grants standing to potential  
11 litigants and subject matter jurisdiction to the superior courts.  
12 Naturally, the plaintiffs would have to prove the allegations of their  
13 complaint by a preponderance of the evidence before the superior court  
14 would be warranted in exercising the power vested in it by this statute.  
15 I should add that it is quite possible that if the legislature does not  
16 act to provide for removal of directors in circumstances such as are  
17 covered by this proposal, a superior court might entertain such suits on  
18 a theory that such a grave matter is within the court's inherent jurisdic-  
19 tion. There is precedent. See, California Fruit Growers' Assn. v.  
20 Superior Court, 8 Cal.App. 711, 97 Pac. 769 (1908). In my opinion, this  
21 is not a desirable alternative because the legislature would be without  
22 control over the vital questions of who had standing to initiate the  
23 litigation and what would be deemed sufficient grounds for this grave  
24 remedy.

25 DIRECTIONS TO YOUR DRAFTING AIDES: Does the Committee favor  
26 in principle the concept of having directors subject to  
27 removal by order of a superior court? YES \_\_\_\_ NO \_\_\_\_ If  
28 "yes," is the Committee in favor of the proposed formula

granting standing only to one hundred or more shareholders?

YES \_\_\_\_ NO \_\_\_\_ . Does the Committee favor granting standing to the Attorney General of Alaska to initiate a removal suit?

YES \_\_\_\_ NO \_\_\_\_ .

PROPOSAL NUMBER TWO: THAT ANY DIRECTOR OR THE ENTIRE BOARD MAY BE REMOVED BY THE SHAREHOLDERS WITHOUT CAUSE.

I propose that at any annual meeting or a special meeting properly noticed for the purpose at which a quorum is present, a majority of the shares voting in person or by proxy may remove the entire board and elect replacement directors. I further propose that the shareholders have power to remove less than the entire board provided there are appropriate safeguards to minimize the chance that an angry faction of shareholders could oust a single director.

Explanation: Both California and Delaware have found it expedient to pass recent legislation enabling shareholders who have lost confidence in the Board of Directors to remove either the entire Board or individual members at a meeting especially called and noticed to entertain such a motion, and that such removal may be for any cause deemed sufficient by a majority of the shares. In both California and Delaware, the statutes grant the right of removal to an absolute majority of the shares (50% plus 1 share). Again, we must recognize that there may be individuals or institutional shareholders who, though a handful in number, would command an absolute majority of the outstanding shares. Such a potential coalition of large shareholders is a strong check upon the Board of Directors. Unfortunately, there will be no such potential shareholder

1 coalition in the CSOC. We must deal with the fundamental characteristic  
2 of a corporate entity, the shares of which are held in lots of one . . .  
3 and by more than 400,000 individuals.

4 The Kelso Report recognizes the problem of human inertia inherent in  
5 such diffuse shareholdings when it proposes to set a quorum for share-  
6 holder attendance at annual and special meetings at one-third of the  
7 shares voting either in person or by proxy (an absentee ballot). At any  
8 meeting at which such a quorum is ascertained to be present, a vote of a  
9 majority of that quorum is sufficient to elect directors. Simple arith-  
10 metic will reveal that a simple majority of one-third is one-sixth of the  
11 shares plus one. Such a scheme is permitted by Sec. 10.05.153 of the  
12 Alaska Business Corporation Act if the articles of incorporation are so  
13 drafted. I favor this aspect of the proposed articles contained in the  
14 Kelso Report because I fear that setting a higher quorum requirement might  
15 preclude the shareholders from effectively meeting. How then does this  
16 guide us as to the machinery for removal of directors by shareholder vote?  
17 I propose that the entire board might be removed for any reason either at  
18 an annual or special meeting of shareholders for which notice of such a  
19 proposal had been given (as provided in Sec. 10.05.141) upon the vote of a  
20 majority of a quorum of the shares present in person or by proxy.

21 If the shareholders desire to remove less than the entire board, we  
22 have a different problem. Here is a danger that a special interest group  
23 or other faction might attempt to gang up on a single director for his or  
24 her policies and seek to accomplish this at a special meeting which may  
25 well be attended by fewer shares than were present at the annual meeting  
26 which elected the targeted director. We can guard against this possibility  
27 by drafting the statute to provide that in the event that there is an  
28 attempt to remove less than the entire board, the resolution shall fail



1 unless the number of shares cast for removal exceeds the number of shares  
2 which originally elected the director. Thus if he was elected by a  
3 majority of 261,000 shares at an annual meeting, a special meeting noticed  
4 to entertain a removal resolution would not accomplish that objective  
5 unless 261,001 shares voted "yes" (in person or by proxy) on that question.  
6 If the director was appointed (as in the case of the initial Board), or  
7 elected by the Board to fill a vacancy arising by death, incapacity, or  
8 resignation mid-term, I would propose that a simple majority of a quorum  
9 would be sufficient to remove that director.

10 DIRECTIONS TO YOUR DRAFTING AIDES: Does the Committee favor  
11 in principle the concept of having directors susceptible of  
12 removal by vote of the shareholders? YES \_\_\_\_ NO \_\_\_\_ . If  
13 so, is the Committee content with the suggested formula for  
14 that removal? YES \_\_\_\_ NO \_\_\_\_ .

15  
16 PROPOSAL NUMBER THREE: THAT THE ENABLING ACT REGULATE THE STANDING OF  
17 SHAREHOLDERS TO INAUGURATE ACTIONS AGAINST DIRECTORS OR OFFICERS BROUGHT  
18 FOR THE BENEFIT OF THE CORPORATION (SHAREHOLDER'S DERIVATIVE ACTIONS).

19 I propose that the enabling act be amended to regulate  
20 the standing of shareholders to inaugurate actions seeking  
21 declaratory relief or money damages as against officers and  
22 directors of the GSOC for the benefit of the corporation  
23 (shareholder's derivative actions); lodge discretion in the  
24 superior court respecting whether and in what amount a security  
25 bond for expenses of litigation should be required of such a  
26 plaintiff; preclude non-judicially approved out-of-court  
27 settlements of such actions; and, provide for an accounting  
28 to the corporation of any proceeds received by the litigating



1 shareholder(s) whether by judgment, settlement, or compromise.

2 Explanation: One of the most important developments in the past half  
3 century in seeking to hold directors and officers accountable for harm  
4 they bring upon the corporation is the concept of the shareholders' action  
5 or derivative suit. If you adopt the hypothesis that the Board or certain  
6 of its members is guilty of action or inaction which has brought great  
7 harm to the GSOC and which violates the duties of care or loyalty to the  
8 corporation, it is unrealistic to assume that those very directors will  
9 authorize or encourage corporate counsel to bring an action naming them as  
10 defendants! For this reason it is necessary to give individual share-  
11 holders the right to bring the litigation in the name of the corporation.  
12 Any recovery of money damages goes to the corporate treasury, not to the  
13 litigating shareholder (save for reimbursing him/her for the costs of the  
14 litigation).

15 Nearly every jurisdiction permits such actions and most regulate the  
16 conduct of such litigation by statute. Alaska is one of the few juris-  
17 dictions which permits but does not regulate by statute. Fortunately, the  
18 Supreme Court has acted to fill this void by providing in Rule 23.1 of the  
19 Civil Rules certain regulations for derivative actions by shareholders.  
20 (Added by Supreme Court Order 258, November 16, 1976.) The Alaska rule is  
21 predicated upon and nearly identical to Rule 23.1 of the Federal Rules of  
22 Civil Procedure. In my opinion, it does not go far enough in policing  
23 derivative actions by shareholders in the context of the General Stock  
24 Ownership Corporation.

25 The matters which should be covered by statute include:

26 \* Who among the shareholders may bring such an action?

27 I suggest that standing be limited to a shareholder who held his or  
28 her share at the time of the transaction of which complaint is made

1 else an unscrupulous shareholder might merely "buy a lawsuit." And  
2 standing should be limited to a shareholder or shareholders with  
3 sufficient resources to be able to vigorously prosecute the action  
4 since a judgment will bind all of the other shareholders by its  
5 result.

6 \* Should the shareholder be required to exhaust intra-corporate  
7 remedies (e.g., make a demand upon the Board that it bring the  
8 action) as a precondition to commencing the action?

9 Modern statutes do not require the shareholder to make demands upon  
10 the Board if that would be a futile act (e.g., if the directors are  
11 named as the defendants it is unlikely that they would respond to the  
12 demand by directing suit against themselves). Thus I would propose  
13 that the shareholder be required to make demand upon the Board for  
14 corrective action or to allege in his complaint before the superior  
15 court the reasons why he deems such a demand to be a futile gesture.

16 \* Should the shareholder be required to post a bond as a  
17 precondition to maintaining any derivative action?

18 Defending a derivative action is time consuming and expensive and  
19 there is always a danger that a shareholder will bring an ill-  
20 founded or vexatious action simply to harass management or in the  
21 hope that he will be "bought off" with an out-of-court settlement.  
22 To minimize the instance of such "strike suits," many states in the  
23 1940's adopted the practice of requiring a litigating shareholder to  
24 post a bond as a precondition to maintaining the action, a bond which  
25 would hold the defendants harmless against their costs of litigation  
26 (including attorney's fees) in the event the shareholder should fail  
27 to prevail. There is no current Alaska law on this point. Rule 23.1  
28 is silent. My suggestion is that the Committee borrow the best

1 features of modern California and New York statutes on striking a  
2 balance on this vital question. Section 800 of the California Act  
3 leaves the trial court with substantial discretion to entertain a  
4 timely motion from defendants for the posting of such security. Thus  
5 the court could consider the nature of the plaintiff's allegations  
6 and project the likelihood of success. It would then exercise sound  
7 discretion in requiring that a bond be posted or in denying the  
8 request of the defendants. If a bond is required the court has  
9 further discretion to determine the amount of the bond. California  
10 presently limits the bond to a sum not more than \$50,000. This  
11 ceiling is viewed as posing some protection against a judge who would  
12 simply price the plaintiff out of court with a bond requirement  
13 substantially beyond reasonable means. Again, the California Act  
14 provides that the amount of the bond may be raised or lowered (subject  
15 to the \$50,000 ceiling) at any time during the course of the litigation  
16 upon the motion of either party or upon the court's own  
17 initiative as it seems the interests of fairness to require.

18 \* Should the shareholder who has commenced a derivative action be  
19 allowed to compromise or "settle out of court"?

20 No, not in my opinion. This is very dangerous and tolerates "strike  
21 suits"—actions commenced with no solid ground but with the hope that  
22 management will tire of the time and expense of defending the litigation  
23 and "buy plaintiff off." New York is far ahead of other jurisdictions  
24 in warding off this danger. No action in the nature of a  
25 derivative suit may be settled or compromised without the approval of  
26 the court in which it was commenced and without notice to the other  
27 shareholders. This last feature is essential to protect the interests  
28 of both the court and the other shareholders. The court is protected



1 for a judicially approved settlement precludes any shareholder from  
2 attempting to relitigate the same questions. The notice requirement  
3 permits other shareholders to come forward and object either to the  
4 terms of the proposed settlement or to offer to take up the suit and  
5 carry it forward in the event of an afterarising unwillingness of the  
6 original litigant.

7 \* Should the litigating shareholder in all circumstances be forced  
8 to account to the corporation for any proceeds realized from such  
9 an action?

10 Yes. In all jurisdictions this is mandatory if the court returns a  
11 judgment against the defendant officers or directors. All proceeds  
12 of the judgment are paid into the corporate treasury on the theory  
13 that the action has vindicated harm done to the corporation and not  
14 the litigating shareholder. The shareholder receives an allowance  
15 from these funds sufficient to cover the costs of the litigation.  
16 But what if the resolution is by way of an informal settlement? This  
17 is the dark side of this type of litigation. Frequently shareholders  
18 are offered a tidy sum (e.g., \$20,000) if they will dismiss their  
19 suit. They keep the money and none of the other shareholders are the  
20 wiser. New York simply prevents this. There can be no informal  
21 settlement. Any dismissal predicated upon a compromise must be pre-  
22 sented to the court, its terms noticed to the other shareholders, and  
23 any proceeds paid into the corporate treasury.

24 If all of these features are incorporated into the enabling act, I am  
25 of the view that Alaska will have the best of all possible positions with  
26 the virtue of derivative actions and none of the vices inherent in strike  
27 litigation.

28 / / / / /



1 DIRECTIONS TO YOUR DRAFTING AIDES: Does the Committee favor in  
2 principle the concept of permitting derivative actions by share-  
3 holders in the General Stock Ownership Corporation? YES \_\_\_\_ NO \_\_\_\_.

4 If "yes," does the Committee favor regulating the derivative action  
5 by special provisions in the enabling act? YES \_\_\_\_ NO \_\_\_\_.

6 If "yes," does the Committee favor:

7 \* The suggested standing rules? YES \_\_\_\_ NO \_\_\_\_.

8 \* The suggested provision on exhaustion of intra corporate  
9 remedies? YES \_\_\_\_ NO \_\_\_\_.

10 \* The suggested provision on the posting of a security bond  
11 for the defendants' costs of litigation? YES \_\_\_\_ NO \_\_\_\_.

12 \* The suggestion that there be no compromise or dismissal of  
13 such an action without court approval? YES \_\_\_\_ NO \_\_\_\_.

14 \* The suggested provision that the litigating shareholder in  
15 all circumstances be forced to account to the corporation  
16 for any proceeds realized from such a derivative action?

17 YES \_\_\_\_ NO \_\_\_\_.

18  
19 11. PROPOSALS DESIGNED TO INCREASE THE INFORMATION AVAILABLE TO AND THE  
20 POTENTIAL ROLE OF SHAREHOLDERS IN THE GENERAL STOCK OWNERSHIP CORPORATION.

21  
22 PROPOSAL NUMBER FOUR: THAT THE ENABLING ACT BE AMENDED TO PROVIDE  
23 LIABILITY FOR AN OFFICER OR AGENT WHO WRONGFULLY REFUSES TO ALLOW A SHARE-  
24 HOLDER, OR A SHAREHOLDER'S AGENT OR ATTORNEY, TO EXAMINE AND MAKE  
25 EXTRACTS FROM CORPORATE BOOKS AND RECORDS.

26 I propose that an officer or agent who refuses to allow  
27 a shareholder or the agent or attorney of a shareholder to  
28 examine and make extracts from corporate books and records

1 of account, minutes, and record of shareholders, for a  
2 proper purpose be made liable to the aggrieved shareholder  
3 for the penal sum of \$1,000 in addition to other damages or  
4 remedy given such shareholder by law.

5 Explanation: Currently Sec. 10.05.240 of the Alaska Business  
6 Corporations Act confers upon shareholders a right to examine books and  
7 records. Section 10.05.243 provides a penalty for any officer or agent  
8 of the corporation who refuses to permit this inspection. Unfortunately,  
9 the penalty there provided (10% of the value of the shares owned by the  
10 aggrieved shareholder), is not much of a sanction in the context of the  
11 GSOC. In other contexts it may be very effective for it is obvious that  
12 the larger the number of shares owned by the aggrieved shareholder the  
13 more substantial are the consequences of denying the right of inspection.  
14 But a shareholder in the GSOC can never own more than 10 shares. Thus I  
15 propose to follow the current content of Alaska law in all particulars  
16 save for suggesting that a flat penal sum of \$1,000 be established as the  
17 sanction.

18 The effective use of any of the shareholder checks upon management  
19 which are set forth in Suggestions One, Two and Three depend upon an  
20 effective ability to gain information as to the conduct of corporate  
21 affairs by the officers and the Board. Thus an effective right of  
22 inspection is essential. Indeed, the Committee might desire to see the  
23 penal sum imposed for each day there is a wrongful denial of the statutory  
24 right of inspection conferred by Sec. 10.05. 240.

25 DIRECTIONS TO YOUR DRAFTING AIDES: Does the Committee favor the  
26 concept of a statutory right of shareholders in the General Stock  
27 Ownership Corporation to inspect corporate books and records?

28 YES \_\_\_\_ NO \_\_\_\_ . Should this sum be levied: (a) per

1 refusal \_\_\_\_\_; or, for each day of a refusal \_\_\_\_\_?

2  
3 PROPOSAL NUMBER FIVE: THAT THE SHAREHOLDERS BE GIVEN THE POWER TO  
4 INITIATE AMENDMENTS TO THE BYLAWS.

5 The current statutes in Alaska provide that the articles  
6 may restrict the power to adopt, amend, and repeal bylaws to  
7 the Board of Directors. The Kelso Report recommends articles  
8 which do so restrict the power to the Board and it is likely  
9 that this is what a Board would do. I propose that the  
10 enabling act be amended to reserve a power of adoption,  
11 amendment or repeal of the bylaws to the vote or written  
12 assent of shareholders entitled to exercise a majority of the  
13 voting power of the GSOC. I would also propose that the act  
14 permit the Board to enjoy this power save for the fact that  
15 the Board could not, on its own motion, repeal or amend a  
16 bylaw which had been adopted by vote of the shareholders.

17 Explanation: As was dramatically illustrated by the content of the  
18 Kelso Report, the document which is most likely to contain the crucial  
19 provisions which govern the structure and operation of the General Stock  
20 Ownership Corporation is the bylaws. A significant feature in what is, in  
21 my opinion, the excessive grant of power to the Board in SSHB 240 is the  
22 potential for vesting this power exclusively in the Board. The balance  
23 can be redressed by simply amending the enabling act to provide for a  
24 sharing of this power in the case of a General Stock Ownership Corporation.

25 DIRECTIONS TO YOUR DRAFTING AIDES: Does the Committee favor  
26 the concept of permitting the shareholders to adopt, amend or  
27 repeal bylaws in the General Stock Ownership Corporation?  
28 YES \_\_\_\_\_ NO \_\_\_\_\_. If "yes," does the Committee favor the



1 suggestion that this power be vested by statute in both the  
2 shareholders and the Board? YES \_\_\_\_ NO \_\_\_\_.

3  
4 **III. PROPOSALS DESIGNED TO IMPROVE THE QUALITY OF BOARD DECISION MAKING.**

5  
6 **PROPOSAL SIX: THAT THE BOARD BE ENABLED TO TRANSACT BUSINESS BY USE OF**  
7 **A CONFERENCE TELEPHONE OR SIMILAR COMMUNICATIONS EQUIPMENT.**

8 Given the significant distances as barriers to travel within the  
9 State of Alaska plus the strong likelihood that a minority of the  
10 directors will be non-Alaskans, I propose that the enabling act be  
11 amended to authorize the board to transact business by use of a  
12 conference telephone or similar communications equipment so long as  
13 all members participating in such a meeting can hear one another.

14 **Explanation:** One of the difficulties inherent in a body of nine members  
15 is to physically gather them in the same place at the same time for the trans-  
16 action of Board business. In large corporate entities this is frequently  
17 difficult. The result has been a tendency to permit the Board to divide  
18 itself into smaller working committees or an "executive committee" to which is  
19 delegated most of the Board's function and authority. There is a price paid  
20 for such a solution. Decisions are made without the participation of the full  
21 membership. Yet a non-classical solution is at hand, and from my personal  
22 observation, a very familiar aspect of life in Alaska--the use of modern  
23 communications equipment to hold board meetings notwithstanding the fact that  
24 the members are not in the same place at the same time. Both California and  
25 Delaware now permit this and the reported experience is very satisfactory. I  
26 would suggest that such a provision be made a permanent amendment to Sec.  
27 10.05.198 for all corporations formed in Alaska. It certainly merits adoption  
28 in the special case of the GSOC.



1 DIRECTIONS TO YOUR DRAFTING AIDES: Does the Committee favor the  
2 concept of permitting the directors to hold meetings via the use  
3 of conference telephones or similar communications equipment with  
4 participation in such a meeting constituting presence in person?

5 YES \_\_\_\_ NO \_\_\_\_.

6  
7 PROPOSAL NUMBER SEVEN: THAT REGARDLESS OF COMMITTEE ASSIGNMENTS EVERY DIRECTOR  
8 HAVE A RIGHT TO ATTEND THE MEETINGS OF ANY COMMITTEE AND BE PRIVY TO ALL BOOKS  
9 AND RECORDS.

10 Current Alaska law permits the Board to divide itself into  
11 committees including an executive committee and to delegate board  
12 functions and authority. I have no quarrel with this concept but  
13 do suggest that the enabling act be amended to make it clear that  
14 regardless of committee assignments any director shall have the  
15 right to attend (but not participate in) any meeting of any  
16 committee and to have access to books and records pertaining to  
17 the activities or responsibilities of such committees as may,  
18 from time to time, be created.

19 Explanation: Again we illustrate what one jurist has termed the  
20 "law of laws" . . . that every advantage is purchased at a price. The desire  
21 to streamline and specialize the functions of directors is understandable but  
22 the price is the exclusion of those directors who are not appointed to key  
23 committees. Sometimes this problem assumes serious dimension as those  
24 directors who are perceived by the majority as raising vexing questions and  
25 airing dissenting views are simply shunted aside by exclusion from committee  
26 assignments. The legislature can go some distance toward minimizing this harm  
27 by providing by statute a right of each director to attend the meeting of any  
28 committee and to have access to books and records.

1 DIRECTIONS TO YOUR DRAFTING AIDES: Does the Committee favor  
2 the concept of granting directors a statutory right to attend  
3 the meetings of any Board committee and to have access to minutes  
4 and records? YES \_\_\_\_ NO \_\_\_\_.

5  
6 END OF THIS TRANSMISSION — SEPARATE LETTER BEING TRANSMITTED NEXT.

THE PRECEDING DOCUMENT(S) MAY NOT FILM  
LEGIBLY BECAUSE OF POOR QUALITY OF THE  
ORIGINAL.

MEMORANDUM

TO: Representative Jim Duncan, Chairman  
Budget and Audit Committee  
Alaska State Legislature

FROM: Arlon R. Tussing

RE: Questions about an Alaska General Stock  
Ownership Corporation (GSOC)

I am submitting these preliminary comments at the request of Mr. Milt Barker of the Division of Legislative Finance. They are based upon my review of the following materials:

1. Louis O. Kelso, et al, Design of an Alaskan General Stock Ownership Plan, Volume I. (February 15, 1979);
2. Kelso & Co., (untitled) documents on British Petroleum's interest in TAPS (December 7, 1978);
3. Alaska House of Representatives, Sponsor Substitute for House Bill No. 240 (March 6, 1979);
4. Wilmer, Cutler & Pickering, Federal Constitutional Issues Presented by Alaska's GSOC (December 15, 1978);
5. Senator Mike Gravel, various speeches, Congressional Record citations on GSOCs (1978 & 1979).



MEMORANDUM

Page Two

I regret that I was not able to present these comments in person to the House State Affairs Committee on March 20, 1979, but I hope that they will be of use to you. Please let me know if you have any further questions.

QUESTIONS ABOUT AN ALASKA GENERAL STOCK  
OWNERSHIP CORPORATION

1. GSOCs in General. Louis Kelso's concept of the General Stock Ownership Corporation (GSOC) has much in common with socialist and welfare state programs for redistributing wealth.\* Instead of directly expropriating or taxing away property for redistribution, however, Kelso's approach would use the government's credit to finance specially created corporations, whose shares would be dealt out to eligible citizens. The individual shareholder in GSOC thus could regard any dividends he received as earnings from his ownership of private capital rather than as a government handout.

Like confiscation or condemnation, GSOCs would create no new wealth for society. The money used to create the GSOC would have to be bid away from private investors who did not have the same access to the government's power to tax (or, in the case of a federally-sponsored GSOC, to print money) in order to make good on their obligations. Because

---

\* Kelso's accusations against present-day capitalism could well have come from a handbook of revolutionary Marxism. His program, it appears, is a remedy for "endemic poverty . . . misuse of technology, resource waste, despoilation of the environment, declining personal freedom, increasing lawlessness and civil disorder, the waning of liberal education, the civil rights impasse, the youth revolt, urban concentration, rising public and private debt, public loss of confidence in leadership and the seemingly irreversible advance toward a totalitarian society." [Kelso, et al, p. 16].

the "losers" would be widely scattered and impossible to identify individually, however, we could expect this kind of property redistribution to be less painful and less socially disruptive than more traditional socialist schemes.

There is nothing novel or radical in this aspect of the GSOC. Private individuals and corporations already benefit from a wide variety of federal and state loan and guarantee programs: each of them reallocates resources and redistributes wealth as surely (if not as visibly) as would taxation or government ownership of industry. GSOCs would no more revolutionize or redeem the capitalist system than do the existing programs of government credit for housing, agriculture, shipbuilding, rural electrification or education. The value of the GSOC concept to Alaska must be judged not by the sweeping claims of its inventors, but rather by whether specific proposals are properly tailored to the state's specific problems.

2. GSOCs in Alaska. The GSOC concept (like that of "Alaska, Inc.") appeals to legislators and other Alaskans because it may be a Constitutional way to use the state's petroleum revenue to increase the wealth of present resident Alaskans without permanently swelling the size of state government or attracting a host of immigrants to share in the windfall. In my opinion, something like a GSOC as contemplated in H.B. 240 may indeed be the best way to give

Alaskans a personal stake in the state's natural resource income. But the GSOC concept is still a very rough one, and there are a number of reservations and cautions even apart from technical legal issues, that I would like to raise here. As the Legislature deliberates further on the GSOC concept, I would expect to raise other problems and perhaps to offer some suggestions for improving the pending legislation.

3. Widely distributed ownership vs. broad-based control. GSOCs may very well be a means of widening ownership in Alaska industry, but widely distributed ownership is not the same thing as broadly-based control. It is a truism that corporations with widely dispersed share ownership are the easiest for small groups of insiders to control. They are practically immune both to stockholder revolts and to hostile takeover attempts (which are often the only way in which an ineffective management can be replaced).

Small shareholders normally do not take an interest in corporate affairs, and it is usually not worth their time to do so. Most shareholders express any dissatisfaction with management by selling their stock, not by becoming active in corporate politics. Otherwise, they routinely give their proxies to management, or simply decline to vote at the annual meeting. This experience in ordinary business corporations is duplicated in "non-profit" economic enterprises



with widely spread ownership, such as cooperatives, credit unions, savings and loan associations, and mutual insurance companies.

By limiting any person's interest to ten shares of GSOC stock, the proposed legislation assures that shareholders generally will not have a large enough stake to warrant their taking an active part in the corporation's affairs on the basis of economic self-interest. This limitation on individual share ownership, the absence of cumulative voting and the staggered terms of office for directors, almost guarantee a self-perpetuating management.

In this setting, the alternative of vigorous controversy among the shareholders is hardly more attractive, however. Any activists, apart from the insider group itself, are likely to be more concerned with personalities and politics than with prudent business management. Alaska can already offer a few prominent examples of broadly-based corporations with such a malady.

4. Motivations of the Directors. Since the officers and directors of a GSOC will not be selected on the basis of a substantial ownership position, and may not obtain such a position, the legislature should consider in advance just what kind of people will constitute this self-perpetuating insider group, and what their motivations are likely to be. Such a group is more likely to be moved by considerations

other than profitability than a board and management representing large shareholders, for example:

Their outside business interests;

Officers' salaries, directors' fees, and other perquisites;

Size and prestige of the organization;

Their social and business philosophies, ideals and ideologies; and

The approval of other businessmen, the media, or the community at large.

These are on the whole the considerations that motivate the boards of many "charitable" enterprises: "non-profit" hospitals, for example, are notorious for bad management, inefficiency, and petty corruption. None of the foregoing motives is necessarily reprehensible, and they are not always at odds with the interest of the shareholders in maximizing profits or capital gains. But as a small shareholder I would prefer to have a few large shareholders on the board looking at the bottom line, and, in their own self-interest looking askance at inefficiency, empire-building or gold-

plating.

5. Vulnerability to speculative promotions. Alaska is a fertile field for promotional schemes, and GSOCs may be just made to order for them. The big private gains in industrial development projects are not made on the operating profits of ownership (Kelso's theories notwithstanding), but from promotional and organizational expenses: land speculation and sales; engineering, consulting, legal and underwriting fees; and the purchase and sale of corporate assets --- all of which can be capitalized into a GSOC's initial "investment."

The Board of Directors of GSOCs will almost inevitably be made up of people who make their living, or at least many of whose friends make their living, by such pursuits. Those who were strangers to that way of life when they were appointed or elected as Directors would not remain so for long. It is likely that an Alaska GSOC of the kind presently contemplated would be tempted to invest in projects that sophisticated profit-motivated capitalists would shun, and for which the legislature would not have been willing to appropriate public funds.

6. State Loan Guarantees. One seeming advantage of the GSOC concept is that the state money backing GSOC credit would bring a double return to Alaska --- once from the investment earnings the government earns on money in the

guarantee fund, and once again from the citizens' GSOC dividends. But state funds needed to back GSOC debt would be considerable (in the case of the proposed BP Pipeline purchase, over \$1 billion), they would be immobilized for any other purpose, and they would truly be at risk --- particularly if GSOCs were capitalized with 100 percent debt, as seems to be necessary if the corporations are to be created without an appropriation of equity capital from the general fund.

The proposed legislation is not clear who is to propose and approve state loan guarantees for the purchase of GSOC assets. There seems to be a Constitutional question whether such a guarantee could be authorized by the Legislature, or even by a popular referendum, but that is an issue outside my area of competence.

7. Investment in TAPS. A share in TAPS is one of the worst investments an Alaska GSOC could possibly make. If something went wrong at the Prudhoe Bay field, with the pipeline or terminal, or in the world petroleum market --- the state could simultaneously be faced with (1) a drastic decline in the oil revenues that support state government and underpin the Alaska economy, (2) an obligation to make good on defaulted pipeline bonds (either out of a guarantee fund or out of reduced general fund revenues), and (3) loss of the value of GSOC stock in the hands of individual Alaskans.



The fact that such a scenario is even imaginable makes it very unlikely that the present holders of pipeline bonds would agree to their assumption by an Alaska GSOC, or that they take any state loan guarantee seriously. As some big lenders have stated about state backing for gas pipeline debt, they would justifiably expect Alaska to try to recover any loss by means of higher taxes on oil and gas production, thereby further undermining the soundness of the lenders' other loans to the owners of TAPS. The same considerations apply, with only slightly less force, to GSOC investments in other facilities for transporting North Slope hydrocarbons.

If the Legislature were to authorize creation of a GSOC, however, there will surely be a clamor (which may well become irresistible) for it to finance or buy into the Alaska Highway gas pipeline, a North Slope gas conditioning plant, the Alpetco refinery, a Fairbanks petrochemical plant, or a natural gas liquids pipeline on terms that no rational private investor would accept. This is my own main concern about GSOCs today. But, for some Alaskans, it may well be a point in their favor.

ALASKA  
GENERAL STOCK OWNERSHIP  
CORPORATION

Sponsor Substitute for House Bill No. 240  
Sponsor Substitute for Senate Bill No. 170

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## HOW IT WORKS

### THE ALASKA GENERAL STOCK OWNERSHIP CORPORATION

- \* A corporation is formed and each resident of Alaska is issued one share of stock.
- \* The corporation borrows money to invest in profitable projects, having assured itself of the investment's soundness.
- \* Private lenders will be willing to provide loans because they can be secured by the assets of AGSOC and, if necessary subject to legislative approval, by a state guarantee.
- \* The loan proceeds will be invested in the project or projects, making AGSOC an owner and thus making each Alaskan (as a shareholder of AGSOC) an owner.
- \* Earnings from the project will be used to pay off the loan.
- \* Dividend payments can be made to AGSOC shareholders as soon as profits are made. Once the loan is paid off, all profits from the corporation's investments will be paid out to the shareholders.



## EXPLANATION: FEDERAL GSOC PROVISIONS

Federal law provides income tax advantages to certain broadly owned corporations. These companies, known as General Stock Ownership Corporations (GSOCs), are exempt from corporate income tax. GSOCs are privately owned corporations designed to leverage the typical citizen into capital ownership. As such the stock is to be distributed free of charge and investments purchase entirely through borrowed funds. As the loans are paid down from investment earnings equity is built into the shareholders.

### Charter Provisions

To qualify as a GSOC a corporation must be specially chartered by a state and have a single class of stock distributed to each qualified state resident. Transfers of stock must be limited to the earliest of five years from issue or the shareholder's death or emigration from the state. No shareholder may own or acquire more than 10 shares.

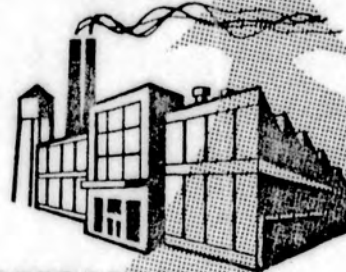
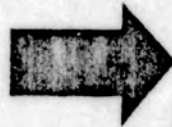
### GSOC Taxation

The GSOC is exempt from corporate income taxes, but its shareholders must report their share of GSOC income personally. GSOC income is computed like that of other corporations with special treatment for tax credits. Audit adjustments are included in income of the corporation for the year during which they are finally determined. Net losses are subject to a 10 year carryover and investment credit and recapture is prorated to the shareholders.

### Shareholder Taxation

GSOC shareholders are taxed on their share of GSOC income. If a shareholder disposes of his stock GSOC income will be prorated on a daily basis. The shareholder's stock basis will be increased by GSOC income attributed to him and reduced by cash distributions. Since GSOC shareholders are attributed GSOC income distributions from the GSOC are generally tax free. Distributions greater than attributed income are nontaxable to the extent of the shareholder's basis and the excess taxed as capital gains. To assure shareholders have cash for taxes on their share of GSOC income GSOCs must distribute 90% of taxable income by January 31. Noncompliance will subject the GSOC to a 20% tax on the distribution deficiency. To assure payment of taxes the GSOC must withhold 25% of each distribution. The amount withheld is a credit against shareholder income taxes. Individuals not required to pay taxes (because of insufficient income) may avoid withholding on GSOC distributions.

STATE  
GUARANTY

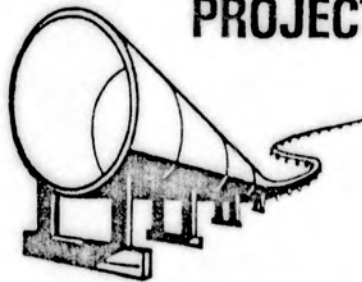


CORPORATION



BENEFICIARIES

ENERGY  
PROJECT



## TAX TREATMENT OF GENERAL STOCK OWNERSHIP CORPORATIONS

THERE HAS BEEN CONFUSION OVER THE EXTENT TO WHICH GENERAL STOCK OWNERSHIP CORPORATIONS RECEIVE SPECIAL TAX TREATMENT. IN A GSOC THE CORPORATE INCOME TAX IS ELIMINATED AND THE INCOME OF THE CORPORATION IS TAXED DIRECTLY TO THE SHAREHOLDERS AT THEIR OWN PERSONAL RATES.

SIMILAR TAX TREATMENT HAS APPLIED TO SMALL CORPORATIONS FOR MANY YEARS. A CORPORATION WITH 10 OR FEWER SHAREHOLDERS MAY ELECT TO BE TREATED AS A "SUBCHAPTER S" CORPORATION. IT IS THEN EXEMPT FROM THE CORPORATE INCOME TAX AND THE CORPORATION'S INCOME IS TAXED TO THE SHAREHOLDERS IN MUCH THE SAME MANNER AS IN A GSOC. IN FACT, THE PROVISIONS OF INTERNAL REVENUE CODE "SUBCHAPTER S" WERE USED AS A MODEL IN DRAFTING THE GSOC TAX LAW.

THUS, THE GSOC TAX BENEFITS ARE NEW AS APPLIED TO CORPORATIONS WITH A LARGE NUMBER OF SHAREHOLDERS, BUT SIMILAR PROVISIONS HAVE BEEN IN EFFECT WITH RESPECT TO SMALL CORPORATIONS FOR SOME TIME.

## TWO IMPORTANT POINTS ABOUT THE ALASKA GENERAL STOCK OWNERSHIP CORPORATION

### 1. THE AGSOC IS NOT A "GIVEAWAY".

AGSOC stock would be issued to all citizens of Alaska. No cash investment is required of the shareholder because the AGSOC would borrow the funds necessary for profitable investments. The loan could be secured by the AGSOC assets and a state guarantee. As the loan is repaid the citizens' AGSOC equity increases.

This type of financing is not unique. The wealthy often borrow money on a nonrecourse basis for investment in profitable enterprises. They use their profits to repay the loans leaving themselves with an increased net worth. The AGSOC simply allows the rest of our citizens access to this type of financing.

### 2. AGSOC IS NOT STATE OWNERSHIP.

The stock of AGSOC will be held by the citizens of Alaska. They will vote this stock for a board of directors responsible for running the AGSOC in a profitable manner. AGSOC will be run in the same way as a typical business corporation. The only role for the State in AGSOC will be chartering the corporation and, if necessary, subject to legislative review, guaranteeing loans to the AGSOC.

In Alaska AGSOC may be an alternative to what would otherwise be State ownership of equity interests in some of Alaska's major energy projects. It was out of concern for this possibility that AGSOC was born.

2



ALASKA  
GENERAL STOCK OWNERSHIP CORPORATION

BILL SUMMARY

Federal law requires state authorization of general stock ownership corporations receiving special tax treatment under Subchapter "U" of the Internal Revenue Code. The bill creates the Alaska General Stock Ownership Corporation (AGSOC). This corporation is a completely private for profit corporation which will operate under the Alaska Business Corporations Act to the extent consistent with the AGSOC act. The shares of the AGSOC will be owned and voted by the citizens of Alaska with each resident holding a share of stock.

The bill directs the Governor to appoint incorporators to form the AGSOC and sets forth the following:

- 1) Board membership limitations assuring Alaskan control;
- 2) Federal requirements for corporate articles;
- 3) Stock distribution to all Alaska residents;
- 4) Penalties for fraudulent acquisition of AGSOC stock;
- 5) One year statute of limitations on AGSOC challenges;
- 6) Financing for AGSOC startup costs; and,
- 7) Technical amendments required to Alaska statutes.

The corporation is designed to have as its shareholders existing Alaskan residents. Stock will be distributed to eligible individuals without cost. Investments by the AGSOC will be made through the use of borrowed funds and the earnings from those investments used to retire the loan and distribute dividends to the shareholders. Except for minor exemptions the AGSOC will be subject to the same rules as all other Alaska corporations.

### DETAILED EXPLANATION

The bill creates a new Chapter 50, entitled "Alaska General Stock Ownership Corporation", within Title 10, the Corporations and Associations title, of Alaska Statutes. The act contains nine sections which may be summarized as follows:

Section 1 sets forth those areas where the AGSOC differs from a typical Alaska business corporation organized under Chapter 5 of Title 10. To the extent that these provisions do not conflict with the provisions of Chapter 5, the Alaska Business Corporations Act, Chapter 5 will apply;

Section 2 includes the corporation among those organizations eligible to receive secured loans from the Permanent Fund;

Section 3 allows the investment of surplus state funds in bonds of the AGSOC;

Section 4 exempts the AGSOC from registration under the Alaska securities laws while providing protection from fraud;

Section 5 creates a one year statute of limitations on suits brought to challenge legality of the AGSOC;

Section 6 makes the provisions regarding eligibility for stock ownership "nonseverable" in order to assure that if this fundamental section is found unconstitutional the entire law will be voided;

Section 7 makes fraud or misrepresentation in obtaining or selling shares of the AGSOC a Class C felony; and,

Sections 8 and 9 provide effective dates immediately following the Governor's signature for most of the legislation.

## ANALYSIS: SECTION 1

Section 1 of the bill constitutes the primary legislative section. It creates a new chapter, Chapter 50, of the Alaska Statutes, Title 10, setting forth technical requirements for the Alaska General Stock Ownership Corporation. The Chapter is divided into nine sections dealing with creation of the AGSOC, federally required charter limitations, board of directors, notification of shareholders' eligibility, limitations on corporate liability, restrictions on application for shares, fraud penalties, corporate dividends and definitions. A section by section analysis of Chapter 50 follows.

### 50.010. ALASKA GENERAL STOCK OWNERSHIP CORPORATION CREATED.

This section directs the Governor to appoint nine people as the incorporators and initial board members of the Alaska General Stock Ownership Corporation. These nine people, a majority of whom must be Alaskans, will adopt corporate articles and by-laws and file with the state to create the corporation as required under the Alaska Business Corporations Act. The bill allows the appointment of some non-Alaskan directors to provide flexibility in obtaining special expertise.

The status of the general stock ownership corporation is made clear by this section. AGSOC is not and may not be considered to be an agency, instrumentality or political subdivision of the State of Alaska. This parallels the federal statute which provides that a GSOC shall be treated as a private corporation and not as a governmental unit. The section also clarifies AGSOC status in relation to other statutes by requiring that it comply with the provisions of Subchapter U of the Internal Revenue Code and the Alaska Business Corporations Act. To the extent that the AGSOC authorizing legislation is not inconsistent with Chapter 5 of Alaska Statutes Title 10, AGSOC will be subject to all the rules applicable to any other Alaska business corporation.

## 50.020. ARTICLES OF INCORPORATION.

Federal law requires certain charter provisions for general stock ownership corporations and these are set out as requirements for the articles of incorporation of the Alaska General Stock Ownership Corporation. Each of the subsections in .020 set forth a different requirement which must be included in the AGSOC articles.

Subsection 1 provides that the AGSOC may issue only one class of stock which impliedly must be voting common stock.

Subsection 2 provides that stock may be issued only to a certain class of individuals. The group to whom stock may be issued, a closed class of original issue shareholders, are those people who fulfill two tests:

- a) They were residents of Alaska, as defined by the definition Section .900, as of the effective date of the legislation which, under Section 8 of the bill, will be the day following the Governor's signing; and,
- b) They remain residents of Alaska until the shares are issued.

50.900 defines resident as a person who lives in Alaska and intends to remain here permanently. The definition allows for temporary travel or employment outside without loss of residency. If a dispute arises over residency all of the facts and circumstances indicative of permanent residency must be considered.

Subsection 3 provides that at least one share of stock must be issued to each eligible resident unless that person elects within one year not to receive the stock. The legislation contemplates issuance of shares to eligible individuals free of charge with corporate investments financed entirely with borrowed funds. The one year period allows shareholders who do not wish to receive stock for whatever reason to reject their share, but this election not to receive stock is irrevocable and once made may not be changed.



Subsection 4 provides for limitations on the transferrability of the stock so that shares may not be sold or used as security for a loan during the first five years unless the shareholder dies or moves out of the state. Shares may only be transferred to another Alaska resident and then only if that person would not own more than ten shares of AGSOC stock after the transfer. Corporations and other artificial persons may not be shareholders. Finally, in order to protect minors, shares may not be transferred until the shareholder reaches 18.

Subsection 5 provides that the corporation shall qualify as a general stock ownership corporation subject to the special tax provisions of Subchapter U of the Internal Revenue Code.

Subsection 6 provides for a limitation on investments which the corporation may purchase. The corporation may not invest in assets acquired by it or for its benefit through the power of eminent domain. This is not to imply that the AGSOC has the power of condemnation since that power may be exercised only by the government. The limitation is designed to prevent the AGSOC from acting in collusion with an agency or local government to acquire a going business from an unwilling seller. It is not intended to prevent the purchase at arm's length of a business where a portion of the seller's assets may have been acquired by condemnation. The AGSOC would not be prevented from investing in a project where some minor portion of the assets must be acquired through eminent domain if the State or local government determines that the exercise of its condemnation power is appropriate. Such a situation might occur should the AGSOC become involved in the construction of a major pipeline.

Subsection 7 provides the AGSOC with a right of first option to purchase, at a price not less than book value, any stock offered for sale during the first five years of the corporation. The terms and conditions for exercise of this right will be set forth in detail in the corporate bylaws and a notice of the restriction will appear on the stock certificates or receipts.

The five year period for the right of first option parallels the time during which shareholders are prohibited from selling their stock. Only a limited number of shares will become available for sale during this period of time and it is unlikely that an organized market for AGSOC stock will develop during this period. Discretion is left with the corporation to pay prices higher than book value for the stock, but it is likely that the directors will determine that book value is the appropriate price.

Since shareholders who become non-residents during the five year period of transfer restrictions may be able to sell their stock at a high price in an uncontrolled market emigration might be encouraged. The option by the corporation provides a controlled market during the transfer restriction period and allows time to structure the full public market which will develop after the transfer restrictions lapse.

#### 50.030. BOARD OF DIRECTORS.

This section sets out the provisions for AGSOC directors which differ from those applicable under Alaska Statutes Title 10, Chapter 5. The nine incorporators serve as the original board of directors and are divided into three groups in accordance with AS 10.05.186, except that only one-third of the directors will stand for election at the first annual meeting, one-third at the second annual meeting and one-third at the third annual meeting. Thereafter each director will serve for a term of three years as provided in AS 10.05.186. None of the other provisions of the Alaska Business Corporations Act regarding directors are changed and the normal rules of Chapter 5 apply to the AGSOC.

50.040. NOTIFICATION OF ELIGIBLE SHAREHOLDERS.

Since stock is to be distributed free of charge all Alaska residents must be notified of its availability. This section sets out the minimum notice requirements of weekly broadcast and publication for at least three months before stock distribution and monthly broadcast and publication for eleven months after distribution. These are minimum requirements only and the board of directors may determine that the corporation should take other steps to identify and notify potential shareholders. The AGSOC might want to compile mailing lists from various sources to develop a list of potential shareholders while in the bush it might be appropriate for it to hire census personnel to locate and identify eligible Alaskans.

50.050. CORPORATION NOT LIABLE TO SHAREHOLDERS.

This section makes it clear that although the AGSOC is required to take reasonable steps to notify potential shareholders of their right to stock the burden of applying for stock lies with the resident and the corporation is not liable for failure to notify or issue stock to a potential shareholder. If a resident makes application for stock after the distribution of one or more dividends he loses his right to those dividends and is entitled to receive only those dividends declared and paid after the date upon which his stock was issued to him.

50.060. LATE APPLICATION FOR SHARES.

The legislation provides that stock is to be issued to all qualifying residents and the corporation directed to use reasonable efforts to identify potential shareholders. The burden of application is upon the resident. Those residents who are identified or who identify themselves will have one year in which to elect not to receive stock. To protect against those eligible residents who are not identified and fail to identify themselves hoping to see how the corporation fares before applying for their stock, a final cutoff date is provided after which distributions of stock will be made only upon payment to the corporation of book value.

50.070. PENALTIES FOR MISREPRESENTATION OF ELIGIBILITY AS SHAREHOLDER.

This section provides a civil right of action against individuals who obtain stock through fraud or misrepresentation and who sell stock on the same basis. It allows the stock to be voided, dividends to be recovered with interest and costs of the suit to be paid by the defendant.

50.080. DIVIDENDS OF THE CORPORATION.

Under the rules of the Alaska Business Corporations Act a corporation may pay dividends only out of earned surplus, the retained earnings of the corporation. Since the AGSOC is required by federal law to distribute 90% of its taxable income to its shareholders on an annual basis it may be necessary to distribute a dividend in excess of earned surplus. Such a situation can arise because accounting for tax purposes and for purposes of the corporation's books may not and are not required to be the same. For this reason an exception to the general rule of Chapter 5, Title 10, is required allowing the AGSOC to distribute dividends as required to meet the terms of Internal Revenue Code Subchapter U except where such distribution would cause the corporation to become bankrupt or when the corporation is already bankrupt. Bankruptcy in this situation means when the corporation is unable to meet its current obligations.

50.090. EXEMPTION FROM AS 10.05

This section exempts the AGSOC from the provisions of the Alaska Business Corporations Act which requires \$1,000 of paid in capital before operation of the corporation commences.

50.100. LOAN GUARANTEE FUND.

This section establishes a fund within the Department of Revenue which is to be used to guarantee loans to the AGSOC by private lenders. This fund is intended to provide security for private credit to be used by the AGSOC for its startup expenses such as the costs of stock issue and the investigation of potential investments.

50.900. DEFINITIONS.

This section defines the terms used in Chapter 50. Especially important is the definition of resident since that definition will determine who is eligible to receive AGSOC stock without charge.



Introduced: 3/6/79  
Referred: Commerce

1 IN THE SENATE

BY COLLETTA, STIMSON AND FAHRENKAMP

2 SPONSOR SUBSTITUTE FOR SENATE BILL NO. 170

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 ELEVENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act creating the Alaska General Stock Ownership  
7 Corporation; and providing for an effective date."

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

9 \* Section 1. AS 10 is amended by adding a new chapter to read:

10 CHAPTER 50. ALASKA GENERAL STOCK OWNERSHIP CORPORATION.

11 Sec. 10.50.010. ALASKA GENERAL STOCK OWNERSHIP CORPORATION

12 CREATED. (a) The governor shall appoint nine persons, at least five of  
13 whom are residents of the state, to act as incorporators of the Alaska  
14 General Stock Ownership Corporation.

15 (b) The corporation is a general stock ownership corporation and  
16 shall be formed in accordance with subchapter U of the Internal Revenue  
17 Code of 1954, as amended, (26 U.S.C. secs. 1391 - 1397), and with  
18 AS 10.05. The corporation is subject to the provisions of AS 10.05,  
19 except when inconsistent with this chapter or 26 U.S.C. sec. 1391(a).

20 (c) The corporation is not and may not be considered to be an  
21 agency, instrumentality, or political subdivision of the state for any  
22 purpose.

23 Sec. 10.50.020. ARTICLES OF INCORPORATION. The corporation's  
24 articles of incorporation shall provide

25 (1) for the issuance of only one class of stock;

26 (2) that shares of stock may be issued only to individuals  
27 who were residents of the state on the effective date of this Act, and  
28 who continued to be residents until the date of issuance of the shares;

29 (3) for the issuance of at least one share of stock to each

1 individual eligible under (2) of this section, unless that individual  
2 elects within one year after the date of issuance not to receive the  
3 share;

4 (4) that no share of stock may be voluntarily or involun-  
5 tarily transferred

6 (A) or encumbered by a shareholder, other than by will  
7 or under the laws relating to intestate succession, until five  
8 years after the date of issuance of the share, except if the share-  
9 holder ceases to be a resident of the state;

10 (B) to an individual other than one who is a resident on  
11 the date of transfer;

12 (C) to an individual who, after the transfer, would own  
13 more than 10 shares of stock of the corporation;

14 (D) or encumbered by a shareholder under 18 years of age  
15 or encumbered by that shareholder's parent or legal guardian;

16 (5) that the corporation must qualify as a general stock  
17 ownership corporation under subchapter U of the Internal Revenue Code of  
18 1954, as amended, (26 U.S.C. secs. 1391 - 1397);

19 (6) that the corporation may not invest in properties  
20 acquired by it, or for its benefit, through the right of eminent domain;

21 (7) that the corporation has a first option to purchase, at  
22 book value, its shares of stock offered to be transferred by a share-  
23 holder within five years after the date of issuance of the shares; if  
24 the corporation exercises the right to purchase, shares purchased shall  
25 be considered treasury stock and not entitled to dividends, if any, or  
26 to voting privileges.

27 Sec. 10.50.03 BOARD OF DIRECTORS. (a) The corporation shall be  
28 governed by a board of directors. A majority of the members of the  
29 board of directors shall be residents of the state at all times during

1 their terms of office. Except as provided in (b) of this section, the  
2 term of office of each director is three years. A director, upon the  
3 expiration of his term, shall continue to hold office until his succes-  
4 sor is elected and qualified.

5 (b) The initial board of directors shall consist of the incorpor-  
6 ators of the corporation. The board shall, as nearly as possible, be  
7 equally divided into three classes of directors. The initial class one  
8 directors shall serve one-year terms of office; the initial class two  
9 directors shall serve two-year terms of office; and the initial class  
10 three directors shall serve three-year terms of office.

11 Sec. 10.50.040. NOTIFICATION OF ELIGIBLE SHAREHOLDERS. Beginning  
12 not less than 90 days before the issuance of any stock, the corporation  
13 shall at least weekly notify the public of its intention to issue stock  
14 and the method for qualifying and applying for shares. The notice shall  
15 be by publication in at least one newspaper of statewide circulation, by  
16 radio and television announcements, and by other means the corporation  
17 determines to be appropriate and reasonable, and shall be continued at  
18 least once each month for 11 months following the date of issuance of  
19 shares.

20 Sec. 10.50.050. CORPORATION NOT LIABLE TO SHAREHOLDERS. Registra-  
21 tion as a shareholder of the corporation is a responsibility solely of  
22 an individual eligible under AS 10.50.020(2) to receive shares of the  
23 corporation. The corporation may not be held liable for

24 (1) any loss resulting directly or indirectly from the  
25 failure of an individual to apply for shares of the corporation; or

26 (2) payment of a declared or paid dividend to an individual  
27 who would have been entitled to receive the dividend had he been a  
28 shareholder at the time of declaration or payment.

29 Sec. 10.50.060. LATE APPLICATION FOR SHARES. An individual eli-

1 gible under AS 10.50.020(2) to receive shares of the corporation who  
2 failed to apply for the shares before their issuance may apply for and  
3 receive the shares any time within one year after the date of issuance  
4 if he is otherwise qualified to own stock of the corporation and upon  
5 the payment of the book value of the shares.

6 Sec. 10.50.070. PENALTIES FOR MISREPRESENTATION OF ELIGIBILITY AS  
7 SHAREHOLDER. (a) The ownership interest in shares of the corporation's  
8 stock issued to an individual ineligible to receive the shares who has  
9 presented fraudulent or misleading information regarding his eligibility  
10 to own the shares, is void upon the issuance of an appropriate order by  
11 the superior court. The ineligible individual is also liable for the  
12 full amount of dividends, or other distributions to shareholders re-  
13 ceived by him plus interest from the date of distribution, and legal  
14 fees and costs of recovery incurred by the corporation. This section  
15 applies to an individual who has presented fraudulent or misleading  
16 information regarding the eligibility of another person for whom he acts  
17 in the capacity of legal guardian.

18 (b) An individual who transfers or obtains shares of the  
19 corporation, or in his capacity as legal guardian obtains shares of the  
20 corporation for another, through fraud, misrepresentation, or any  
21 deceitful or illegal means is guilty of a felony.

22 Sec. 10.50.080. DIVIDENDS OF THE CORPORATION. Dividends, or other  
23 distributions, may be declared and paid by the corporation at any time  
24 and from any source to the extent considered necessary by the board in  
25 order to comply with the distribution requirements of subchapter U of  
26 the Internal Revenue Code of 1954, as amended, (26 U.S.C. secs. 1391 -  
27 1397), except that no dividend or other distribution may be declared if  
28 the corporation is insolvent or if the declaration would cause the  
29 corporation to become insolvent.



1           Sec. 10.50.090. EXEMPTION FROM AS 10.05. The corporation is  
2 exempt from the requirements of AS 10.05.012, 10.05.216(e), 10.05.255(7),  
3 and 10.05.264.

4           Sec. 10.50.100. LOAN GUARANTEE FUND. (a) There is a special fund  
5 of the state known as the "Alaska General Stock Ownership Corporation  
6 loan guarantee fund" which shall be completely segregated from all other  
7 funds of the state, and which is a trust fund for the uses and purposes  
8 of this section.

9           (b) The commissioner of revenue shall use the fund to guarantee  
10 loans made to the corporation by lenders other than the state. In  
11 guaranteeing loans the commissioner of revenue shall review the loans  
12 for the purpose of guarding against fraud and misrepresentation. A  
13 guarantee of a loan may not be for an amount in excess of the un-  
14 obligated balance of the fund at the time the guarantee is made.

15           Sec. 10.50.900. DEFINITIONS. In this chapter,

16           (1) "board" means the board of directors of the Alaska  
17 General Stock Ownership Corporation;

18           (2) "corporation" means the Alaska General Stock Ownership  
19 Corporation;

20           (3) "fund" means the Alaska General Stock Ownership Corpora-  
21 tion loan guarantee fund;

22           (4) "resident" means an individual who maintains a permanent  
23 place of abode in the state with the intention of making the state his  
24 permanent place of residence and who resides in the state continuously  
25 except for temporary purposes only and with the intent of returning; a  
26 person may not be considered to have gained a residence solely by reason  
27 of his presence and he may not lose it solely by reason of his absence  
28 while in the civil or military service of this state or of the United  
29 States or of his absence because of marriage to a person engaged in the

1 civil or military service of this state or the United States; while a  
2 student at an institution of learning; while in an institution or asylum  
3 at public expense; while confined in public prison; while engaged in the  
4 navigation of waters of this state, of the United States, or of the high  
5 seas; or while residing upon an Indian or military reservation; a minor  
6 takes the residence of his parent or of his legal guardian; a married  
7 woman may establish her own residence and does not presumptively take  
8 the residence of her husband.

9 \* Sec. 2. AS 37.10.065(a) is amended by adding a new paragraph to read:

10 (9) secured loans to the Alaska General Stock Ownership  
11 Corporation.

12 \* Sec. 3. AS 37.10.070(a) is amended by adding a new paragraph to read:

13 (14) bonds or other forms of indebtedness of the Alaska  
14 General Stock Ownership Corporation.

15 \* Sec. 4. AS 45.55.140(a) is amended by adding a new paragraph to read:

16 (12) a security issued by the Alaska General Stock Ownership  
17 Corporation.

18 \* Sec. 5. Notwithstanding any other provision of law, a civil action to  
19 contest the legality of this Act is barred unless the complaint is filed  
20 within one year of the effective date of this Act. The purpose of this  
21 limitation on suits is to insure that, after the expiration of a reasonable  
22 period of time, the right, title, and interest of shareholders of the Alaska  
23 General Stock Ownership Corporation will be vested with certainty and that  
24 the corporation will be able to carry on its business activities with cer-  
25 tainty.

26 \* Sec. 6. Notwithstanding AS 01.10.030, the requirements of this Act for  
27 eligibility to receive original issue shares of the Alaska General Stock  
28 Ownership Corporation are not severable. If those requirements, or the  
29 application of them to any person or circumstance, are held invalid, this Act

1 is void in its entirety.

2 \* Sec. 7. AS 10.50.070(b) is amended to read:

3 (b) An individual who transfers or obtains shares of the corpora-  
4 tion, or in his capacity as legal guardian obtains shares of the  
5 corporation for another, through fraud, misrepresentation, or any  
6 deceitful or illegal means is guilty of a class C felony.

7 \* Sec. 8. Sections 1 - 6 of this Act take effect immediately in accor-  
8 dance with AS 01.10.070(c).

9 \* Sec. 9. Section 7 of this Act takes effect January 1, 1980.  
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1 IN THE HOUSE

BY DUNCAN, COTTEN, HURLBERT,  
MCKINNON, MILES, MILLER,  
MUNSON, PARKER AND GARDINER

2 SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 240

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 ELEVENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act creating the Alaska General Stock Ownership  
7 Corporation; and providing for an effective date."

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

9 \* Section 1. AS 10 is amended by adding a new chapter to read:

10 CHAPTER 50. ALASKA GENERAL STOCK OWNERSHIP CORPORATION.

11 Sec. 10.50.010. ALASKA GENERAL STOCK OWNERSHIP CORPORATION

12 CREATED. (a) The governor shall appoint nine persons, at least five of  
13 whom are residents of the state, to act as incorporators of the Alaska  
14 General Stock Ownership Corporation.

15 (b) The corporation is a general stock ownership corporation and  
16 shall be formed in accordance with subchapter U of the Internal Revenue  
17 Code of 1954, as amended, (26 U.S.C. secs. 1391 - 1397), and with  
18 AS 10.05. The corporation is subject to the provisions of AS 10.05,  
19 except when inconsistent with this chapter or 26 U.S.C. sec. 1391(a).

20 (c) The corporation is not and may not be considered to be an  
21 agency, instrumentality, or political subdivision of the state for any  
22 purpose.

23 Sec. 10.50.020. ARTICLES OF INCORPORATION. The corporation's  
24 articles of incorporation shall provide:

25 (1) for the issuance of only one class of stock;

26 (2) that shares of stock may be issued only to individuals  
27 who were residents of the state on the effective date of this Act, and  
28 who continued to be residents until the date of issuance of the shares;

29 (3) for the issuance of at least one share of stock to each



1 individual eligible under (2) of this section, unless that individual  
2 elects within one year after the date of issuance not to receive the  
3 share;

4 (4) that no share of stock may be voluntarily or involun-  
5 tarily transferred

6 (A) or encumbered by a shareholder, other than by will  
7 or under the laws relating to intestate succession, until five  
8 years after the date of issuance of the share, except if the share-  
9 holder ceases to be a resident of the state;

10 (B) to an individual other than one who is a resident on  
11 the date of transfer;

12 (C) to an individual who, after the transfer, would own  
13 more than 10 shares of stock of the corporation;

14 (D) or encumbered by a shareholder under 18 years of age  
15 or encumbered by that shareholder's parent or legal guardian;

16 (5) that the corporation must qualify as a general stock  
17 ownership corporation under subchapter U of the Internal Revenue Code of  
18 1954, as amended, (26 U.S.C. secs. 1391 - 1397);

19 (6) that the corporation may not invest in properties  
20 acquired by it, or for its benefit, through the right of eminent domain;

21 (7) that the corporation has a first option to purchase, at  
22 book value, its shares of stock offered to be transferred by a share-  
23 holder within five years after the date of issuance of the shares; if  
24 the corporation exercises the right to purchase, shares purchased shall  
25 be considered treasury stock and not entitled to dividends, if any, or  
26 to voting privileges.

27 Sec. 10.50.030. BOARD OF DIRECTORS. (a) The corporation shall be  
28 governed by a board of directors. A majority of the members of the  
29 board of directors shall be residents of the state at all times during

1 their terms of office. Except as provided in (b) of this section, the  
2 term of office of each director is three years. A director, upon the  
3 expiration of his term, shall continue to hold office until his succes-  
4 sor is elected and qualified.

5 (b) The initial board of directors shall consist of the incorpor-  
6 ators of the corporation. The board shall, as nearly as possible, be  
7 equally divided into three classes of directors. The initial class one  
8 directors shall serve one-year terms of office; the initial class two  
9 directors shall serve two-year terms of office; and the initial class  
10 three directors shall serve three-year terms of office.

11 Sec. 10.50.040. NOTIFICATION OF ELIGIBLE SHAREHOLDERS. Beginning  
12 not less than 90 days before the issuance of any stock, the corporation  
13 shall at least weekly notify the public of its intention to issue stock  
14 and the method for qualifying and applying for shares. The notice shall  
15 be by publication in at least one newspaper of statewide circulation, by  
16 radio and television announcements, and by other means the corporation  
17 determines to be appropriate and reasonable, and shall be continued at  
18 least once each month for 11 months following the date of issuance of  
19 shares.

20 Sec. 10.50.050. CORPORATION NOT LIABLE TO SHAREHOLDERS. Registra-  
21 tion as a shareholder of the corporation is a responsibility solely of  
22 an individual eligible under AS 10.50.020(2) to receive shares of the  
23 corporation. The corporation may not be held liable for

24 (1) any loss resulting directly or indirectly from the  
25 failure of an individual to apply for shares of the corporation; or

26 (2) payment of a declared or paid dividend to an individual  
27 who would have been entitled to receive the dividend had he been a  
28 shareholder at the time of declaration or payment.

29 Sec. 10.50.060. LATE APPLICATION FOR SHARES. An individual eli-

1 gible under AS 10.50.020(2) to receive shares of the corporation who  
2 failed to apply for the shares before their issuance may apply for and  
3 receive the shares any time within one year after the date of issuance  
4 if he is otherwise qualified to own stock of the corporation and upon  
5 the payment of the book value of the shares.

6 Sec. 10.50.070. PENALTIES FOR MISREPRESENTATION OF ELIGIBILITY AS  
7 SHAREHOLDER. (a) The ownership interest in shares of the corporation's  
8 stock issued to an individual ineligible to receive the shares who has  
9 presented fraudulent or misleading information regarding his eligibility  
10 to own the shares, is void upon the issuance of an appropriate order by  
11 the superior court. The ineligible individual is also liable for the  
12 full amount of dividends, or other distributions to shareholders re-  
13 ceived by him plus interest from the date of distribution, and legal  
14 fees and costs of recovery incurred by the corporation. This section  
15 applies to an individual who has presented fraudulent or misleading  
16 information regarding the eligibility of another person for whom he acts  
17 in the capacity of legal guardian.

18 (b) An individual who transfers or obtains shares of the  
19 corporation, or in his capacity as legal guardian obtains shares of the  
20 corporation for another, through fraud, misrepresentation, or any  
21 deceitful or illegal means is guilty of a felony.

22 Sec. 10.50.080. DIVIDENDS OF THE CORPORATION. Dividends, or other  
23 distributions, may be declared and paid by the corporation at any time  
24 and from any source to the extent considered necessary by the board in  
25 order to comply with the distribution requirements of subchapter U of  
26 the Internal Revenue Code of 1954, as amended, (26 U.S.C. secs. 1391 -  
27 1397), except that no dividend or other distribution may be declared if  
28 the corporation is insolvent or if the declaration would cause the  
29 corporation to become insolvent.



1       Sec. 10.50.090. EXEMPTION FROM AS 10.05. The corporation is  
2 exempt from the requirements of AS 10.05.012, 10.05.216(e), 10.05.255(7),  
3 and 10.05.264.

4       Sec. 10.50.100. LOAN GUARANTEE FUND. (a) There is a special fund  
5 of the state known as the "Alaska General Stock Ownership Corporation  
6 loan guarantee fund" which shall be completely segregated from all other  
7 funds of the state, and which is a trust fund for the uses and purposes  
8 of this section.

9       (b) The commissioner of revenue shall use the fund to guarantee  
10 loans made to the corporation by lenders other than the state. In  
11 guaranteeing loans the commissioner of revenue shall review the loans  
12 for the purpose of guarding against fraud and misrepresentation. A  
13 guarantee of a loan may not be for an amount in excess of the un-  
14 obligated balance of the fund at the time the guarantee is made.

15       Sec. 10.50.900. DEFINITIONS. In this chapter,

16       (1) "board" means the board of directors of the Alaska  
17 General Stock Ownership Corporation;

18       (2) "corporation" means the Alaska General Stock Ownership  
19 Corporation;

20       (3) "fund" means the Alaska General Stock Ownership Corpora-  
21 tion loan guarantee fund;

22       (4) "resident" means an individual who maintains a permanent  
23 place of abode in the state with the intention of making the state his  
24 permanent place of residence and who resides in the state continuously  
25 except for temporary purposes only and with the intent of returning; a  
26 person may not be considered to have gained a residence solely by reason  
27 of his presence and he may not lose it solely by reason of his absence  
28 while in the civil or military service of this state or of the United  
29 States or of his absence because of marriage to a person engaged in the



1 civil or military service of this state or the United States; while a  
2 student at an institution of learning; while in an institution or asylum  
3 at public expense; while confined in public prison; while engaged in the  
4 navigation of waters of this state, of the United States, or of the high  
5 seas; or while residing upon an Indian or military reservation; a minor  
6 takes the residence of his parent or of his legal guardian; a married  
7 woman may establish her own residence and does not presumptively take  
8 the residence of her husband.

9 \* Sec. 2. AS 37.10.065(a) is amended by adding a new paragraph to read:

10 (9) secured loans to the Alaska General Stock Ownership  
11 Corporation.

12 \* Sec. 3. AS 37.10.070(a) is amended by adding a new paragraph to read:

13 (14) bonds or other forms of indebtedness of the Alaska  
14 General Stock Ownership Corporation.

15 \* Sec. 4. AS 45.55.140(a) is amended by adding a new paragraph to read:

16 (12) a security issued by the Alaska General Stock Ownership  
17 Corporation.

18 \* Sec. 5. Notwithstanding any other provision of law, a civil action to  
19 contest the legality of this Act is barred unless the complaint is filed  
20 within one year of the effective date of this Act. The purpose of this  
21 limitation on suits is to insure that, after the expiration of a reasonable  
22 period of time, the right, title, and interest of shareholders of the Alaska  
23 General Stock Ownership Corporation will be vested with certainty and that  
24 the corporation will be able to carry on its business activities with cer-  
25 tainty.

26 \* Sec. 6. Notwithstanding AS 01.10.030, the requirements of this Act for  
27 eligibility to receive original issue shares of the Alaska General Stock  
28 Ownership Corporation are not severable. If those requirements, or the  
29 application of them to any person or circumstance, are held invalid, this Act

1 is void in its entirety.

2 \* Sec. 7. AS 10.50.070(b) is amended to read:

3 (b) An individual who transfers or obtains shares of the corpora-  
4 tion, or in his capacity as legal guardian obtains shares of the  
5 corporation for another, through fraud, misrepresentation, or any  
6 deceitful or illegal means is guilty of a class C felony.

7 \* Sec. 8. Sections 1 - 6 of this Act take effect immediately in accor-  
8 dance with AS 01.10.070(c).

9 \* Sec. 9. Section 7 of this Act takes effect January 1, 1980.  
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## BILL SUMMARY

### ALASKA GENERAL STOCK OWNERSHIP CORPORATION

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The general stock ownership corporation (GSOC) bill provides for the creation of a GSOC in Alaska and a new chapter of Alaska Statutes to regulate it. The AGSOC, taking advantage of new federal law, will be exempt from corporate income taxes. Income will be distributed to the shareholders and they will pay tax at their personal rates. The shareholders will be all the residents of Alaska as of the bill's effective date and stock will be distributed to them free of charge. The AGSOC will borrow funds to finance investments.

#### FORMATION OF THE AGSOC

The Alaska General Stock Ownership Corporation is formed by three incorporators appointed one each by the Speaker, Senate President and Governor. The incorporators will select nine people to serve as the initial board of directors subject to disapproval within 15 days by two of the three state officials mentioned. The incorporators will prepare and file the articles of incorporation to begin the AGSOC. The articles will include technical requirements of federal law restricting transfer of shares for five years and mandating issue of stock to all Alaska residents.

The directors, appointed by the incorporators, adopt bylaws, hire officers and begin the process of shareholder identification. The initial board serves only until the first shareholder meeting when the appointed directors must stand for election. The initial articles and bylaws of the corporation must be submitted to the legislature within 30 days of adoption and the legislature has 60 legislative days within which to disapprove of any provision by concurrent resolution.

### AGSOC SHARES

One share of stock will be distributed free of charge to each Alaskan resident who was a resident on the effective date of the bill. Resident means a person who lives in Alaska and intends to remain here permanently. Only individuals may own AGSOC shares and no one may own more than ten. Each week for three months before issuance of stock the AGSOC must by newspaper, radio and television notify residents of their eligibility to receive stock. A resident who does not wish to receive stock may decline. For one year after the initial stock issue a qualified resident may receive his share of stock without charge and for an additional year may purchase his share for book value.

Federal law requires GSOCs to have a charter providing for the issuance of "at least one share (of stock) to each eligible individual." To fulfill this requirement the first share of GSOC stock must be issued without charge to the shareholders. However, there is no restriction upon subsequent sales of GSOC stock. Thus, provision is made for the subsequent sale of AGSOC stock if the shareholders approve.

### SHAREHOLDER POWERS

Each share of stock may be voted at shareholder meetings with 1/3 of the shares required for a quorum. Proxies are prohibited and in their place a corporate ballot and shareholder's pamphlet will be prepared, under regulations insuring fairness, and mailed to each shareholder. Shareholders vote their ballot by mail and cumulative voting is prohibited. The shareholders may nominate directors and place issues on the corporate ballot by petition of 1,000 shareholders. Notice of the right to nominate directors and place issues on the corporation ballot must be made by publication at least 150 days before the shareholder meeting and the meeting notice and ballot must be mailed at least 60 days before the meeting.

AGSOC is required to keep complete books and records available for shareholder inspection and any corporate agent wrongfully refusing shareholder access may be fined \$1,000 per day. Shareholders have the right to remove the entire board by a majority vote or any single director by a vote at least as large as that which elected him. The attorney general or 100 shareholders may file suit to remove a director for fraudulent or dishonest acts or gross abuse of authority. Any shareholder may file a derivative suit on behalf of the corporation if those responsible inside the AGSOC fail to do so. The shareholders have the right to amend the bylaws and with a 2/3 vote the articles of incorporation.



### DIRECTORS AND OFFICERS

The board of directors has management responsibility for AGSOC. The chairman and at least 3/4 of the board must be Alaskans. Board meetings must be held in the state, but members may participate by conference telephone. Outside directors can never constitute a quorum except when meeting to fill vacancies in the board. AGSOC will have nine directors although the number may be changed in the bylaws. The entire appointed initial board will stand for election at the first annual meeting. Thereafter, members serve for two years with half the board elected each year. Criminal misdemeanor penalties are provided for directors making distributions designed to deceive creditors or shareholders of AGSOC and any agent of AGSOC who makes fraudulent statements regarding the value of shares.

Officers of the AGSOC are appointed by the board of directors and serve at their pleasure. The board establishes the duties of the officers and may replace them at any time.

### OTHER PROVISIONS

AGSOC is prevented from making endorsements of political candidates or ballot issues and may not spend money for lobbying of the legislature. Many of the other provisions of the Committee bill have been carried over substantially from existing Alaska corporate law. The provisions regarding sales of assets outside the ordinary course of business, dissolution of the corporation, restatement of the articles of incorporation, requirements for annual reports to the Dept. of Commerce, filing fees and charges, procedural provisions and forms, and power of the Commissioner of Commerce are all basically the same provisions which apply to existing Alaska corporations. The bill does retain the right in the legislature to change the law with respect to AGSOC at any time so long as the creditors of the corporation are protected.

## SECTION BY SECTION ANALYSIS

This analysis of Committee action on the Alaska General Stock Ownership Corporation legislation describes the provisions of Section 1 of the Committee bill as of April 27, 1979. Since many of the provisions of the Committee Substitute are carried over wholly or in part from the Alaska Business Corporations Act (ABCA) there is included at the end of each section description a reference to the corresponding section of the ABCA, if any.

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### ARTICLE 1. SUBSTANTIVE PROVISIONS.

- .005. PURPOSES. This section makes it clear that, unless the enabling legislation for a GSOC provides otherwise, the corporation may engage in any legal business. (ABCA 10.05.003).
  - .010. GENERAL STOCK OWNERSHIP CORPORATIONS. This section makes it clear that corporation organized under chapter 50, Title 10, are general stock ownership corporations subject to Internal Revenue Code Subchapter "U" and are not agencies of the state for any purpose.
  - .015. GENERAL POWER. This section grants to GSOCs the powers of normal corporations to conduct business. Two changes have been made in adapting the ABCA provisions to GSOCs.
    - 1) There is a limitations in (4) preventing a GSOC from investing in property "acquired by it, or for its benefit, through the right of eminent domain . . . ." This limitation prevents GSOCs from acting in collusion with an agency or local government to acquire a going business from an unwilling seller. GSOCs are not prevented from investing in projects where some minor portion of the project is acquired through condemnation if the local government determines that the exercise of its condemnation power is appropriate.
    - 2) The power to establish stock bonus plans is deleted from subsection (15) because of the special nature of GSOCs and the limitations on share ownership would make it difficult for a GSOC to adopt a qualified stock bonus plan for its employees. If the GSOC desires to have its employees benefit from growth in the value of GSOC stock the corporation could adopt a funded "phantom stock" program. (ABCA 10.05.009).
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- .020. INDEMNIFICATION OF OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS; INSURANCE. This section is carried over unchanged from the ABCA and allows the corporation to indemnify its directors or employees for expenses and fines incurred as a result of their actions on behalf of the corporation if they acted in good faith. Indemnification is disallowed in derivative suits where the defendant is guilty of negligence or misconduct in his duties unless the court determines the indemnification is proper. The corporation may purchase insurance on behalf of its directors and employees for claims against them arising out of their corporate positions. (ABCA 10.05.010).
- .030. DEFENSE OF ULTRA VIRES. Meaning "beyond the power" an ultra vires act is one which the corporation did not have authority to perform. This section, carried over from the ABCA, provides that this lack of corporate power can be asserted by a shareholder, the corporation, or the attorney general. It may not, however, be asserted by another party to a transaction with the corporation as grounds for failing to perform. (ABCA 10.05.018).
- .035. CORPORATE NAME. This section requires that a GSOC include in its corporate name the words "general stock ownership corporation" or an abbreviation thereof. In addition, the name may not be misleading or deceptively similar to the name of another corporation doing business in Alaska. (ABCA 10.05.021).
- .040. RESERVATION OF CORPORATE NAME. This section allows a person or corporation to reserve a specific name for a general stock ownership corporation for a period of two years with a renewal period of one year. Reservation of a name might be used where an individual seeks to establish a GSOCs by initiative petition or where an existing GSOC seeks to change its name upon the approval of its shareholders. The name may be reserved by this section during the period in which the necessary activities are undertaken to make the name effective. (ABCA 10.05.024, .027, and .033).
- .045. FOREIGN GENERAL STOCK OWNERSHIP CORPORATIONS. General stock ownership corporations chartered in another state and doing business in Alaska are subject to the rules of the Alaska Business Corporations Act (AS 10.05).
- .050. REGISTERED OFFICE AND REGISTERED AGENT. The registered agent is the agent for the corporation upon whom legal papers may be served. This provision requires that the corporation maintain a registered office and agent within the state. (AS 10.05.045)

- .055. FILING LIST OF REGISTERED CORPORATIONS WITH SUPERIOR COURT.
- .060. CHANGE OF REGISTERED OFFICE OR AGENT.
- .065. REGISTRATION OF REGISTERED AGENT.

These three sections set out the rules for registration of the registered agent with the Commissioner of Commerce, the listing of registered agents and offices with the superior courts throughout the state, and the method by which a registered agent may change the registered office or resign his position. These provisions are carried over intact from AS 10.05.048, .051, and .054 respectively.

- .070. SERVICE OF PROCESS ON CORPORATION. In addition to designating the registered agent as agent for service of legal papers on the corporation this section allows the Commissioner of Commerce to be served on behalf of the corporation when the registered agent cannot be found. (AS 10.05.057).

- .075. CREATION AND ISSUANCE OF SHARES. This section allows the corporation to create and issue shares of no par value stock. The total number of shares available for issue must be stated in the articles of incorporation. GSOCs are prohibited from issuing "par value" stock since that concept, developed for the protection of shareholders, has no application in a corporation such as the GSOC where shares are to be distributed initially without payment by the shareholders.

- .080. CONSIDERATION FOR SHARES. The federal GSOC legislation requires that a GSOC have a charter providing for the issuance of "at least one share (of stock) to each eligible individual." In order to fulfill this requirement it appears that the first share of GSOC stock must be issued without charge to the shareholders. However, there does not appear to be any restriction in the federal legislation upon subsequent sales of stock by GSOCs except for the general limitations upon share ownership. In keeping with the Committee's desire for a generally applicable GSOC chapter provision is made for the subsequent sale of stock by GSOCs. Thus, this section allows the GSOC to issue shares without consideration or for a payment fixed in advance by a vote of the shareholders.

Sales of corporation stock by the corporation may not be made at a price in excess of book value if the shares sold are treasury shares, that is shares which have been issued and repurchased by the corporation. (AS 10.05.096).

- .085. PAYMENT FOR SHARES. Payment for shares may be made in cash, other property or services, but not in notes or future services. (AS 10.05.099).
  - .090. JUDGMENT OF BOARD OR SHAREHOLDER AS TO VALUE OF CONSIDERATION CONCLUSIVE. This section allows the directors or the shareholders to conclusively determine the value of payment for shares in the absence of fraud. (AS 10.05.102).
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- .095. EXPENSES OF ORGANIZATION, REORGANIZATION AND FINANCING. In sales of stock by a corporation shares entitled to the full protections of limited liability must be fully paid and nonassessable. This means that the full sales price for the stock has been received by the corporation. However, if the stock is sold through an underwriter the fees will come out of the sales proceeds before they are paid to the corporation. Likewise, the organizational expenses of the corporation may be paid out of stock sales before the proceeds are remitted to the corporation. This section clarifys that in such cases the shares are deemed to be fully paid. (AS 10.05.111).
- .100. CERTIFICATES REPRESENTING SHARES. This provisions sets out the requirements as to form of stock certificates which must be signed by the corporate officers. (AS 10.05.114)
- .105. INFORMATION REQUIRED TO BE STATED ON CERTIFICATE. The stock certificates or other evidences of ownership must include information regarding the person to whom they are issued, that they are no par value shares, and that the corporation is organized in Alaska. (AS 10.05.117).
- .110. FULL PAYMENT REQUIRED FOR CERTIFICATE. If payment is required for shares they may not be issued until full payment is received. (AS 10.05.120).
- .115. ISSUANCE OF FRACTIONAL SHARES. GSOCs may issue fractional shares of stock and these fractional shares hold dividend, voting and distribution rights equal to their fractional interest. It may be necessary for a GSOC to issue fractional shares in the situation where a shareholder leaves his stock to his heirs and there is more than one child beneficiary. (AS 10.05.123).
- .120. LIABILITY OF SUBSCRIBERS AND SHAREHOLDERS. This section, adopted directly from ABCA, limits the liability of shareholders and those who have agreed to purchase share to the amount which they agreed to pay to the corporation for the shares. Subsequent holders of the stock are protected if they received the stock in good faith. (AS 10.05.126).
- .125. BYLAWS. The board of directors adopts the initial bylaws of a GSOC subject to review and rejection by the legislature under section 335 of the bill. Subsequent bylaws may be adopted, amended or repealed by a vote of either the shareholders or directors.
- .130. MEETINGS OF SHAREHOLDERS. The time and location of the annual shareholders meeting is established in the bylaws. The specific place is set by the board. Special shareholder meetings may be called by the president of the GSOC, the board or the holders of at least 1,000 shares. Shareholder meetings may be teleconferenced. (AS 10.05.138).

- .135. NOTICE OF SHAREHOLDER'S MEETINGS. This section requires written notice of shareholder's meetings mailed to shareholders not less than 60 days before the meeting. In addition, notice of shareholders' rights to add ballot issues or nominate directors must be made by publication at least once a week for four weeks beginning at least 150 days before the meeting. (AS 10.05.141).
- .140. CLOSING OF TRANSFER BOOKS AND FIXING RECORD DATE. To determine the shareholders of the corporation for purposes of a dividend distribution or voting rights the transfer books of the corporation may be closed prior to the date of the proposed activity or a "record date" may be established and the shareholders determined as of that date. Time limits are provided beyond which the transfer books may not be closed in order to protect shareholder voting rights and to allow interested parties to inspect the share records of the corporation prior to shareholders' meetings. (AS 10.05.144).
- .145. VOTING LIST. The responsible officer of the corporation must make available at the registered office of the corporation beginning at least 60 days before any shareholders' meeting a list of the shareholders eligible to vote at the meeting and access to this list must be provided to all shareholders. (AS 10.05.147).
- .150. QUORUM OF SHAREHOLDERS. 1/3 of the shares constitute a quorum for action by the shareholders and a majority vote of a quorum is sufficient to bind the shareholders in most cases. (AS 10.05.153).
- .155. PROXY VOTING PROHIBITED. Because of the ballot mechanism whereby each shareholder is allowed to vote in person through his ballot proxies are unnecessary in general stock ownership corporations and are therefore prohibited.
- .160. VOTING FOR DIRECTORS. Each shareholder may vote his shares for directors but cumulative voting is prohibited. This means that each share can cast only one vote for director in any contested election for a directorship position.
- .165. VOTING OF SHARES IN THE NAME OF ANOTHER.
- .170. VOTING OF PLEDGED SHARES.  
These sections allow shares held by an administrator, executor or guardian to be voted by him without a transfer of the shares into his name. Shares held by a pledgee may be voted by the pledgor until transferred into the pledgee's name. (AS 10.05.165 and . 168).

- .175. CORPORATION BALLOT. Voting at meetings of shareholders will be by ballot rather than through the normal corporate vehicle of proxies. The ballot will be prepared by the corporation subject to review for fairness by the Commissioner of Commerce. It will be mailed to each shareholder with the notice of the shareholders' meeting and voted by mailing it back to the corporation before the date of the meeting.
- Shareholders may, by petition of 1,000 or more, nominate directors and place issues on the corporate ballot. In addition, the directors may place issues and candidates on the ballot by a majority vote. Information on board candidates and ballot issues is to be provided to the shareholders by the corporation and these materials will be filed with the Commissioner of Commerce and subject to the regulations and criminal penalties applicable thereto.
- .180. BOARD OF DIRECTORS. The board of directors is charged with management responsibility for the corporation and their compensation is to be fixed in the bylaws. The chairman and at least 3/4 of the board must be residents of Alaska insuring that outside directors may never constitute a quorum of directors except when meeting to fill vacancies in directors seats until the next shareholder meeting. Officers or employees of the corporation may not serve on the board of directors. (AS 10.05.174).
- .185. NUMBER OF DIRECTORS. The minimum number of directors is three and the number is to be fixed in the bylaws except that the original number is fixed by the enabling legislation. If the bylaws are silent the number fixed in the enabling legislation is the proper number. The number of directors can be changed through a bylaw amendment.
- The board members serve for two year terms and they are to be divided into classes with only half the board standing for election at any one annual meeting. This staggering of the board members' terms provides for some continuity of management on the board of directors. (AS 10.05.177).
- .190. ELECTION OF DIRECTORS. Directors are to be elected at the annual meetings and each director hold office until his successor is elected and qualified. This prevents gaps in board membership except upon death or incompetance of a board member. (AS 10.05.183).
- .195. VACANCIES. Vacancies in the board caused by death, resignation or incompetance may be filled by a majority vote of the remaining directors. Directors elected by the board to fill a vacancy must stand for election by the shareholders at the next shareholders' meeting and are elected to fill the remaining portion of the directors position originally filled by vote of the board. No vacancy may continue for more than 6 months or until the next shareholders' meeting. (AS 10.05.189).



- .200. QUORUM OF DIRECTORS. A majority of the total number of directors fixed in the bylaws, articles or enabling legislation constitutes a quorum and action may be taken by a majority vote of a quorum. By allowing only  $\frac{1}{4}$  of the board to be outsiders Alaskan control of the board is assured. One-quarter of the board can never constitute a majority of a quorum except in the event of a vacancy in which case the board must act to fill the vacancy. (AS 10.05.192).
- .205. PLACE AND NOTICE OF DIRECTORS' MEETINGS. Directors meetings may be held only in Alaska and regular meetings of the board may be held without notice. Special board meetings require notice specifying the purpose of the meeting. (AS 10.05.198).
- .210. PARTICIPATION BY TELEPHONE. Directors may participate in directors meetings by telephone if all the participants may hear and be heard by each other. (AS 10.05.199).
- .215. DISTRIBUTIONS. Some restrictions on corporate distributions are necessary because the limited liability feature of corporations prohibits creditors from levying against shareholders if the corporation distributes its way to insolvency. The traditional restraints which have been used to protect creditors of corporations are the devices of stated capital, capital surplus, earned surplus and retained earnings. Through these devices corporations are required to keep at least something in the till for creditors.

However, the traditional restraints never ensured that cash would be on hand for creditors and they have been eroded by numerous exceptions allowing the corporation to designate capital surplus and create surplus by reduction of capital. As a result corporations have been able to make distributions beyond the point where liabilities to third parties were protected.

Under the ABCA dividends may generally be declared only out of earned surplus. (AS 10.05.204). There are several exceptions to this rule. Dividends may be paid in cash out of depletion reserves by natural resource companies and in stock out of capital surplus. (AS 10.05.204). However, a dividend may not be declared if the corporation would thereby be rendered insolvent. (AS 10.05.201). These restrictions provide some protection to creditors in that at least 75% of the amount received for shares must be allocated to stated capital, but the remaining 25% may be allocated to capital surplus available for distribution under certain circumstances.

Similarly, the ABCA provides that a corporation may acquire shares issued by it only from earned surplus except in special situations. (AS 10.05.012). This distinction between the sources from which shares may be purchased and those from which dividends may be paid does not make much sense since a purchase of shares on a prorata basis has the same effect as a dividend with regard to the protection of creditors.



To protect the creditors and shareholders of general stock ownership corporations and to rationalize restrictions upon the payment of dividends and repurchase of shares, this section provides restrictions on shareholder distributions based upon the current financial condition of the corporation. This section, adapted from a 1977 California amendment to the California Corporations Code, eliminates the concepts of stated capital and capital surplus in favor of a simple balance sheet test.

Under this section the corporation may always make the distribution required by subchapter "U" of the Internal Revenue Code. Thus, the corporation may always distribute to its shareholders an amount equal to 90% of its taxable income.

For distributions in excess of 90% of taxable income the corporation must fulfill either of two tests:

- 1) The corporation may make a distribution out of retained earnings.
- 2) If there are no retained earnings the corporation may make a distribution only if it meets a two pronged test:
  - a) The assets of the corporation, after the distribution are at least equal to  $1\frac{1}{2}$  times its liabilities, AND
  - b) The current assets, after the distribution, are at least equal to the current liabilities (a "liquidity test").

If the average pretax income plus interest expense for the two preceeding fiscal years is not at least equal to the average interest expense for those years the current assets must be at least  $1\frac{1}{2}$  times current liabilities.

If the corporation does not classify its assets into current and fixed in accordance with generally accepted accounting principles the current assets or liquidity test does not apply.

.220. DISTRIBUTIONS IN PARTIAL LIQUIDATION. Distributions in partial liquidation are special distributions which reduce the capital value of the corporation. They are distributions out of capital rather than earnings. These distributions may be made only upon a  $2/3$  vote of the shareholders and must be identified as distributions in partial liquidation. (AS 10.05.207).

.225. CERTAIN LOANS PROHIBITED. Loans by the corporation to its officers or directors are prohibited. (AS 10.05.213).

- .230. LIABILITY OF DIRECTORS IN CERTAIN CASES. This section carried over from ABCA makes directors personally liable for distributions and stock purchases by the corporation in violation of the distribution limitations. (AS 10.05.216).
- .235. EFFECT OF GOOD FAITH RELIANCE ON FINANCIAL STATEMENTS OR BOOK VALUE. Directors are not liable under the preceeding section if they relied upon financial statements of the corporation represented to him to be correct. (AS 10.05.219).
- .240. PRESUMPTION OF CONSENT OF DIRECTOR AND FILING OF DISSENT. A director present at a meeting is presumed to consent to the action taken by the board at such a meeting unless he files a dissent in accordance with this section. (AS 10.05.222).
- .245. DIRECTOR'S RIGHT TO CONTRIBUTION. A director sued for violation of the distribution rules is entitled to contribution (a sharing of the damages) from all directors assenting to or voting for the action. (AS 10.05.225).
- .250. OFFICERS. Officers of the corporation are elected by the board of directors and serve at their pleasure. (AS 10.05.228).
- .255. DUTIES OF OFFICERS. The board and the bylaws establish the duties of the corporate officers. (AS 10.05.231)
- .260. REMOVAL OF OFFICERS. Officers may be removed by the board but removal does not prejudice contract rights. (AS 10.05.234).
- .265. BOOKS AND RECORDS. GSOCs are required to keep complete books and records and make them available for inspection by shareholders and the Dept. of Commerce at the principal place of corporate business or the registered office. (AS 10.05.237).
- .270. SHAREHOLDER'S RIGHT TO EXAMINE BOOKS AND RECORDS. Shareholders have the right to examine books of the corporation at a reasonable time upon written demand. Access to the books of the corporation can be denied if sought for an "improper" purpose. The proper purpose restriction is a carryover from common law where the restriction insured that the examination was for an honest purpose and not to gratify curiosity or for speculative or vexatious purposes. It was designed to make certain that the purpose of the shareholder desiring to make examinations must be germane to his interests as a shareholder, that it was proper and lawful in character, and that it was not inimical to the interests of the corporation.

To clarify the applicability of this common law doctrine a number of states, including Alaska, have adopted into their corporation codes an inspection of records provision requiring the proper purpose. Under these provisions the shareholder is presumed to have the right of inspection and the lack of a proper purpose can only be asserted as a defense to a claim of wrongful denial of inspection. There is no comprehensive definition of what constitutes a proper purpose since there are innumerable valid reasons for a shareholder to inspect the books of his corporation. However, case law has indicated many such purposes a partial list of which would include:

- 1) To ascertain the value of a shareholder's stock.
- 2) To acquire knowledge to enable him to vote understandingly at a shareholder's meeting.
- 3) To investigate into consideration actually paid for stock and the failure to distribute dividends.
- 4) To investigate irregularities resulting in secret profits to officers of the corporation.
- 5) To determine correctness of financial statements and the existence of collateral for notes.
- 6) To determine whether a shareholder is being discriminated against in relation to his shares. (AS 10.05.237).

.275. LIABILITY FOR REFUSAL OF EXAMINATION. Any agent of the corporation wrongfully refusing shareholder access to the books and records of the corporation is subject to a fine of \$1,000 per day for each day of wrongful refusal. (AS 10.05.243).

.280. COURT MAY COMPEL INSPECTION. Courts have the power to compel inspection of the corporations books. (AS 10.05.249).

.285. SHAREHOLDERS' RIGHT TO FINANCIAL STATEMENT. The corporation must provide the shareholders with a financial statement upon request. (AS 10.05.249).

.290. REMOVAL OF DIRECTORS BY SUPERIOR COURT. This new provision allows a court, upon the suit of the attorney general or 100 shareholders 18 or older, to remove a director for fraudulent or dishonest acts or gross abuse of authority and bar such director from reelection.

This provision is not a simple removal clause, but gives standing to the shareholders and the attorney general to ask a court to remove a director for specific reasons. In order to have the court remove the director the shareholders or the attorney general bringing suit must still prove the director guilty of the offenses charged.

.295. SHAREHOLDER REMOVAL OF DIRECTORS. This section allows the shareholders to remove the entire board by a majority vote or any single director by a vote at least as large as that which elected him at his last election.

- .300. SHAREHOLDERS' DERIVATIVE ACTION. Shareholders may file suit on behalf of the corporation if those responsible inside the corporation fail to do so. Alaska Supreme Court Rule 23.1 provides for such an action, but does not specify treatment of security for expenses and other details. This section allows the court discretion to require security for expenses incurred in the prosecution of the suit. The court must approve of any settlement to insure that those prosecuting the suit are not simply bought off. The proceeds of any successful action or settlement must be accounted for to the court which may authorize reasonable expenses to the parties.
- .305. FRAUDULENT TRANSFERS OF SHARES. Transferring or obtaining shares of the corporation by fraud is a felony.
- .310. POLITICAL ACTIVITIES. GSOCs may not endorse candidates or ballot issues nor spend money in support or opposition of either. They are also prohibited from spending any monies to lobby the legislature. Violations are a misdemeanor punishable by a jail term and a \$10,000 fine.

## ARTICLE 2. FORMATION OF CORPORATIONS.

- .315. INCORPORATORS. Incorporators are those persons who file the articles of incorporation to begin the corporation's existence. This must be done by at least three people over the age of 18. (AS 10.05.252).
- .320. ARTICLES OF INCORPORATION. This section sets out the minimum requirements of the articles of a GSOC including the provisions required by subchapter "U" of the Internal Revenue Code that the corporation have only one class of stock, issued only to individuals, with the right to elect not to receive a share, and subject to transfer restrictions for five years. Other provisions are carried over from the ABCA. (AS 10.05.255).
- .325. FILING OF ARTICLES OF INCORPORATION. Articles of incorporation are to be filed with the Commissioner of Commerce who shall certify the filing and return one original of the articles to the corporation. (AS 10.05.258).
- .330. EFFECT OF ISSUANCE OF CERTIFICATE OF INCORPORATION. Upon issuing the certificate corporate life begins. (AS 10.05.261).
- .335. ARTICLES OF INCORPORATION AND INITIAL BYLAWS. The articles and initial bylaws must be submitted to the legislature within 30 days of issuing the certificate of incorporation and, if not disapproved within 60 legislative days by concurrent resolution, they are approved. Legislative disapproval may not abrogate any contract obligations of the corporation and may be overridden by a shareholder vote.



- .340. ORGANIZATION MEETING OF DIRECTORS. The incorporators shall call an organizational meeting of directors in the state for the purpose of adopting bylaws, electing officers and conducting other business necessary to the organization of the corporation. (AS 10.05.267).

#### ARTICLE 3. APPLICATION FOR SHARES.

- .345. NOTIFICATION OF ELIGIBLE SHAREHOLDERS. Since stock is to be distributed free of charge initially all Alaska residents must be notified of its availability. This section sets out the minimum notice requirements of weekly broadcast and publication for at least three month before stock distribution and monthly broadcast and publication for eleven months after distribution. These are minimum requirements only and the board of directors may determine that the corporation should take other steps to identify and notify potential shareholders.
- .350. CORPORATION NOT LIABLE TO SHAREHOLDERS. Although GSOCs are required to take reasonable steps to notify potential shareholders of their right to stock the burden of applying for stock lies with the resident and the corporation is not liable for failure to notify or issue stock to a potential shareholder. If a resident makes application for stock after the distribution of one or more dividends he loses his right to those dividends and is entitled to receive only those dividends declared and paid after the date upon which his stock was issued to him.
- .355. LATE APPLICATION FOR SHARES. Any individual who is eligible to receive an initial distribution of shares but who fails to apply for issuance of stock may be issued a share without charge at any time within one year of the original issue. The one year period coincides with the period during which a shareholder may elect not to receive his stock and have his share cancelled. For one additional year a person who would have been eligible to receive an initial share but did not get one may purchase his share at book value. Original issue is cut off completely after the two year period.
- .360. PENALTIES FOR MISREPRESENTATION OF ELIGIBILITY AS SHAREHOLDER. The superior court is given jurisdiction to void stock issued to an ineligible individual who obtained his shares by fraud and allows the corporation to recover any distributions paid to such a shareholder.

#### ARTICLE 4. AMENDMENT.

- .365. RIGHT TO AMEND ARTICLES OF INCORPORATION. The articles of the corporation may be amended to include any legal provision. (AS 10.05.270).

- .370. PURPOSES FOR WHICH ARTICLES MAY BE AMENDED. This section lists some, but not all, of the legal purposes for which the articles may be amended. (AS 10.05.273).
- .375. PROCEDURE TO AMEND ARTICLES OF INCORPORATION. The board of directors or the shareholders can propose amendments to the articles of incorporation, but the articles may only be amended upon a 2/3 majority vote of a quorum of shareholders.
- .380. ARTICLES OF AMENDMENT.
- .385. FILING OF ARTICLES OF AMENDMENT.
- .390. EFFECT OF CERTIFICATE OF AMENDMENT.  
These three sections provide that an amendment approved by the shareholders to the articles of incorporation must be filed with the Commissioner of Commerce in the same manner as the original articles of incorporation and once certified by the Commissioner the amendment becomes effective. These sections are adopted directly from AS 10.05.285, .288, and .291 respectively.
- .395. RESTATED ARTICLES OF INCORPORATION.
- .400. EXECUTION OF RESTATED ARTICLES OF INCORPORATION.
- .405. CONTENTS OF RESTATED ARTICLES OF INCORPORATION.
- .410. FILING OF RESTATED ARTICLES OF INCORPORATION.
- .415. EFFECT OF ISSUANCE OF RESTATED CERTIFICATE OF INCORPORATION.  
These five sections deal with restated articles of incorporation. Restated articles of incorporation for purposes of GSOCs are simply a consolidation and updating of the articles of incorporation with current amendments. This allows the corporation to have on file with the Commissioner a current copy of the articles of incorporation incorporating all amendments. The provisions are adopted essentially from ABCA except that GSOCs are not allowed to amend the articles of incorporation through filing restated articles and for that reason are allowed to file restated articles upon motion of the board of directors. (AS 10.05.294, .297, .300, .303, and .306 respectively).

#### ARTICLE 5. SALE OF ASSETS.

- .420. SALE OR MORTGAGE OF ASSETS IN REGULAR COURSE OF BUSINESS.  
The board of directors may sell or dispose of all the assets of the corporation if it is in the ordinary course of the corporation's business. (AS 10.05.435).
- .425. SALE OR MORTGAGE OF ASSETS OTHER THAN IN REGULAR COURSE OF BUSINESS. Sale of all the assets of the corporation other than in the ordinary course of business requires a vote of the shareholders. (AS 10.05.438).

- .430. APPROVAL OF PLAN BY SHAREHOLDERS. A 2/3 vote of the shareholders is required to approve a sale of all the assets of the corporation outside the ordinary course of business. (AS 10.05. 441).
- .435. ABANDONMENT OF PLAN BY BOARD OF DIRECTORS. Even though a vote of the shareholders is required to approve a sale of all the assets the sale may be abandon by the board since such sales are unusual and may require quick decisions which cannot be effectively put to the shareholders. If the shareholders are unhappy about the abandonment they have the power to remove the board and it is to be expected that the board would not abandon such a sale without good cause. (AS 10.05.444).
- .440. RIGHTS OF DISSENTING SHAREHOLDERS UPON SALE OR EXCHANGE OF ASSETS.
- .445. NOTICE TO DISSENTING SHAREHOLDER.
- .450. PAYMENT TO DISSENTING SHAREHOLDER AFTER AGREEMENT ON VALUE OF SHARES.
- .455. ACTION BY DISSENTING SHAREHOLDER TO COMPEL PAYMENT UPON FAILURE TO AGREE ON VALUE.
- .460. EFFECT OF ABANDONMENT OR REVOCATION OF SALE OR EXCHANGE ON SHAREHOLDER'S RIGHTS.
- .465. STATUS OF SHARES ACQUIRED FROM DISSENTING SHAREHOLDER. These section deal with the shareholder who does not wish to be a part of the sale of substantially all the assets of the corporation in spite of the 2/3 majority vote of the shareholders. Such a shareholder can dissent from the sale and have the corporation purchase his shares. There are notice provisions and opportunity for the shareholder and the corporation to agree upon a purchase price for the shares. If the shareholder and the corporation cannot agree upon a price the matter can be decided by a court. If the sale is abandoned the dissenting shareholder loses his right to receive payment from the corporation for his share and he remains a shareholder. Shares acquired from a dissenting shareholder become treasury shares.

#### ARTICLE 6. DISSOLUTION.

GSOCs may be dissolved voluntarily by a 2/3 vote of a quorum of shareholders (.475) or by the Commissioner of Commerce (.530). In a voluntary dissolution the question may be put to the shareholders upon action of the board or a petition of 1,000 shareholders (.475). On affirmative vote of the shareholders a statement of intent to dissolve signed by corporate officers (.480) is filed with the commissioner of Commerce (.485). When the statement is officially filed by the Commissioner the corporation must cease doing business and wind up its operations (.470). However, the corporate existence continues while the corporation notifies creditors,

collects and liquidates assets and pays off its obligations (.490)(.495). When the business of the corporation has been wound up articles of dissolution (.515) are filed with the Commissioner (.520) and when certified the corporate existence ceases (.525). Voluntary dissolutions may be revoked at any time by a 2/3 vote of the shareholders (.500) in which case the corporation files a statement of revocation (.505) and the dissolution process is terminated (.510).

A GSOC may be dissolved involuntarily by the Commissioner of Commerce with 60 days notice for failure to file reports or pay fees, failure to maintain a registered agent or office or change either without notice, and unfilled board vacancies continuing beyond the allowable time (.530). A corporation can be reinstated within two years upon remedy of the violation.

The superior court may dissolve a GSOC (.530) and has jurisdiction to liquidate the corporation's assets (.540). The Attorney General may bring suit to dissolve the corporation where there was fraudulent incorporation or continual abuse of corporate authority (.530).

In addition a suit for liquidation of the corporations assets may be brought by:

- 1) A shareholder where the board is deadlocked; the board is action in an illegal, oppressive, or fraudulent manner; the shareholders are deadlocked for two annual meetings; or, the corporation's assets are being misapplied (.545).
- 2) A creditor when the creditor's claim is unsatisfied and the corporation is insolvent (.550).
- 3) The corporation upon request to have a voluntary dissolution continued under court supervision (.555).
- 4) The Attorney General in conjunction with a suit for dissolution (.560).

The shareholders need not be a party to the action for liquidation (.565). The court has authority to appoint a qualified receiver (.605) for the corporation with power defined by the court (.585) to collect and sell its assets (.570)(.575). Proceeds are to be used to pay expenses allowed by the court (.590) and debts of the corporation with the remainder distributed to the shareholders (.580).

The receiver may sue and be sued (.595) and all claims against the corporation must be filed in a timely manner with the court or the receiver (.610). Liquidation may be terminated by the court (.615) but upon completion the court must enter a decree of dissolution (.620).

The article on dissolution is carried over substantially intact from ABCA (AS 10.05.465 - .594).



## ARTICLE 7. GENERAL PROVISIONS.

- .625. AS 10.05 INCORPORATED BY REFERENCE. In order to reduce duplication this section incorporates by reference Sections .699 through .819 of ABCA (AS 10.05.699 - .819). These sections deal with requirements for annual reports to be filed with the Commissioner of Commerce, filing fees and charges, procedural provisions and forms, and powers of the Commissioner of Commerce.
- .630. FALSE STATEMENTS AFFECTING VALUE OF SHARES. An agent of a corporation who makes fraudulent statements regarding the value of shares is guilty of a misdemeanor.
- .635. DIRECTOR MAKING UNLAWFUL DIVIDEND OR DISTRIBUTION OF ASSETS. A director who concurs in a distribution designed to deceive creditors or shareholders is guilty of a misdemeanor.
- .640. RESERVATION OF POWER. Amendments to this chapter apply to all existing and future corporations organized under it, but an amendment may not abrogate the contractual obligations of any corporation.
- .645. DEFINITIONS. Many of the definitions in this section are carried over from ABCA and may also be found in AS 10.05.825. However, there are two significant new definitions:
- Certificate as used in the context of "stock certificate" may mean something other than the actual certificate such as a receipt evidencing ownership. This definition has been broadened in order to allow for the possibility that the stock certificates themselves may never be issued, but that the stock records may be kept by the corporation itself as the evidence of ownership in a particular shareholder which ownership would be represented in the hands of the shareholder by a receipt. Such a receipt would be required to carry all the same information as is required on the certificate itself.
- Resident is defined as a person who lives in Alaska and intends to remain here permanently. The definition allows for temporary travel or employment outside without loss of residency. If a dispute arises over residency all of the facts and circumstances indicative of permanent residency must be considered.

ALASKA  
GENERAL STOCK OWNERSHIP CORPORATION

BILL SUMMARY

Federal law requires state authorization of general stock ownership corporations receiving special tax treatment under Subchapter "U" of the Internal Revenue Code. The bill creates the Alaska General Stock Ownership Corporation (AGSOC). This corporation is a completely private for profit corporation which will operate under the Alaska Business Corporations Act to the extent consistent with the AGSOC act. The shares of the AGSOC will be owned and voted by the citizens of Alaska with each resident holding a share of stock.

The bill directs the Governor to appoint incorporators to form the AGSOC and sets forth the following:

- 1) Board membership limitations assuring Alaskan control;
- 2) Federal requirements for corporate articles;
- 3) Stock distribution to all Alaska residents;
- 4) Penalties for fraudulent acquisition of AGSOC stock;
- 5) One year statute of limitations on AGSOC challenges;
- 6) Financing for AGSOC startup costs; and,
- 7) Technical amendments required to Alaska statutes.

The corporation is designed to have as its shareholders existing Alaskan residents. Stock will be distributed to eligible individuals without cost. Investments by the AGSOC will be made through the use of borrowed funds and the earnings from those investments used to retire the loan and distribute dividends to the shareholders. Except for minor exemptions the AGSOC will be subject to the same rules as all other Alaska corporations.

### DETAILED EXPLANATION

The bill creates a new Chapter 50, entitled "Alaska General Stock Ownership Corporation", within Title 10, the Corporations and Associations title, of Alaska Statutes. The act contains nine sections which may be summarized as follows:

Section 1 sets forth those areas where the AGSOC differs from a typical Alaska business corporation organized under Chapter 5 of Title 10. To the extent that these provisions do not conflict with the provisions of Chapter 5, the Alaska Business Corporations Act, Chapter 5 will apply;

Section 2 includes the corporation among those organizations eligible to receive secured loans from the Permanent Fund;

Section 3 allows the investment of surplus state funds in bonds of the AGSOC;

Section 4 exempts the AGSOC from registration under the Alaska securities laws while providing protection from fraud;

Section 5 creates a one year statute of limitations on suits brought to challenge legality of the AGSOC;

Section 6 makes the provisions regarding eligibility for stock ownership "nonseverable" in order to assure that if this fundamental section is found unconstitutional the entire law will be voided;

Section 7 makes fraud or misrepresentation in obtaining or selling shares of the AGSOC a Class C felony; and,

Sections 8 and 9 provide effective dates immediately following the Governor's signature for most of the legislation.

## ANALYSIS: SECTION 1

Section 1 of the bill constitutes the primary legislative section. It creates a new chapter, Chapter 50, of the Alaska Statutes, Title 10, setting forth technical requirements for the Alaska General Stock Ownership Corporation. The Chapter is divided into nine sections dealing with creation of the AGSOC, federally required charter limitations, board of directors, notification of shareholders' eligibility, limitations on corporate liability, restrictions on application for shares, fraud penalties, corporate dividends and definitions. A section by section analysis of Chapter 50 follows.

### 50.010. ALASKA GENERAL STOCK OWNERSHIP CORPORATION CREATED.

This section directs the Governor to appoint nine people as the incorporators and initial board members of the Alaska General Stock Ownership Corporation. These nine people, a majority of whom must be Alaskans, will adopt corporate articles and by-laws and file with the state to create the corporation as required under the Alaska Business Corporations Act. The bill allows the appointment of some non-Alaskan directors to provide flexibility in obtaining special expertise.

The status of the general stock ownership corporation is made clear by this section. AGSOC is not and may not be considered to be an agency, instrumentality or political subdivision of the State of Alaska. This parallels the federal statute which provides that a GSOC shall be treated as a private corporation and not as a governmental unit. The section also clarifies AGSOC status in relation to other statutes by requiring that it comply with the provisions of Subchapter U of the Internal Revenue Code and the Alaska Business Corporations Act. To the extent that the AGSOC authorizing legislation is not inconsistent with Chapter 5 of Alaska Statutes Title 10, AGSOC will be subject to all the rules applicable to any other Alaska business corporation.



## 50.020. ARTICLES OF INCORPORATION.

Federal law requires certain charter provisions for general stock ownership corporations and these are set out as requirements for the articles of incorporation of the Alaska General Stock Ownership Corporation. Each of the subsections in .020 set forth a different requirement which must be included in the AGSOC articles.

Subsection 1 provides that the AGSOC may issue only one class of stock which impliedly must be voting common stock.

Subsection 2 provides that stock may be issued only to a certain class of individuals. The group to whom stock may be issued, a closed class of original issue shareholders, are those people who fulfill two tests:

- a) They were residents of Alaska, as defined by the definition Section .900, as of the effective date of the legislation which, under Section 8 of the bill, will be the day following the Governor's signing; and,
- b) They remain residents of Alaska until the shares are issued.

50.900 defines resident as a person who lives in Alaska and intends to remain here permanently. The definition allows for temporary travel or employment outside without loss of residency. If a dispute arises over residency all of the facts and circumstances indicative of permanent residency must be considered.

Subsection 3 provides that at least one share of stock must be issued to each eligible resident unless that person elects within one year not to receive the stock. The legislation contemplates issuance of shares to eligible individuals free of charge with corporate investments financed entirely with borrowed funds. The one year period allows shareholders who do not wish to receive stock for whatever reason to reject their share, but this election not to receive stock is irrevocable and once made may not be changed.

Subsection 4 provides for limitations on the transferrability of the stock so that shares may not be sold or used as security for a loan during the first five years unless the shareholder dies or moves out of the state. Shares may only be transferred to another Alaska resident and then only if that person would not own more than ten shares of AGSOC stock after the transfer. Corporations and other artificial persons may not be shareholders. Finally, in order to protect minors, shares may not be transferred until the shareholder reaches 18.

Subsection 5 provides that the corporation shall qualify as a general stock ownership corporation subject to the special tax provisions of Subchapter U of the Internal Revenue Code.

Subsection 6 provides for a limitation on investments which the corporation may purchase. The corporation may not invest in assets acquired by it or for its benefit through the power of eminent domain. This is not to imply that the AGSOC has the power of condemnation since that power may be exercised only by the government. The limitation is designed to prevent the AGSOC from acting in collusion with an agency or local government to acquire a going business from an unwilling seller. It is not intended to prevent the purchase at arm's length of a business where a portion of the seller's assets may have been acquired by condemnation. The AGSOC would not be prevented from investing in a project where some minor portion of the assets must be acquired through eminent domain if the State or local government determines that the exercise of its condemnation power is appropriate. Such a situation might occur should the AGSOC become involved in the construction of a major pipeline.

Subsection 7 provides the AGSOC with a right of first option to purchase, at a price not less than book value, any stock offered for sale during the first five years of the corporation. The terms and conditions for exercise of this right will be set forth in detail in the corporate bylaws and a notice of the restriction will appear on the stock certificates or receipts.

The five year period for the right of first option parallels the time during which shareholders are prohibited from selling their stock. Only a limited number of shares will become available for sale during this period of time and it is unlikely that an organized market for AGSOC stock will develop during this period. Discretion is left with the corporation to pay prices higher than book value for the stock, but it is likely that the directors will determine that book value is the appropriate price.

Since shareholders who become non-residents during the five year period of transfer restrictions may be able to sell their stock at a high price in an uncontrolled market emigration might be encouraged. The option by the corporation provides a controlled market during the transfer restriction period and allows time to structure the full public market which will develop after the transfer restrictions lapse.

#### 50.030. BOARD OF DIRECTORS.

This section sets out the provisions for AGSOC directors which differ from those applicable under Alaska Statutes Title 10, Chapter 5. The nine incorporators serve as the original board of directors and are divided into three groups in accordance with AS 10.05.186, except that only one-third of the directors will stand for election at the first annual meeting, one-third at the second annual meeting and one-third at the third annual meeting. Thereafter each director will serve for a term of three years as provided in AS 10.05.186. None of the other provisions of the Alaska Business Corporations Act regarding directors are changed and the normal rules of Chapter 5 apply to the AGSOC.

50.040. NOTIFICATION OF ELIGIBLE SHAREHOLDERS.

Since stock is to be distributed free of charge all Alaska residents must be notified of its availability. This section sets out the minimum notice requirements of weekly broadcast and publication for at least three months before stock distribution and monthly broadcast and publication for eleven months after distribution. These are minimum requirements only and the board of directors may determine that the corporation should take other steps to identify and notify potential shareholders. The AGSOC might want to compile mailing lists from various sources to develop a list of potential shareholders while in the bush it might be appropriate for it to hire census personnel to locate and identify eligible Alaskans.

50.050. CORPORATION NOT LIABLE TO SHAREHOLDERS.

This section makes it clear that although the AGSOC is required to take reasonable steps to notify potential shareholders of their right to stock the burden of applying for stock lies with the resident and the corporation is not liable for failure to notify or issue stock to a potential shareholder. If a resident makes application for stock after the distribution of one or more dividends he loses his right to those dividends and is entitled to receive only those dividends declared and paid after the date upon which his stock was issued to him.

50.060. LATE APPLICATION FOR SHARES.

The legislation provides that stock is to be issued to all qualifying residents and the corporation directed to use reasonable efforts to identify potential shareholders. The burden of application is upon the resident. Those residents who are identified or who identify themselves will have one year in which to elect not to receive stock. To protect against those eligible residents who are not identified and fail to identify themselves hoping to see how the corporation fares before applying for their stock, a final cutoff date is provided after which distributions of stock will be made only upon payment to the corporation of book value.



50.070. PENALTIES FOR MISREPRESENTATION OF ELIGIBILITY AS SHAREHOLDER.

This section provides a civil right of action against individuals who obtain stock through fraud or misrepresentation and who sell stock on the same basis. It allows the stock to be voided, dividends to be recovered with interest and costs of the suit to be paid by the defendant.

50.080. DIVIDENDS OF THE CORPORATION.

Under the rules of the Alaska Business Corporations Act a corporation may pay dividends only out of earned surplus, the retained earnings of the corporation. Since the AGSOC is required by federal law to distribute 90% of its taxable income to its shareholders on an annual basis it may be necessary to distribute a dividend in excess of earned surplus. Such a situation can arise because accounting for tax purposes and for purposes of the corporation's books may not and are not required to be the same. For this reason an exception to the general rule of Chapter 5, Title 10, is required allowing the AGSOC to distribute dividends as required to meet the terms of Internal Revenue Code Subchapter U except where such distribution would cause the corporation to become bankrupt or when the corporation is already bankrupt. Bankruptcy in this situation means when the corporation is unable to meet its current obligations.

50.090. EXEMPTION FROM AS 10.05

This section exempts the AGSOC from the provisions of the Alaska Business Corporations Act which requires \$1,000 of paid in capital before operation of the corporation commences.

50.100. LOAN GUARANTEE FUND.

This section establishes a fund within the Department of Revenue which is to be used to guarantee loans to the AGSOC by private lenders. This fund is intended to provide security for private credit to be used by the AGSOC for its startup expenses such as the costs of stock issue and the investigation of potential investments.

50.200. DEFINITIONS.

This section defines the terms used in Chapter 50. Especially important is the definition of resident since that definition will determine who is eligible to receive AGSOC stock without charge.

**Rule 23.1 Derivative Actions by Shareholders.**

In a derivative action brought by one or more shareholders or members to enforce a right of a corporation or of an unincorporated association, the corporation or association having failed to enforce a right which may properly be asserted by it, the complaint shall be verified and shall allege that the plaintiff was a shareholder or member at the time of the transaction of which he complains or that his share or membership thereafter devolved on him by operation of law. The complaint shall also allege with particularity the efforts, if any, made by the plaintiff to obtain the action he desires from the directors or comparable authority and, if necessary, from the shareholders or members, and the reasons for his failure to obtain the action or for not making the effort. The derivative action may not be maintained if it appears that the plaintiff does not fairly and adequately represent the interests of the shareholders or members similarly situated in enforcing the right of the corporation or association. The action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to shareholders or members in such manner as the court directs. (Added by Supreme Court Order 258 effective November 15, 1976)

Introduced: 3/6/79  
Referred: State Affairs and  
Finance

BY DUNCAN, COTTEN, HURLBERT,  
MCKINNON, MILES, MILLER,  
MUNSON, PARKER AND GARDINER

1 IN THE HOUSE

2 SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 240

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 ELEVENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act creating the Alaska General Stock Ownership  
7 Corporation; and providing for an effective date."

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

9 \* Section 1. AS 10 is amended by adding a new chapter to read:

10 CHAPTER 50. ALASKA GENERAL STOCK OWNERSHIP CORPORATION.

11 Sec. 10.50.010. ALASKA GENERAL STOCK OWNERSHIP CORPORATION

12 CREATED. (a) The governor shall appoint nine persons, at least five of  
13 whom are residents of the state, to act as incorporators of the Alaska  
14 General Stock Ownership Corporation.

15 (b) The corporation is a general stock ownership corporation and  
16 shall be formed in accordance with subchapter U of the Internal Revenue  
17 Code of 1954, as amended, (26 U.S.C. secs. 1391 - 1397), and with  
18 AS 10.05. The corporation is subject to the provisions of AS 10.05,  
19 except when inconsistent with this chapter or 26 U.S.C. sec. 1391(a).

20 (c) The corporation is not and may not be considered to be an  
21 agency, instrumentality, or political subdivision of the state for any  
22 purpose.

23 Sec. 10.50.020. ARTICLES OF INCORPORATION. The corporation's  
24 articles of incorporation shall provide

25 (1) for the issuance of only one class of stock;

26 (2) that shares of stock may be issued only to individuals  
27 who were residents of the state on the effective date of this Act, and  
28 who continued to be residents until the date of issuance of the shares;

29 (3) for the issuance of at least one share of stock to each

1 individual eligible under (2) of this section, unless that individual  
2 elects within one year after the date of issuance not to receive the  
3 share;

4 (4) that no share of stock may be voluntarily or involun-  
5 tarily transferred

6 (A) or encumbered by a shareholder, other than by will  
7 or under the laws relating to intestate succession, until five  
8 years after the date of issuance of the share, except if the share-  
9 holder ceases to be a resident of the state;

10 (B) to an individual other than one who is a resident on  
11 the date of transfer;

12 (C) to an individual who, after the transfer, would own  
13 more than 10 shares of stock of the corporation;

14 (D) or encumbered by a shareholder under 18 years of age  
15 or encumbered by that shareholder's parent or legal guardian;

16 (5) that the corporation must qualify as a general stock  
17 ownership corporation under subchapter U of the Internal Revenue Code of  
18 1954, as amended, (26 U.S.C. secs. 1391 - 1397);

19 (6) that the corporation may not invest in properties  
20 acquired by it, or for its benefit, through the right of eminent domain;

21 (7) that the corporation has a first option to purchase, at  
22 book value, its shares of stock offered to be transferred by a share-  
23 holder within five years after the date of issuance of the shares; if  
24 the corporation exercises the right to purchase, shares purchased shall  
25 be considered treasury stock and not entitled to dividends, if any, or  
26 to voting privileges.

27 Sec. 10.50.030. BOARD OF DIRECTORS. (a) The corporation shall be  
28 governed by a board of directors. A majority of the members of the  
29 board of directors shall be residents of the state at all times during



1 their terms of office. Except as provided in (b) of this section, the  
2 term of office of each director is three years. A director, upon the  
3 expiration of his term, shall continue to hold office until his succes-  
4 sor is elected and qualified.

5 (b) The initial board of directors shall consist of the incorpor-  
6 ators of the corporation. The board shall, as nearly as possible, be  
7 equally divided into three classes of directors. The initial class one  
8 directors shall serve one-year terms of office; the initial class two  
9 directors shall serve two-year terms of office; and the initial class  
10 three directors shall serve three-year terms of office.

11 Sec. 10.50.040. NOTIFICATION OF ELIGIBLE SHAREHOLDERS. Beginning  
12 not less than 90 days before the issuance of any stock, the corporation  
13 shall at least weekly notify the public of its intention to issue stock  
14 and the method for qualifying and applying for shares. The notice shall  
15 be by publication in at least one newspaper of statewide circulation, by  
16 radio and television announcements, and by other means the corporation  
17 determines to be appropriate and reasonable, and shall be continued at  
18 least once each month for 11 months following the date of issuance of  
19 shares.

20 Sec. 10.50.050. CORPORATION NOT LIABLE TO SHAREHOLDERS. Registra-  
21 tion as a shareholder of the corporation is a responsibility solely of  
22 an individual eligible under AS 10.50.020(2) to receive shares of the  
23 corporation. The corporation may not be held liable for

24 (1) any loss resulting directly or indirectly from the  
25 failure of an individual to apply for shares of the corporation; or

26 (2) payment of a declared or paid dividend to an individual  
27 who would have been entitled to receive the dividend had he been a  
28 shareholder at the time of declaration or payment.

29 Sec. 10.50.060. LATE APPLICATION FOR SHARES. An individual eli-

1 gible under AS 10.50.020(2) to receive shares of the corporation who  
2 failed to apply for the shares before their issuance may apply for and  
3 receive the shares any time within one year after the date of issuance  
4 if he is otherwise qualified to own stock of the corporation and upon  
5 the payment of the book value of the shares.

6 Sec. 10.50.070. PENALTIES FOR MISREPRESENTATION OF ELIGIBILITY AS  
7 SHAREHOLDER. (a) The ownership interest in shares of the corporation's  
8 stock issued to an individual ineligible to receive the shares who has  
9 presented fraudulent or misleading information regarding his eligibility  
10 to own the shares, is void upon the issuance of an appropriate order by  
11 the superior court. The ineligible individual is also liable for the  
12 full amount of dividends, or other distributions to shareholders re-  
13 ceived by him plus interest from the date of distribution, and legal  
14 fees and costs of recovery incurred by the corporation. This section  
15 applies to an individual who has presented fraudulent or misleading  
16 information regarding the eligibility of another person for whom he acts  
17 in the capacity of legal guardian.

18 (b) An individual who transfers or obtains shares of the  
19 corporation, or in his capacity as legal guardian obtains shares of the  
20 corporation for another, through fraud, misrepresentation, or any  
21 deceitful or illegal means is guilty of a felony.

22 Sec. 10.50.080. DIVIDENDS OF THE CORPORATION. Dividends, or other  
23 distributions, may be declared and paid by the corporation at any time  
24 and from any source to the extent considered necessary by the board in  
25 order to comply with the distribution requirements of subchapter U of  
26 the Internal Revenue Code of 1954, as amended, (26 U.S.C. secs. 1391 -  
27 1397), except that no dividend or other distribution may be declared if  
28 the corporation is insolvent or if the declaration would cause the  
29 corporation to become insolvent.

1           Sec. 10.50.090. EXEMPTION FROM AS 10.05. The corporation is  
2 exempt from the requirements of AS 10.05.012, 10.05.216(e), 10.05.255(7),  
3 and 10.05.264.

4           Sec. 10.50.100. LOAN GUARANTEE FUND. (a) There is a special fund  
5 of the state known as the "Alaska General Stock Ownership Corporation  
6 loan guarantee fund" which shall be completely segregated from all other  
7 funds of the state, and which is a trust fund for the uses and purposes  
8 of this section.

9           (b) The commissioner of revenue shall use the fund to guarantee  
10 loans made to the corporation by lenders other than the state. In  
11 guaranteeing loans the commissioner of revenue shall review the loans  
12 for the purpose of guarding against fraud and misrepresentation. A  
13 guarantee of a loan may not be for an amount in excess of the un-  
14 obligated balance of the fund at the time the guarantee is made.

15          Sec. 10.50.900. DEFINITIONS. In this chapter,

16           (1) "board" means the board of directors of the Alaska  
17 General Stock Ownership Corporation;

18           (2) "corporation" means the Alaska General Stock Ownership  
19 Corporation;

20           (3) "fund" means the Alaska General Stock Ownership Corpora-  
21 tion loan guarantee fund;

22           (4) "resident" means an individual who maintains a permanent  
23 place of abode in the state with the intention of making the state his  
24 permanent place of residence and who resides in the state continuously  
25 except for temporary purposes only and with the intent of returning; a  
26 person may not be considered to have gained a residence solely by reason  
27 of his presence and he may not lose it solely by reason of his absence  
28 while in the civil or military service of this state or of the United  
29 States or of his absence because of marriage to a person engaged in the

1 civil or military service of this state or the United States; while a  
2 student at an institution of learning; while in an institution or asylum  
3 at public expense; while confined in public prison; while engaged in the  
4 navigation of waters of this state, of the United States, or of the high  
5 seas; or while residing upon an Indian or military reservation; a minor  
6 takes the residence of his parent or of his legal guardian; a married  
7 woman may establish her own residence and does not presumptively take  
8 the residence of her husband.

9 \* Sec. 2. AS 37.10.065(a) is amended by adding a new paragraph to read:

10 (9) secured loans to the Alaska General Stock Ownership  
11 Corporation.

12 \* Sec. 3. AS 37.10.070(a) is amended by adding a new paragraph to read:

13 (14) bonds or other forms of indebtedness of the Alaska  
14 General Stock Ownership Corporation.

15 \* Sec. 4. AS 45.55.140(a) is amended by adding a new paragraph to read:

16 (12) a security issued by the Alaska General Stock Ownership  
17 Corporation.

18 \* Sec. 5. Notwithstanding any other provision of law, a civil action to  
19 contest the legality of this Act is barred unless the complaint is filed  
20 within one year of the effective date of this Act. The purpose of this  
21 limitation on suits is to insure that, after the expiration of a reasonable  
22 period of time, the right, title, and interest of shareholders of the Alaska  
23 General Stock Ownership Corporation will be vested with certainty and that  
24 the corporation will be able to carry on its business activities with cer-  
25 tainty.

26 \* Sec. 6. Notwithstanding AS 01.10.030, the requirements of this Act for  
27 eligibility to receive original issue shares of the Alaska General Stock  
28 Ownership Corporation are not severable. If those requirements, or the  
29 application of them to any person or circumstance, are held invalid, this Act



1 is void in its entirety.

2 \* Sec. 7. AS 10.50.070(b) is amended to read:

3 (b) An individual who transfers or obtains shares of the corpora-  
4 tion, or in his capacity as legal guardian obtains shares of the  
5 corporation for another, through fraud, misrepresentation, or any  
6 deceitful or illegal means is guilty of a class C felony.

7 \* Sec. 8. Sections 1 - 6 of this Act take effect immediately in accor-  
8 dance with AS 01.10.070(c).

9 \* Sec. 9. Section 7 of this Act takes effect January 1, 1980.

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