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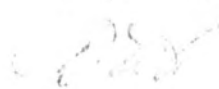
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PLEASE NOTE: THE FOLLOWING PAGES WERE TREATED
AS A UNIT IN THE ORIGINAL DOCUMENT.

Dear Fellow Legislator

Attached is some information that I have put together
regarding the issue of AGSOG. I think you will find
it both interesting and pertinent.

Regards,


Dick Randolph

*Also get copy of Res 1-30-80
HCR 44*

Alaska State Legislature

Libertarian
Representative
RICHARD (DICK) L. RANDOLPH
1105 Cushman St.
Fairbanks, Alaska, 99701



While in Juneau
POUCH V
Juneau, Alaska
99801

House of Representatives

Dear concerned Alaskans,

Senator Gravel is energetically promoting his AGSOC proposal. In typical Gravel fashion he is employing every technique of professional "con-ism" available. Please do not swallow his big lie. AGSOC is not free enterprise! It is not capitalism of any kind! It is complete and total collectivism and it must be stopped!! I can appreciate the appeal of something-for-nothing "professta-tions," but it's full of holes, it won't work, and it will commit at least one and maybe many generations of Alaskans to its cruel hoax.

Gravel's altar-ego, Louis O. Kelso, has been promoting this "economic idiocy" for over 20 years and in Gravel he has finally found a politician who is politically oriented enough to promote it. It is a scheme completely void of any redeeming values to a free society.

I appreciate that this is a harsh indictment, but one which is completely defensible. I will, between now and however long it takes to expose and defeat this sham, provide information and leadership to those who agree with this indictment.

To begin with, it is important that we understand Kelso's so-called "economic theories" from which AGSOC is derived. Toward that understanding I have enclosed two critiques of his book, The New Capitalists.

The first critique was recently produced by Robert Shelley, a life-long Alaskan, attorney, and presently my administrative aide in Juneau. Bob does an excellent job of tying Kelso, Gravel and AGSOC together and pointing out their fallacies.

Percy L. Greaves, a free-market economist, in his critical analysis of this work comments: "This small book contains more economic fallacies than it does pages. The basic assumptions upon which it is built cannot withstand the light of careful scrutiny. Furthermore, the alleged facts are not documented and the logic employed is extremely loose. Its strong effect on the casual reader rests largely upon the repeated assertion of seemingly plausible statements

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which, upon close analysis turn out to mean almost the exact opposite of what they first seemed to say.

Any attempt to put the book's proposals into effect would immediately reduce the incentive to produce and result in a rapid paring down of the American standard of living. At the same time, it would set up an economic dictatorship which would select the management of the nation's industries and determine all production goals. In short, it is an unwitting blueprint for the establishment of a Socialist America."

Please carefully read both, and then compare the AGSOC proposal in detail against this background. I am convinced that anyone who understands and believes in true free enterprise and capitalism will agree that this sham does not qualify in any aspect!

I would not dignify this proposal with a response if it were not apparent that many fine and normally right-thinking Alaskans are being drawn in by the insidious lure of this bankrupt proposal.'

It is my commitment to provide a well studied, articulate defense of the free market as opposed to this vicious, fraudulent misrepresentation of the facts! I am absolutely convinced that the adoption of the AGSOC proposal would have the most negative economic and social impact on the traditional Alaskan lifestyle conceivable.

I sincerely and emphatically request that you study the enclosed material and the other information which I will provide you from time to time. If you agree and want to help, let me know. Together we can expose and defeat this fraud and save 450,000 Alaskans from inadvertently creating a socialist Alaska!!

Freedom is the issue,



Dick Randolph
Alaska's Libertarian Legislator

AGSOC -- A FOOL'S PARADISE

prepared for

Representative Dick Randolph (L)

by

Robert Reed Shelley

AGSOC - A FOOL'S PARADISE
by
Robert Reed Shelley

In order to understand the meaning of the Alaska General Stock Ownership proposal presently before the legislature and the people of Alaska, it is necessary to become more familiar with the philosophy of its creator and to test some of the premises upon which its foundation is built.

Certainly any discriminating thinker who has encountered the AGSOC concept has realized that there must be more to the proposal than meets the eye. This is primarily because rarely in human experience does one get something for nothing. Try to picture Senator Gravel performing his political song and dance version of Jiminy Cricket's "Oh the World Owes Me a Living" on the Gong Show. Then compare The Sound of Music in which Julie Andrews sings, "Nothing comes from nothing, nothing ever could." Which one would you believe?

The creator of this attractive sounding 'horn of plenty' is a man named Louis O. Kelso who, along with myself, has combined the two professions of which the discriminating thinker is most skeptical, Economist and Lawyer, to form his background. From that point on, however, Mr. Kelso and I seem to diverge in our approach to human nature and the application of human nature to the economics of man.

Among Mr. Kelso's publications are two books with rather deceiving titles. The first in order is one entitled The Capitalist Manifesto, and its sequel is one called The New Captalists. This paper is primarily con-

cerned with The New Capitalists, with references made therein to The Capitalist Manifesto. It's the inclusion of the term 'capitalist' which makes these titles so deceiving. Upon close scrutiny it is clear that Mr. Kelso is to capitalism what Benedict Arnold was to the American revolution.

Webster's Dictionary (1979 Ed) defines 'capitalism' as: "the form of economic, industrial, and social organization of society involving ownership, control, and direction of production by privately owned business organizations" (as opposed to the government). In other words, capitalism means free enterprise without government interference in the economy. Mr. Kelso, on the other hand, has the audacity to try to pawn off his plan for governmental direction of the economy to unsuspecting readers as 'capitalism.' If he and Senator Gravel (Kelso's political promoter) are successful, they should be named the flim-flam men of the century.

Basically, Mr. Kelso sees only two factors in production: 1) Physical labor and 2) Capital goods (those goods which produce other goods). It is his contention that capital produces 90 percent of the gross national product in our economy, and that all but a small fraction of the capital instruments are owned by 5 percent of the households of the economy. In addition, he claims that despite this "concentration of ownership of capital, "70 percent of income produced is distributed through labor.

It is important to critically examine these contentions because they are the basic assumptions upon which his entire theory rests.

Any reasonably astute person knows that the initial factor in any kind of production is an 'idea.' While ideas are not exactly physical labor, they are essential to production. When physical labor and capital are added

to ideas, we may have production. Mr. Kelso seems to practically ignore ideas as the factor of production which is uniquely human. Instead, he classifies the factors of production into physical labor (his "human" factor) and capital (his "nonhuman" factor). One might wonder how capital can be termed "nonhuman" since it is only by human conception, creation, and operation that capital exists.

At any rate, contrary to Kelso's views, each factor of production is not mutually exclusive. Neither ideas, physical labor, nor capital can produce anything by itself. It is ludicrous to attempt to determine what percentage of any finished product was the result of the idea, the physical labor, or the capital goods used to produce it. We could argue forever as to how much of the production of the Wright Brothers' first plane at Kitty Hawk was the result of their idea, their physical labor, or their capital. For each item of capital produced, it takes ideas and labor to put it together, to operate it and to maintain it. Then, once the capital produces something, it takes ideas and labor to distribute and market the product. Mr. Kelso has conveniently determined, in an effort to support his theories, that 'capital' is responsible for 90% of all production. So much for the first of Mr. Kelso's premises.

Next, Mr. Kelso claims that this 'capital' is almost totally owned by only 5% of the households in America. While it is undoubtedly true that some Americans own more capital than others, Mr. Kelso's estimate is obviously misleading. The number of stockholders of publicly held corporations listed on the New York Stock Exchange now exceeds 20 million, or one out of every six adults in the United States. In addition, Kelso seems to ignore the multitude of privately owned closed corporations, partnerships, sole proprietorships, house ownership, real

estate holdings, life insurance and other forms of capital. The most important point to make is that a large extent of what capital concentration does exist in the United States is the result of government control of the economy, which results in political rather than economic allocation of available resources. In other words, through subsidies, regulation, and huge government spending, government, through politics, helps some wealthy people to unjustly remain wealthy and even become wealthier. In any case, it is the divergence in wealth between people in a free society that has given the world its highest standard of living and which makes life interesting. It is the opportunity to better one's well-being that stimulates all production. The extent of that opportunity should not be limited. Variance in wealth should not be disdained in itself as Mr. Kelso seems to do.

The third 'statistic' which Mr. Kelso uses to further his plans is that 70% of all income produced is distributed through labor. While one might be able to come up with such an estimate, careful thinking would certainly question the accuracy of such a figure. For instance, is the board member of a large corporation really earning \$500,000 worth of labor in his salary, or is this a payment in lieu of dividends which could be taxed as high as 70%, whereas earned income has a 50% maximum tax rate? Even assuming Kelso's 70% of all income being distributed through labor, one could argue that this refutes his previous assumption

that capital produces 90% of all production, since one would assume that each factor would be rewarded in relation to its worth. Kelso, however, argues that this disparity between 10% of production being caused by labor and 70% of income being distributed to it proves that American labor is composed of primarily lazy people who just take up space and time but don't really produce anything. Kelso says that unemployment in a capitalist system is both desirable and inevitable. He supposes that soon machinery will do everything and humans will do nothing. This concept is so naive that it barely rates refuting. While it is true that capital equipment may eventually produce more products which were produced previously by labor, so far no machine can replace man's unique ability to reason and create new ideas. In addition, it will always take human physical labor to get the resources, to build the new capital equipment, to operate it, to maintain it and to distribute the product which it produces. In addition, it will be a long time before machines totally replace humans in the service industries. Perhaps technology has allowed mankind to concentrate on mental labor rather than physical labor, but even physical labor will never be totally eliminated. Kelso says his plan would cast out the irrational doctrine of full employment, indicating the people wouldn't have to work. As he says, "unemployment is natural and desirable in a technically advanced economy." Until human needs are totally satisfied, there will always be a demand for new and better products at a lower price, and this will keep most of us employed (if we so choose) through the next major evolution of man.

From these "statistics" as to production and the distribution of income, Mr. Kelso comes up with some incredible conclusions and recommendations.

One such conclusion is that the rich get richer and the poor get poorer. Mr. Kelso reasons that since "labor is being replaced by capital as the total factor of production," soon those who currently own capital will be the only ones who will survive economically. He further argues that it's nearly impossible to accumulate capital unless you already have capital. This, he says, is causing an increasing concentration of wealth in the country. Then Kelso wonders what these wealthy capitalists do with all of their extra capital. He comes to the conclusion that they just make themselves wealthier by re-investing it, with no benefit to anyone else. This is a distorted conclusion indeed. Because when that 'extra' capital is reinvested, many people become employed, and we can assume that somebody's need will be fulfilled if the product sells. On top of that, it is true capitalist economic theory to believe that because of the increased supply of products on the market, the added competition by the new business venture, and the added growth to the wealth of the economy, both the particular price of that product and the general price level of the economy would fall to some extent. In turn, this lowering of prices and increased availability of goods on the market make almost everyone else in the economy better off (wealthier). It is clear, then, that Mr. Kelso's conclusion should have been that the rich get richer (assuming they make productive investments) and so do the poor. Everyone is made better off by the reinvestment of the capital which the wealthy man did not consume himself.

What's wrong with some rich people getting richer in relation to some poor people? In my view, nothing. In Mr. Kelso's view, however, it is somehow unfair, and he claims it will soon lead to socialism since the relatively less rich will use government to control the economy, and redistribute the wealth. The incredible inconsistency

in Mr. Kelso's thinking occurs when in the next breath he suggests the creation of a new governmental agency that would virtually take over the banking system and control the entire economy. This he calls the Capital Diffusion Insurance Corporation (CDIC).

Although Kelso doesn't like his plan to be associated with the redistribution of wealth, he believes that the government needs to take an active role in redistributing wealth so that there are many little "capitalists" rather than just a few. It shows his lack of understanding of capitalism that he should use the concepts of redistribution of wealth and capitalism in the same breath. In addition, Kelso defines a capitalist as "a member of a household which derives not less than half the amount the household spends on consumption from the ownership of capital." Under this definition, Leonid Breznev would be one of the biggest capitalists in the world (although he steals it) and an average American with a business, a house, a retirement system, and a small portfolio of common stock probably would not qualify (although he probably earned it honestly). Of course, when this average American retires and lives off the return on his investment rather than labor related income, he can suddenly call himself a capitalist even though he might do virtually nothing.

Kelso says government's objective should be to make sure that technological unemployment falls on those who can afford it (the wealthy). Does he actually advocate government retirement of successful people so that others can take their place?

The Capital Diffusion Insurance Corporation (CDIC) is the governmental mechanism by which Kelso plans to "create" lots of little "capitalists" out of nothing. In Kelso's view, the only thing that is preventing more

little "capitalists" from popping up is the present free market system of capital formation financing. Under the current system, someone who doesn't own capital can only get it in one of two ways: 1) forego consumption and accumulate savings (capital), or 2) find someone who will lend you money (capital) so that you can reinvest it and make a higher return. Kelso argues that most people can't afford to forego consumption so as to accumulate capital, and that this wouldn't be good anyway because it would cause a decrease in the demand for consumer goods and the economy would collapse. Again, Kelso fails to see that as the economy expands because of capital investment, the entire populace benefits due to more and better products at lower prices. If the average American of today was compared to the average American of 100 years ago, there is little doubt that today's subject is much better off economically than yesterday's. As the man of today rises higher and higher above a subsistence living, he ends up having more wealth to spend on both consumption and capital investment, thereby both keeping up the demand in the economy and giving himself more opportunity to own capital. Again, Kelso leaves out the Human idea factor of production. He almost assumes that an investment is just an investment. The truth is that a man with a big idea and little capital can make more wealth than a man with a small idea and lots of capital. Therefore, Kelso's view that there is no upward mobility in our society and that one can only acquire capital if he already has capital, is not entirely correct.

Kelso astutely observes that those lending capital to others want some insurance that they will be repaid. Under the current system of financing, this means that the lender will want collateral in the form of a claim upon the currently held assets of the borrower. Kelso claims those without currently held capital will then not

be able to get a loan to acquire their own capital. He fails to see that at some point all of us must forego some consumption (save) in order to borrow to accumulate capital. (Unless it's given to us, of course.)

In order to provide those who lack collateral with capital-producing potential, Kelso's CDIC would guarantee, in the name of the government, loans by commercial banks to borrowers who would otherwise be poor credit risks. These loans would not even provide for the personal liability of the borrower. Responsibility is totally removed for the borrower. Kelso compares his plan to the federal FHA program, which is noted for its bankrupt failings.

By the government becoming involved in capital financing, all of us, including those who make successful investments, would be paying for the mistakes of those who didn't deserve a guarantee in the first place and who would go belly up in their investment. There are only two ways the government could pay off such guarantees. 1) raise taxes on everyone else; or 2) start up the printing presses and pay the claims off in phony dollars thereby feeding fuel to inflation. Neither method is fair or honest.

But the fact that such a government program is not fair because it would force innocent people to pay for others' mistakes is only a small part of the real evils that such a scheme would create. In describing CDIC still further, Kelso discusses what 'policy' factors should go into the manner in which CDIC decides who should get the guarantee and in what business ventures these borrowers should be able to invest.

Included in these proposed policies are the following:

1. Anti-Monopoly Policy: This would be left to the political whim of bureaucrats who would likely insure through government power that the rich and powerful were well protected. Still Kelso calls

his plan capitalism.

2. Promotion of technological improvement policy: There could be no more detrimental effect on technological change than to misallocate resources for such change by political (government) means rather than by the free market. Leave it to competition! Still Kelso writes of capitalism?
3. Increase the number of capital owning households policy: This basically means redistribution of wealth by transferring opportunity and risk from those who deserve it to those who don't. The New Capitalists?
4. Investment preferences for new capital estates policy: Another form of the redistribution of wealth. Capitalist?
5. Prevention of speculation in stocks policy: Let's say goodbye to the New York Stock Exchange. Kelso fails to see that stock speculation is the incentive for persons to first put money into a proposed development. He still refers to his plan as capitalist!
6. Coordination of consumer demand and new capital formation policy: This is plain and simply a planned economy proposal. Kelso the capitalist?
7. Inflation control and reduction of consumer credit policy: There are several reasons why Kelso's plan would in fact be inflationary. First, the misallocation of resources from the free market to borrowers with a poor credit risk will adversely affect economic expansion while the money supply either remains constant or expands. Second, it is likely that the government would honor guarantees made by CDIC by printing dollars (a hidden tax) rather than by raising actual taxes.

Additionally, once the government, through CDIC has guaranteed a major portion of outstanding loans

in the economy, it will have even a more vested interest in promoting inflation as a way to make the loans easier to repay.

8. Personal aptitudes and education requirements policy:

This is perhaps the most appalling of the powers Kelso wants to place in government hands. Under this policy, a bureaucrat would direct the economy by giving preferences on loans to only those with a particular level of education or background. This would be a very hard part of Kelso's planned economy to swallow. I can just see a father telling his son that he must become an artist in order to get started in the world because that's what the CDIC decided he should be.

It is inconceivable to me that any reasonable person after reading Kelso's proposed policies could not see his plan as pure socialism -- governmental control of the means of production. This is definitely not capitalism.

A good rule of thumb is that any government policy means government control -- unless that government policy is freedom. Kelso's "new capitalism" is in fact a blueprint for a totally socialist society. The most incredible thing is that he claims to propose his plan to avoid socialism.

The CDIC would have to make countless arbitrary rules about who was eligible for the program and who wasn't. By Kelso's own description, bankers would basically become government agents interpreting regulations and helping to operate a government program. Their decisions would be based on political governmental edict rather than good solid business factors.

Only a fool would believe that CDIC guaranteed loans would not soon permeate the capital market, drying up available capital to non-government approved enterprise. Eventually, anyone not qualifying for the CDIC program would be at a tremendous competitive disadvantage to those using

the program. Why should anyone strive for financial well being if government programs will eventually discriminate against them?

Creating the CDIC would substitute a political economy for a free market economy. It would open the whole system up to graft and corruption both in terms of bureaucrats wielding undeserved power and in terms of crafty entrepreneurs ripping off a shoddily run government program.

Eventually, the government, through CDIC, will literally be controlling the economy by deciding who's going to get loans, and for what purpose. No better plan could be conceived to destroy free enterprise and substitute socialism in the name of "capitalism."

Even beyond Kelso's CDIC blueprint for socialism, he advocates several changes in free market corporate operations. For instance, Kelso wants some kind of legal requirement that all earnings of corporations be paid out in dividends rather than allow investment for future expansion. This goes right along with his plans to eliminate speculation on resale of stock certificates. He wants an end to consumer credit so that people will be forced to become capitalists by foregoing consumption. (This is despite his fear that less consumption will hurt the economy.) Even if all corporate earnings were paid out in dividends, there is no assurance that people would spend the money on capital investment rather than consumption. The fact is that the government would get a larger part of it since dividends are taxed as non-earned income, and the sale of speculated stock is taxed at capital gains rates.

As an additional tool for the redistribution of wealth (which Kelso claims he does not advocate) he suggests major increases in inheritance tax rates. This proposal would give even less incentive for a man to build up his capital estate.

So as to not let Mr. Kelso off the hook too easily, let's look at some additional inconsistent remarks made by him which indicate a lack of understanding about capitalism and the free market.

At one point Kelso remarks that in Russia, industrialization is achieved at the cost of totalitarianism. Actually, industrialization isn't achieved very well in Russia, and even then only by almost completely foregoing consumption. In addition, Kelso is promoting totalitarianism here by creating an economy based on politics rather than the free market.

Kelso also claims that "conventional business financing falls far short of satisfying the basic principles of economic justice." The truth is that the free market finance system is the only one which does create economic justice. Justice means no more nor less than one deserves. Kelso's plan would, through government intervention, give some more than they deserve at the expense of others. At another point, Kelso says wealth should be distributed to those who produce, yet he comes up with plans like CDIC, and increased inheritance taxes.

Consistent with Kelso's something for nothing theory, he attempts to create capital wealth for those who he thinks don't have it by bookkeeping entries brought about by government guarantees without any abstaining from consumption. This is economically ridiculous and amounts to government increasing the money supply without additional wealth, thereby fueling inflation.

Placing his personal value judgment on everyone else, Kelso states that "society's first economic duty to its citizens is to enable them to be or become productive." True capitalism, meaning economic freedom, is the only way that individuals will have the opportunity to be or become productive. "Society" is a group of individuals, and individuals should have no duty to anyone other than

those they choose to contract with. It is individual freedom that sparks economic growth even for less productive people. Kelso's meddling in the economy is nothing but anti-productive.

Elsewhere, Kelso states that we "need even more intensive efforts by government and government supported power blocs to divert the wealth produced by capital to those who do not own capital." If this isn't a proposal for the redistribution of wealth and socialism, then neither was the Communist Manifesto.

Later Kelso states "every major increase in new capital formation that is not accompanied by an increase in the number of new 'capitalists' is a leap in the direction of socialism." Not only is this an untrue statement in itself, but if there is any leap to socialism, it would be to adopt Kelso's proposals.

While Kelso indicates that it's impossible for those without capital to become capitalists, he complains that "today owners of a hotel suddenly become owners of a chain of hotels" and says the same about restaurants and warehouses. This only points out the fallacy of his theory. If someone has a good idea, and foregoes a little consumption, then there's no reason why he couldn't become a wealthy capitalist. If someone doesn't do that, it's primarily because they don't have the qualities necessary to be capitalists. One of the most dangerous aspects of Kelso's theory is that he wants to make the government the insurer for people who probably don't have the qualities to be capitalists, are poor credit risks, and don't deserve loans.

At another point, while speaking woefully about inevitable socialism if we don't adopt his plan, Kelso states "socialist methods of new capital formation are more efficient and quicker than traditional methods of business finance now employed by the free world." This

is called talking out of both sides of your mouth.

Kelso virtually ignores that there is a skill involved in choosing good capital investment which should be rewarded. Instead, he figures that by putting capital into anyone's hands, benefit will result.

In short, Kelso's theory closely follows that of another economist who advocated, 'from each according to his ability, to each according to his need.' Kelso further admits the failure of his theory by stating that, with it in effect, "the government would wield considerable power."

It is unfortunate indeed that so many pages of words need to be produced describing Kelso's illogical economic theory, but when the legislature and the people of Alaska are asked to swallow the demagogic AGSOC proposal of Senator Gravel, they should know what the ultimate theory is behind the AGSOC plan. After examining Kelso's inconsistent and illogical reasoning, it would be incredible that any legislator could lend their support to AGSOC. Let's look at how the AGSOC proposal fits into Kelso's overall plan, and why certain parts of Kelso's plan are conveniently being left out at the initial stages of AGSOC.

In brief, AGSOC would hand out shares of stock "free" to most every Alaskan. The corporation would be formed by the initial appropriation of millions of your tax dollars by the government, with no guarantee or liability by the state or the stockholders (at least for the time being). One indicator of the deception built into AGSOC is that while its initiative literature only mentions initial government aid to the project, the Alaska House State Affairs Committee and Senate Finance Committee plans call for the likely guaranteeing of loans to AGSOC by the state. Ownership of the "free" shares would have all kinds of restrictions including the number of shares, how and when they could be sold, and who could own them. Then, this paper corporation would supposedly be able to

to borrow all kinds of capital to invest in money-making projects that would make us all wealthy since it would be required to pay all hoped-for earnings out in dividends without investing in itself. Even though there is talk of AGSOC buying various companies, one might wonder at the viability of such companies if they're willing to sell to AGSOC.

Comparing such a plan to Kelso's theory, it's easy to see what essential feature of Kelso's plan is missing from AGSOC. That missing piece is CDIC and the government guarantee of any part of the operation.

The question might be asked how could such a plan work when even Kelso admitted that some kind of a guarantee or collateral is absolutely essential to the formation and acquisition of capital? The answer is that it won't.

For AGSOC to go begging to a lender for money would be ridiculous. Can you imagine yourself, or any other intelligent person, readily lending huge amounts of capital to some immature youngster with no experience, no well-formed ideas, no collateral, no guarantee, and no strong sense of direction? Of course not. And this is exactly what AGSOC will be when it attempts to get a loan.

The only reason anyone would lend money to such a scheme would be if there were some hidden factors involved. I can immediately see at least one possibility of such a hidden factor.

The most dangerous of such hidden factors would be the unwritten assumption that based on political experience, the government, (State of Alaska) would eventually step in and guarantee, loan, or subsidize to AGSOC if it should ever find itself in bad finances (which it is doomed to from the outset). Any astute political observer (such as Senator Gravel) knows very well that if the state had already invested millions into AGSOC's start-up costs, had

perhaps lent money to AGSOC, if powerful legislative political figures had supported the AGSOC concept, and if politically appointed 'leading citizens' had been appointed to its directorship -- then the State of Alaska would politically be forced into saving the sinking ship of AGSOC before it went totally under. Such a bail-out of AGSOC by the state would be inevitable, and would complete Kelso's blueprint for socialism. There is no way that those demagogic promoters of AGSOC would allow AGSOC to go under, and if there's one attribute which politicians like to maintain, it's the characteristic of infallibility. Senator Gravel's primary concern is getting re-elected in 1980. The AGSOC 'something for nothing' appeal might get him over that hurdle and set him up for another six years, by which time he would find another distraction with which to attempt to fool the voters.

It would be this unwritten, but politically sound assumption of bail-out by the wealthy state of Alaska that might actually find someone willing to 'risk' a loan to AGSOC. An analogous situation would be a child's (AGSOC's) first loan, with the father (politicians) winking in the background that he will actually guarantee the loan even though it's not on paper. Such a risky loan would particularly be possible by the application of political pressure or offer of political gain by a powerful promoter of AGSOC to some government protected holder of extra capital which could be loaned to AGSOC (political payoff).

The next question to ask is, why wouldn't the AGSOC proposal include government subsidy, loans, and guarantees right from the beginning? The answer is simple. It would be easier for Kelso and Gravel to hold AGSOC up as "capitalistic" and not socialistic if they can minimize the aspect of government involvement. They may also be clever enough to realize that it wouldn't be necessary to include government guarantees at the outset. If they just feed

AGSOC to the people a little at a time, they'll be hooked by the time it's too late to do anything about it. Promoters of AGSOC would know that once the corporation was created on paper, and stock was issued to all Alaskans, it will be easy to get the missing government guarantees and subsidies worked into the picture later on. When those subsidies and bail-outs occur later on, individual owners of AGSOC shares may not be personally liable as stockholders, but they would certainly be liable as taxpayers.

In addition to the possible devious scheme behind AGSOC, there are many other aspects of it which make it undesirable. For instance, promoters claim that the fact that AGSOC would not be subject to taxes on its earnings (even though shareholders would be on their dividends) will make it attractive enough for investors to lend to it. That not only points out the ridiculous level to which taxation has risen in this country, but it should be obvious to the observer that by exempting AGSOC from taxation, the government is actually subsidizing it, since all of us will probably have to make up the revenue lost by tax exemption.

Another aspect of AGSOC is its political control from the outset. Politicians would be appointed to its board of directors at the beginning, and because of its diversified ownership, those directors would be nearly impossible to dislodge. These political directors would have AGSOC competing with other businesses in the Alaskan economy with the competitive edge of no taxation and no capital requirements. Through a slow process, this politician's boondoggle would begin to control and affect more and more of the Alaskan economy, with government's help.

Since AGSOC would be prohibited from retaining earnings for reinvestment, it couldn't help itself grow even when reinvestment might be economically feasible.

THE NEW CAPITALISTS

by

Louis O. Kelso and
Mortimer J. Adler

A CRITICAL ANALYSIS

by

Percy L. Greaves, Jr.

This small book contains more economic fallacies than it does pages. The basic assumptions upon which it is built cannot withstand the light of careful scrutiny. Furthermore, the alleged facts are not documented and the logic employed is extremely loose. Its strong effect on the casual reader rests largely upon the repeated assertion of seemingly plausible statements which, upon close analysis, turn out to mean almost the exact opposite of what they first seemed to say.

Any attempt to put the book's proposals into effect would immediately reduce the incentive to produce and result in a rapid paring down of the American standard of living. At the same time, it would set up an economic dictatorship which, through the political allocation of capital, would select the management of the nation's industries and determine all production goals. In short, it is an unwitting blueprint for the establishment of a Soviet America.

A complete analysis of all the book's fallacies would necessitate a theoretical treatise of several large volumes. However, the following brief analysis of seven of the book's basic fallacies should be helpful in indicating why the book is unworthy of serious consideration. These seven basic fallacies are:

- I. Capital produces at least 90 percent of the gross national product. (pp. 5, 6, 38-40, et al.)
- II. A progressive concentration of the ownership of capital exists; the great bulk of capital is owned by 3 or 4 percent of the households (pp. 14-15, 28-37, et al.)
- III. Savings are not required for capital accumulation. (pp. 53, 55, 59, et al.)
- IV. No real shortages of labor and resources exist in Western nations. (pp. 4, 41, 46, 86, 101, 104 et al.)
- V. Government redistribution of income is now necessary. (pp. 6, 31, 32, 41, 45, et al, ad infinitum.)
- VI. Bank credit expansion can create wealth. (pp. 17-18, 55-56, 58-59, 60-63, 100-102, et al.)
- VII. Proposals provide for a free society. (Implicit throughout and stated in conclusion, pp 108-109.)

I. Capital produces at least 90 percent of the gross national product.

The early classical economists and Karl Marx believed that human labor produced all economic values. Today, most labor union leaders, as well as those who write our laws, believe that human labor is responsible for producing almost all economic values and that employees, as employees, are entitled to all increases in production.

The authors of this book believe that capital is responsible for the production of almost all economic values and that the share attributable to capital is ever increasing with each addition to available capital. They assume that this is an apparent fact and make no attempt to document it or defend it logically. They apparently assume that because the increasing use of capital results in higher physical volume of goods, all the increased human satisfaction resulting from such increased quantities must be attributed to capital.

This neo-capital theory of value is just as indefensible as the labor or neo-labor theory of value. They both ignore the essential factors of time and abstinence as well as the factor of profit and loss which results from the uncertainty of future demand at the time businessmen commit their capital to the time-consuming process of producing particular goods. Attributing 90 percent or more of all production to any one essential factor and belittling the contributions of the other factors as insignificant and no longer needed is a little like attributing all football victories to the backs who score the touchdowns and thus implying that the linesmen are no longer necessary. Attention is concentrated on the sensational at the expense of other very essential contributions. No football game can be won without linesmen. Similarly, no economic production can take place without human foresight and the combination of capital and labor over a period of time. Each of the four factors is both important and essential.

Capital is always the result of human action. To obtain capital, men must first save, i.e., consume less than they produce. Only such savings can give them the time and ability needed to produce capital goods. Human ideas and foresight of future needs must also precede the introduction of every new capitalistic method. Then men must not only produce the capital goods but also direct and manage their use in production of other goods. Without the human factor, there would be no production, capitalistic or otherwise. Capital alone is incapable of producing anything.

Men do not value all labor or all capital. Men only value the specific units of labor or capital which they are considering in connection with a specific situation. Men think in terms of the value to them of one more, or one less, unit, that is the marginal unit. If they are buying, they compare the value to them of one more unit of labor or capital of a specific type and the price they must pay for it. They then buy until one more unit is no longer worth its market price to them. When they consider selling, they compare the value to them of one less specific unit with the value to them of the sum of money they receive in return for it. The market values of all types and units of both labor and capital are traceable to the values consumers are expected to place on their final products.

In the market place all identical units sold at the same time and place are sold at the same price. The market process thus tends to allocate every available unit of capital and labor to the production of those products which are expected to bring the highest prices from consumers. This means that each additional unit of capital tends to be used to produce something considered less valuable than what was produced with previously available capital. Otherwise, the previously available units of capital would have been used to make those products.

So, with any given population, each additional unit of capital is not only worth less than the units of the previously existing supply of capital units, but it also reduces the value of every other existing capital unit with which it competes. Thus, with any given population, every increase in the amount of available capital reduces the importance of every existing unit of capital. Man can then have more of the things he wants but the additional things are not as important to him as the things he desired when less capital was available. So more capital makes capital less important (valuable), rather than more important (valuable) to man.

Let us attack the problem in another way. As man is constituted, his desires are insatiable. As soon as some desires are satisfied, other unsatisfied desires arise to take their place. If they did not, man would stop eating and all his other acitons. He would, in fact, lie down and die.

As long as man lives, he has unsatisfied desires. This means there is always a demand for more of what labor can produce with available resources. There are always ores that are not mined, land that is not planted, waters that are not fished, and goods that are not made because there is an insufficiency of labor. Labor, a necessary factor of all economic production, is the limiting factor in almost all areas of production. Every new person born on this earth brings his own unsatisfied demands for more things than can be produced with available supplies of labor. There is no such thing as a sufficiency of all kinds of labor.

Some types of labor are always in short supply. The economic problem is how to use available supplies of labor so as to produce the highest valued possible products, that is, how to prevent the waste of available supplies in idleness or producing less valuable products than such types of labor are capable of producing. All men have a point at which they prefer rest or leisure to the results of more labor, but up to that point men desire more of the goods and services that they can obtain only by more of their own labor or by spending money they are paid for contributing more of their labor.

Millions are unemployed today because political conditions either make them unemployable or create a situation in which they prefer to be unemployed, even though there is a great unsatisfied demand for the things they could help to produce. These political conditions are the laws and customs which hinder or prohibit the employment of persons where they could be most productive in terms of what consumers want more of most. These laws and customs include those that permit unions

to raise wages above free market rates, thus reducing the number employable in unionized industries; minimum wage laws, which prohibit the employment of those for whose products consumers will not pay the equivalent of the minimum wage; unemployment benefits, which encourage men to remain unemployed; and employment taxes, including social security taxes, progressive income tax rates and higher rates for overtime, all of which increase the costs of labor to employers and thus to the ultimate consumers.

It must be remembered that businessmen are merely middlemen between the workers and consumers. They will always hire every possible person they can afford to pay, up to wage rates that raise costs above what they can expect to recover from consumers. If they can make a penny by hiring one man more and selling his product, they will do so. Businessmen constantly strive to hire all who are willing to work at the free market wages which are set at the point which it is expected can be recouped from the ultimate consumer. Laws and customs which interfere with such free market wages also interfere with employment. They either cause unemployment or shift men into poorer paid jobs where they compete with less skilled persons who are driven further down the economic ladder, some of them being pushed below the minimum wage and thus into compulsory unemployment. These interventions have produced mass unemployment but in a free market society there can be no surplus of labor as long as men have unsatisfied desires which the employment of labor could satisfy. As mentioned above, such unsatisfied desires are a fact of human life.

One of the values of owning capital is that it saves men time. If we have the capital, we do not have to take the time and trouble to produce it. The payment for capital is thus a payment for time saved as well as for the labor needed to produce it. The payment for time is called interest. The rate of interest is determined by man's time preference, that is, by how much he prefers to have some things now rather than a year from now. Businessmen devote time and labor to the production of specific types of capital goods when they foresee that the cost of producing such capital goods will be less than their expected market value at the time of their completion. Not even the best businessman can always foresee future market conditions perfectly. This imperfection of human foresight is responsible for the factor of profit and loss. A period of time must elapse between the time businessmen decide what to produce and its later availability for sale. Those who turn out to have been relatively the most proficient in foreseeing correctly future demands make a profit. Those who do not suffer a loss.

In this connection, it should be remembered that profits are the amounts they receive over and above their labor costs, expenses for supplies and raw materials, and interest charges on necessary capital for the necessary period of time. When businessmen recover only their expenses for labor, supplies and raw materials and do not recover sufficient funds to pay the interest rate they could have obtained by lending their capital funds, they have suffered a loss. No one goes into business without the hope of earning more than he could by lending his money out or putting it in a savings account. On the other hand, profit or loss is merely the relative difference in expected market values between the time production is started and when it is completed, that is the time when the producer can transfer its ownership to another who then assumes the responsibility for future changes in its value.

For the fallacy of this book, all this means that the contributions of capital to production must be traced back to the contributions of the four essential factors that are necessary for the creation of capital. These four factors are human foresight, scarce goods consumed (savings) human labor and time. The scarce goods consumed in producing capital are the tools, supplies, and raw materials which, in turn, represent savings produced by human labor over a preceding time period.

The more capital savings there are available, the more apt we are to undertake projects which take a long time to produce to the point of operation and which will last a long time before their value is fully consumed. This means that interest payments are likely to be a larger factor in the costs of such enterprises. Any profits above the basic interest rate will attract competition which will pare down and finally eliminate the profit item. However, with the passage of time and changes in consumer preferences, new opportunities constantly arise for the re-emergence of new profits and losses.

As men are constituted, human foresight in deciding what to produce is imperfect and always will be. Likewise, our time, labor and capital are in short supply and always will be. The competition of a free market will allocate available supplies so that in the long run they will be combined to produce the highest possible values known to mankind. Should any investment temporarily obtain profits over and above labor, material and interest charges, competition, if not politically prevented, will soon tend to eliminate the profits. All profits are at best only fleeting in character and must be re-earned if they are to reappear.

In this connection, it should be pointed out that every increase in capital permits the production of goods and services not previously produced. Each new addition to capital goes to work by bidding up wages and the prices of raw materials before it can obtain the factors needed to go into production. Then, the newly produced goods must compete with existing goods and services and offer consumers a better buy before the contributor of the capital can receive a cent back on his investment. Further, the capital goods and the products they make must continue to compete for their originally estimated life if the capitalist is to get back his full investment with interest and possibly a net profit.

Another popular fallacy, inherent in the logic of the book's authors, is that it is thought that if corporate income taxes are reduced or repealed, the present profits before taxes would continue to be about what they are now and that this would be a windfall for the owners of capital. This is a gross error.

As long as a market economy exists, competition will determine the allocation of the reduced taxes among the various market participants as each specific condition dictates. This means that the repeal of 50 percent corporate income taxes would not double available corporate income as the authors seem to think when they estimate the share of production they attribute to capital. Actually, market competition would rapidly force the sharing of the tax savings in lower prices, increased production and higher wages. No doubt such an event would affect interest rates (time preferences). It would also change the

pattern of goods and services produced and thus those on which the highest profits of the future would be made. However, these changes in the allocation of produced income would be determined by the existing market forces and not by corporations trying to maintain the same wages, prices and production pattern as prevailed before the reduction in corporate income taxes.

Corporate income taxes are indirect taxes levied on market operation. Such taxes tend to hide the real burden of government spending from the general public which in the long run must bear the full burden. Unfortunately, many high and low income people, as well as the authors of this book, tend to think that it is the capital stock holders who now bear the full burden of corporate income taxes. This is just not so. Investors still earn the market rate of interest plus profits or less losses, depending on the foresight of each company's management, under existing conditions, in supplying what consumers want most as shown by how they spend their money.

In the long run, those who accumulate capital by consuming less than they produce must receive interest on their savings. If they did not, they would not invest their savings in capitalistic production. No law short of a complete dictatorship can force a man to save and invest without payment of interest. Nor can any law eliminate the uncertainties of the future. Any attempt to reduce or eliminate profits from business enterprise would only result in reducing the efforts of business to provide more efficiently for the uncertain human wants of an unknowable future.

While laws can and do reduce the return on capital, they cannot do so without at the same time reducing real wages and increasing the costs of the goods and services people want. Every government tax, rule or regulation which is not for the purpose of protecting or defending life, health, property or the activities of the market place must be a burden on all market participants. What is more, it is the market and not the government that allocates that burden and it does not spare those with low incomes. Except for their proposal to remove all corporate income taxes, the proposals of this book would increase the present burdens of every American. Its authors have no real concept of how a capitalistic society functions and how the benefits from the increased use of capital are shared by all market participants.

II. A progressive concentration of the ownership of capital exists; the great bulk of capital is owned by 3 or 4 percent of the households.

There is a slight plausibility to this argument. However, such plausibility is entirely due to political interferences rather than free market operations. One little known result of the political interventions before, during and since the New Deal is that they have tended to protect the positions of those already at the top of the business heap by making it considerably more difficult for new and struggling new competitors to replace them.

This is particularly true of the tax laws. Under present tax laws, it would be impossible for any man or family to duplicate the contributions to society of Henry Ford. He raised wages and benefited millions by making autos available for a few hundred dollars because he was able to

plow back his profits into expansion of his original small plant. This process could not be duplicated on a similar scale today. In this connection, it should be further stressed that the benefits of his increased capital investment did not all go to him or his family. The market compelled him to share his gains with his workers, his suppliers and his customers.

Other laws also help to protect those who have arrived from the competition of newcomers. This is most apparent in the labor area where union members can keep the unemployed from competing for the highest paid jobs. This unfortunately is the underlying cause of the economic distress and unrest among American negroes. However, all interventionary laws have this effect. It is quite evident where permits or licenses are required for the sole purpose of limiting competition. Laws which prevent the use of new materials or more economic methods or protect featherbedding are other instances. So also are the farm laws which curb the most efficient use of land. So also are oil import quotas, export licenses, interstate commerce regulations, certain food and drug regulations and many many more types of government owned and operated activities.

However, it is not such intrenchment of established business that the authors of this book have in mind. Nonetheless, it is the results of such interventions that opened the door to their approach. They build heavily on the results of government directed expansion of bank credit and the progressive income tax. They constantly stress the point that much present day capital accumulation is amassed by corporations plowing back their earnings rather than paying them out in dividends. They even admit that personal income taxes at higher rates than those on capital gains are a major factor.

However, they neglect to mention another contributing factor---that interest payments on corporate bonds entirely escape corporate income taxes. This fact, plus the effects of inflation, encourages the accumulation of capital in the form of corporate debts and capital gains upon the retirement of the bonds. They do not seem to realize that many of the conditions they deplore could be eliminated by simply removing the double taxation now levied on corporate dividends and levying the same tax rate on all personal and corporate income.

Unfortunately, the error in their reasoning is still greater. They assume that because a great part of capital accumulation takes place within existing corporations that almost all of it does and then as they proceed they not only assume that all capital accumulation happens in this manner but also that the owners of capital stock always remain the same persons. Actually, where corporations accumulate capital in order to provide their owners with capital gains rather than dividends, the stockholders must sell some of their holdings in order to realize their capital gains. The authors ought to visit the stock market some day, or at least read the figures on the turnover of stock ownership every business day. It runs into millions of shares.

While the authors with ever increasing emphasis proclaim the ever narrowing number of the nation's stockholders, the actual figures belie them. On June 24, 1965, the New York Times and Wall Street Journal

published figures of the New York Stock Exchange reporting that the number of stockholders of publicly held corporations has increased with every count made since 1952. The total figure now exceeds 20 millions and includes one out of every six adults in the United States. This is a far cry from the claim of the authors and this is only for the publicly owned corporations.

Many of our wealthiest men are owners of closely held privately owned corporations. So are many of our middle class citizens, including millions who place their savings in their own businesses with which they are more familiar than with the affairs and management of publicly owned corporations. The facts indicate that over the years the ownership of capital has become ever wider as has the resulting benefits to workers and consumers who use the many products made possible by the increase in capital. Many more than the Ford family are now benefiting from the existence of the Ford Motor Car Company. And so it is with every large corporation that earns profits.

The authors completely overlook the huge savings of the masses in many areas, including home ownership and other real estate. Take life insurance for example. There are now more than 120 million individual policy-holders insured with legal reserve life insurance companies holding more than \$141 billions in assets. In 1960, 89 percent of all family heads were insured, including 71 percent of those with annual incomes under \$3000. In 1963, American families received from life insurance companies payments amounting to 10 billion dollars. Such payments as well as the assets held by life insurance companies for their policy-holders are increasing with every passing year.

By the end of 1964, insured deposits in mutual savings banks had risen to more than 42 billion dollars, compared with only 10 billions at the end of 1945. This quadrupling was not done by any 3 or 4 percent of the nation's households. In the same period the savings capital of the savings and loan associations had increased from less than 8 billion dollars to almost 102 billion dollars. This is not where a few enormously wealthy capitalists are concentrating their savings. Individuals also now hold more than 49 billion dollars worth of the national government's baby bonds. This figure is up by more than 6 billion dollars since the end of World War II.

There is absolutely no evidence that there is a progressive concentration of capital in the United States. In fact, all the available evidence points in the opposite direction. Unfortunately, too much of the increasing savings have gone into forms that are hard hit by the inflationary policies of our national government.

There are two lesser points that should also be mentioned. First, the authors consider depreciation, amortization and depletion, along with withheld earnings, as "internally generated funds" which contribute "today almost three-fourths of new capital formation." Such funds are merely a replacement of capital consumed in production. While they may represent a demand for new capital goods, they are not an increase in capital, but merely a maintenance of prior capital accumulations.

Second, the book makes no mention of the effects of inflation on corporate earnings as figured by tax authorities, in general, a part of what is considered "taxable profits" is in fact only illusory profits. Under the tax laws, taxpayers are allowed to amortize or depreciate only the original costs and not the eventual replacement costs. Thus, when inflation increases the dollar costs for replacements, the government is actually taxing as a profit what is in fact a loss, or technically a consumption or depletion of previously accumulated capital assets. So the authors actually consider the mere replacement of such consumed capital as further evidence of their imagined concentration of the ownership of capital.

III. Savings are not required for capital accumulation.

This is one of the most idiotic ideas on which the entire book is based. The authors bluntly assume that capital can be created from scratch and without any abstinence by the application of the future earnings from capital created by the mere bookkeeping addition of sums to bank deposits. The only basis furnished for such illogical reasoning is a study that Harold G. Moulton made some thirty years ago. That study indicated that historically capital accumulations have on certain occasions increased most rapidly during periods of "high-level consumption."

Dr. Moulton made this study for Brookings Institution early in the New Deal. It was part of a four volume series in which each succeeding volume pyramided its own fallacies on top of those of the preceding volumes. However, Dr. Moulton and his Brookings associates, including Dr. Edwin G. Nourse, later, 1946-49, Chairman of President Truman's Council of Economic Advisors, are not to blame for the extreme interpretation placed on their findings by the authors of the book under review. In boom times, particularly those induced by expansion of bank credit, there are more dollars for both consumption and investment.

The fact remains: all capital accumulation must be the result of savings on the part of someone. Capital can only be amassed by abstaining from consuming all that is produced and available. Before goods can exist, they must be produced. Those who consume all that they produce have no savings or capital. Those who consume less than they produce have some savings. These savings are their capital. It is as simple as that.

Unfortunately, the authors of this book have been fooled, as have many others, by the illusion that the granting of bank loans by bookkeeping processes is a wealth creating process. This illusion will be dealt with under VI. Here, it is sufficient to state that physical capital goods, the only kind that can be used in production, can not be created by accounting manipulations. Capital accumulation requires abstinence on the part of the owners of wealth. They must first live on less wealth than they, their ancestors or other benefactors have produced.

In the market economy, people are paid in money for their contributions to the market. When they do not spend all their money income for consumption of goods and services, there must remain in the economy a portion of their contribution to society which is available as capital. They can use that capital themselves or transfer title to it by lending or investing that part of their money income. When one lends his savings, he merely transfers title temporarily to existing wealth.

This, of course, assumes no theft or manipulation of the money supply such as the authors of this book endorse when they propose making their proposed capital-creating bank loans redeemable in newly created Federal Reserve Notes. When one borrows or spends artificially created bank credit, one merely exercises a claim on previously existing wealth---wealth which in a free and moral society would be allocated to someone spending funds that were received in return for a contribution to society.

Capital cannot be created out of thin air or by the bookkeeping opening of a bank credit. The authors believe that capital can be so created. All that they ask is that the bank borrower pay an insurance premium to a government agency which will insure the bank against any entrepreneurial error by the user of such accounting-created-capital. They expect that such accounting created capital will earn sufficient profits and interest to pay off the original loan with interest. This is pure nonsense. Yet the entire plan of the book is based on it.

IV. No real shortage of labor and resources exist in Western nations.

If this were so, there would be no economic problem. A prime factor of life here on earth is that the things men want and can produce are in short supply. Where they are not in short supply they are free goods and there is no economic problem.

The top shortage is labor. As mentioned under number I, many resources are not fully developed to the extent of present technological knowledge because there is a shortage of labor. The usual expression is that labor costs would be too high, or that it would be uneconomic or simply that it would not pay. All of which means that there are better uses available for the labor on hand. Unfortunately, governments are not always guided by such economic logic. The present development of atomic power for peaceful uses is still uneconomic. The labor and capital so consumed could produce higher values if there were no government interference with market processes. This is true of almost every government activity except those of defense and the peaceful settlement of disputes. If this were not so, men would find it profitable to undertake such activities in a free market.

Nothing can have value in the market place unless the supply is less than the demand for it as a means for satisfying some human need or want.

It goes without saying that there are many resources around the world that men could and would exploit if governments did not hinder or prohibit such exploitation. However, there is a real shortage of labor and resources in the form that men find them useful and there always will be.

V. Government redistribution of income is now necessary.

The only justification for such a belief is that of Marx and Engels in the Communist Manifesto, where they state that every government intervention makes matters worse and creates a demand for further intervention until the point is reached where the whole capitalistic system is overthrown and replaced by a dictatorship of the proletariat.

A good argument might be made that because government spending, taxing and inflation policies have destroyed considerable private savings and potential private savings the government now has an obligation to those it has impoverished. However, that is not the argument of the book. The authors imply that all present deplorable conditions are the natural result of a free and unhampered capitalistic system which must be reformed by governmental action. They thus offer their plan for the political creation of capital with the promise that Congress will vote to give every person his fair share of the capital created by bank loans. The owners of such capital will then somehow be entitled to receive 90 percent or more of all production.

It is true, of course, that there are people in this country who are in need of financial help. That this number is now large is due primarily to political interferences with the operations of a free market as well as uneconomic fiscal and monetary policies. However, it is still likely that private charity could and would take care of all cases of real need, particularly if political restraints on employment were lifted.

Present day political programs only serve to encourage and sustain poverty and unemployment by dampening the spirit and ability of people to find self supporting jobs where they could contribute to society as they improve their own lot in life. Present programs lead people to believe that they are entitled to a living without any contribution on their part. In fact, they are even encouraged to think they are contributing when they are living on and distributing largesse obtained through taxes collected from the more successful citizens. The illusion that the burden of such taxes fall entirely on the well-to-do is encouraged at every opportunity. It is popularly considered a form of economic justice. Actually, as explained previously, the market allocates the tax burden on every citizen of the land, even those with the least to spend.

This book encourages the popular fallacy that only a few own capital and if the government did not intervene, these few would receive 90 percent of the nation's production. This is pure nonsense. Market processes, if left free from government interferences, allocate all production to those responsible for its production. Everyone is then free to choose the most attractive opportunity open to him. Every worker is assured of the market value of his wages before those advancing his wages can get back a cent. The market processes thus see to it that the capitalists are the last to receive any of the gains from their contribution. This book encourages its readers to think otherwise. They declare that every person is entitled to become owners of capital without any contribution or sacrifice on their part, except for the

payment of a small insurance fee to a government agency. Their plan is a plan for the redistribution of 90 percent of total production. It would rapidly reduce total wealth to the point where many would starve. They simply do not understand that every honest and moral person would attain his maximum possible income in a free and unhampered market economy.

VI. Bank credit can create wealth.

It would take a volume to present fully the monetary explanation of the trade cycle as expounded by Ludwig von Mises. However, Mises has clearly demonstrated that modern recession and depression problems are basically the result of political attempts to stimulate economic activity by the expansion of the money supply through the creation of circulating bank credit. Should the holders of such bank credit desire to convert their artificially created bank accounts into cash, the central banks, in our case the Federal Reserve Banks, are empowered to print legal tender paper money against evidences of debt owed to banks. In the United States, such printed money is in the form of Federal Reserve Notes.

The authors of this book would extend this disastrous principle still further. They propose the printing and issuance of Federal Reserve Notes against bank loans with no security except government insurance and the hope that the sum created will be put to work as capital in such a way that it will before too long repay the loan with interest. They blithely assume that such government insurance can be sold for a mere trifle just as the National Government now insures mortgages on real property.

Actually, banks perform a useful social function when they operate as middlemen between savers who want to lend money and borrowers who need and want funds they expect to be able to repay with interest at the maturity of the loan. Such loans are merely temporary transfers of monetary savings (purchasing power) from one person to another. They do not increase the available amount of spendable money in the economy. What the borrower can now spend, the lender can no longer spend. Such voluntary loans help all parties concerned, whether made through a bank or not.

However, when a bank makes a loan merely by adding the sum to the checking account of the borrower, it is not transferring to the borrower the title to someone's actual monetary savings (purchasing power). The bank is merely adding this sum to the available amount of spendable money in the economy. This addition to the money supply empowers the borrower to go out and buy something, leaving less available for all previous owners of money. Thus, those who have obtained their money in payment for their contributions to society find that they cannot buy as much as they could have bought if the bank had not issued an artificially created claim to its borrower. Such bank loans merely transfer a part of the existing wealth from those who helped create it to the borrower from the bank. Such bank loans add no wealth to that previously existing. They merely transfer titles to existing wealth at the expense of all those who have earned or saved their dollars which will now buy less.

Needless to say, such expansions of bank credit cannot create any useful capital goods. All that such bank credit, as these authors propose and endorse, can do is to transfer ownership of existing capital goods from their rightful owners to those receiving the proceeds of the bank loan. It is done by a process that probably not one in a million can detect, for each loan reduces each person's purchasing power only infinitesimally. However, over a period of time such loans have a tremendous effect. Any expansion on the scale proposed by these authors would quickly depreciate the already shaky value of the dollar.

The authors propose that their plan will make everyone a capitalist merely by the creation of such bank credits. They believe that future earnings from the capital so created will pay off the loans with interest and that thereafter the borrowers will be entitled to all further earnings for evermore. Such income is then supposed to make it possible to sustain millions without any further effort on their part.

Such a program is absolute nonsense. It could not work once people realized what it meant. It would certainly not encourage an increase in real savings, the only kind businessmen can use. The greatest incentive for the increase of capital is for people to believe that their savings are safe from either direct or indirect confiscation. The scheme proposed is an indirect confiscation of the wealth of others. It could not and would not increase wealth in any useful form. It would merely dilute titles to existing wealth until the point was reached when people no longer found it profitable to invest their savings in capitalistic production. They would then put their savings in gems, jewelry and precious metals that they could hide and quickly move should the authorities become too nosy.

VII. Proposals provide for a free society.

The first fifty or more pages of the book make no mention of the government controls involved. However, starting on about page 55, such controls are mentioned on almost every succeeding page. In short, the scheme provides that a governmental agency would insure all lending banks against all future human errors of their borrowers in investing their loans so they can be repaid by earnings without any further claim on the sum lent or what was bought with the sum so lent. A government agency would thus be forced to determine all future investments as well as the amounts banks might lend for the purpose of creating capitalists out of bank borrowers. By such a fantastic scheme of government controls of the very life-blood of business we would "start the process of industrialization without resort to past savings." (Pg. 55)

To get the plan started, they would force present corporations to pay out all earnings in dividends. To keep it going and put an end to uncontrolled investments, they would enact inheritance taxes which equalize the dividend income of the entire population, or so they think. They would prohibit those owning a certain amount of income from capital from working and thus competing for jobs. The government could control all monopolies by shutting off capital and creating competitors. The government would, of course, prevent all malinvestment.

"Each loan would be made in accordance with policies established by Congress and administered by the Federal Reserve System" or some other agency "as Congress might determine." (Pg. 61) If the politicians would decide which industries and which managements could have capital, pray tell where would any free enterprise exist??

On page 75 we learn that the government would impose "high standards for demonstrating feasibility of new enterprises or new expansions before their securities could qualify for CDIC-insured loans." Shades of Thomas A. Edison !!! Could he have gotten the capital for his inventions?

On page 69 we learn that American political history has been characterized by changes "required to increase its efficiency in the face of its large-scale tasks by eliminating much of its original decentralization." Shades of Adolf Hitler!!!

They do admit, "there is no doubt that government would exercise considerable power." However, they do not admit that it would exercise totalitarian power over the access to capital, without which no business could even exist. If men were not free in the economic realm, they would soon find that they had lost all that freedom had ever meant. Who could print books and papers? Those the politicians selected and allocated the needed capital. Who could build churches and schools? Those the politicians selected and allocated the needed capital. Who could work? Those the politicians decided were eligible.

One could go on and on but the reader who has read this far should easily see that it is merely another scheme for milking those who have produced, saved and invested wealth for the benefit of those who will keep the politicians in office. The book's authors would make everybody a capitalist by giving them a share of the wealth already produced by others.

If such a scheme were ever attempted, capital accumulation, the source of the ever higher American standard of living, would soon dry up. Men do not save and invest when they know their savings will be despoiled or confiscated. Workers and consumers alike are heavily indebted to those who have saved in the past. Without such additions to capital by every succeeding generation, our standard of living would have stood still. If the capital so carefully accumulated over the decades should be dissipated by any such illogical wild scheme as this proposal, Americans would be compelled to return to the living standard of the Indians. Our population would also have to shrink to that of a century or more ago.

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PHILLIPS

1 IN THE HOUSE

2 HOUSE CONCURRENT RESOLUTION NO. 44

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 ELEVENTH LEGISLATURE - SECOND SESSION

5 Opposing the creation of the Alaska
6 General Stock Ownership Corporation.

7 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

8 WHEREAS the founders of this nation intended for government to be an
9 impartial protector of property rights rather than an active participant in
10 the free market; and

11 WHEREAS without government guarantees, subsidies, and preferences it
12 would be impossible for the Alaska General Stock Ownership Corporation
13 (AGSOC) to be a viable economic entity; and

14 WHEREAS AGSOC would be a government-created economic force which would
15 never be able to separate itself from the political arena; and

16 WHEREAS the State of Alaska would have a vested interest in AGSOC due to
17 the expenditure of tax dollars for its creation, the possible guarantees of
18 its debts, and the subsidization of its operations through tax exemption; and

19 WHEREAS this vested interest would cause the state to give preferential
20 treatment to AGSOC in the course of its operations; and

21 WHEREAS political preference, tax-exempt status, tax support, and no
22 capital requirements would give AGSOC an unfair competitive advantage over
23 truly private business in the Alaska economy; and

24 WHEREAS AGSOC would be competing with private businesses for the limited
25 amount of financing available in the Alaska economy; and

26 WHEREAS individual citizens of Alaska would be compelled to parti-
27 cipate in AGSOC or lose the benefits of their tax dollars; and

28 WHEREAS a state-supported economic entity as part of the economy of
29 Alaska will tend to make its decisions political ones which would inevitably

1 foster corruption; and

2 WHEREAS the creation of AGSOC would establish a dangerous precedent for
3 increased government involvement in the private economy;

4 BE IT RESOLVED that the Alaska State Legislature opposes the establish-
5 ment of the Alaska General Stock Ownership Corporation.

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

TAX CONSEQUENCES OF GSOCs

The figures used in this example assume on the one hand ownership of a 15.84% interest in the TAPS line by a private corporation wholly owned by non-residents and on the other hand a similar interest owned by an Alaska general stock ownership corporation. An effort is made here to illustrate the effect of these different forms of ownership upon the tax revenues of the state of Alaska.

	<u>NON-RESIDENT CORP.</u>	<u>GSOC</u>
Taxable Income ¹	\$131,548,000	\$131,548,000
Alaska Corporate Tax (9.4%)	12,366,000	-0-
Cash for distribution	\$119,182,000	\$131,548,000
Distributions to Alaskans	-0-	\$131,548,000
Alaskans subject to tax on ² their distribution	-0-	51.85%
Distributions taxed by Ak.	-0-	\$68,208,000
Average rate on distributions ³ taxed by Alaska		5.5%
Income to State of Alaska	\$12,366,000	3,751,000

The second step in the analysis is to determine how much additional income will accrue to Alaskans from this type of corporation. Once that is determined we can apply a multiplier to that income and determine the tax consequences of later transactions in which the additional income is spent and becomes income to someone else.

CASH AVAILABLE TO ALASKANS

Income to Alaskans after state income tax	-0-	\$127,797,000
Alaskans subject to federal ⁴ income tax on distribution		<u>51.85%</u>
Distributions taxed by the federal government		66,263,000
Average federal rate on ⁵ distributions		<u>27.5%</u>
Federal taxes paid on distributions		18,222,000
Cash, after income taxes, available to Alaskans		
Total distribution to Alaskans		\$131,548,000
Less Alaska income taxes		\$3,751,000
Less federal income taxes		18,222,000
Total cash, after income taxes, available to Alaskans		<u>\$109,575,000</u>

From this total cash available to Alaskans figure we can determine the secondary tax consequences of this addition to personal income in Alaska. The MAP econometric model of the Institute of Social and Economic Research in Anchorage uses a multiplier of 2 to determine the tax effect of additions to personal income in Alaska. Since the income has already been taxed once by Alaska in our calculations the model tells us that an additional 5.5% can be expected in state taxes, most of which would be realized within 18 months of the distribution.

ADDITIONAL STATE INCOME FROM MULTIPLIER

Portion of distribution taxed in Alaska ⁶	\$ 68,208,000
Additional 5.5% from taxes on income generated by spending of the additional disposable income	<u>5.5%</u>
Tax revenues to state from multiplier	\$ 3,751,000

COMPARISONS

Income to Alaskans (pre federal income tax)	\$ -0-	\$124,046,000
Income to State	12,366,000	7,502,000
Total income to Alaska	<u>\$12,366,000</u>	<u>\$131,548,000</u>

¹Derived from Arthur Anderson & Co. study "Prudhoe Bay Field and Trans-Alaska Pipeline System - Comparative State Tax Burden Study" Feb. 1979.

²The Department of Revenue estimates that approximately 210,000 Alaskan individuals pay income taxes out of a total population of 405,000. Thus, approximately 51.85% of Alaskans pay taxes to the state.

³The average rate of state income tax on the last dollar of income received by Alaskans who pay state income taxes is estimated by the Department of Revenue to be approximately 5.5%. Since any GSOC dividend would constitute additional income to the shareholders they would be taxed on this income at their marginal rate.

⁴This figure is approximately the same as those Alaskans subject to state income tax.

⁵Department of Revenue estimates that the average rate of federal income tax on the last dollar of income of those who pay federal taxes in Alaska lies between 25% and 30%. For purposes of this example these estimates are averaged to arrive at a rate of 27.5%.

⁶This is the same amount as found above on the line below footnote #2 and represents the amount received by those Alaskans subject to state income tax.

STATE OF ALASKA THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

MEMORANDUM

June 18, 1979

SUBJECT: Meeting with Kelso & Co., Inc.

TO: Representative Jim Duncan, Chairman
Legislative Budget and Audit Committee

Representative Mike Miller, Chairman
State Affairs Committee

FROM: Kenneth M. Rosenstein *KMR*
Legislative Counsel

The meeting took place at Kelso's office in San Francisco on June 11, 1979. In attendance were: Louise Kelso, John Miskimmen, and Norma Johnson of Kelso & Co., Inc.; Representative Jim Duncan, Representative Mike Miller, Milt Barker and Ken Rosenstein.

Mr. Kelso began the meeting by stating that he had not yet had an opportunity to analyze the bill (CSSSSB 170) in detail, but had several comments and suggestions for changes:

- (1) A provision should be included that makes clear that the Alaska Business Corporation Act (AS 10.05) is preempted by AS 10.50 insofar as it relates to general stock ownership corporations.
- (2) Ownership of GSOC stock should be permitted by Alaska residents retiring to locations outside the state.
- (3) Potential candidates for the board of directors may be eliminated due to the personal liability imposed on directors for certain acts and the risk of removal.
- (4) Serious management problems could arise as a result of the prohibition on directors serving as officers. The suggestion was to add two directorships which would be filled by the president and highest financial officer of the GSOC.

(5) There was a problem perceived in AS 10.50.215(b) which was viewed as creating problems with the valuation of treasury shares. This problem was seen as possibly inhibiting the sale of those shares. It was explained that §215 merely established monetary limits on what a GSOC could distribute to shareholders and in that limited context treasury shares would not be considered.

In addition, Mr. Kelso outlined a proposal for his firm's continued work on the bill. The proposal included the following items:

(1) Study the feasibility of integrating the compilation of eligible shareholders with the federal census to be conducted next year. If it appears feasible, begin the negotiation of the details with the Bureau of Census.

(2) Prepare a detailed analysis of the bill.

(3) Prepare a catalog of the types of potential investments, without specifying particular investments, that would be available to the GSOC.

(4) Lobby the Congress for certain amendments to subchapter U of the Internal Revenue Code. Amendments would be sought to (A) allow the acquisition of capital assets without the payment of taxes on the earnings used to pay the principal for the asset; and (B) permit more than one class of GSOC shares in order for GSOC employees to create an employee stock ownership plan and to enable a nationally underwritten sale of stock to proceed.

cc: Milt Barker
Jerry Gauche

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 I: 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
Section 5: penalties provisions of section 1 of the bill
Section 6: 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 therefore 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.

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 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.

Add a new Subsection (d) to Section .130 reading as follows:

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

Sec. 10.50.135 *AM To read*

NOTICE OF SHAREHOLDERS' MEETINGS. The existing language should be redesignated as subsection (b) and a new subsection inserted to read:

(a) Beginning not less than 150 days before any meeting of shareholders the corporation shall, at least weekly, notify the shareholders of the time and manner in which (1) nominations for the board of directors of the corporation may be made and (2) issues may be place on the corporation ballot for consideration by the shareholders. Notice shall be be publication in newspapers of all regions of the state and shall continue for at least four weeks.

For individual in highest income bracket

Normal Corp. fully distributed all stockholders' expenses
also does not account for 100% exclusion

100		
<u>9.40</u>	- Cp Tax (Ak) ^{9.4%}	
90.60		
<u>41.67</u>	Cp Tax (Fed.) ^{46%}	
48.93		
<u>7.09</u>	State Tax (14.5%)	
41.83		
<u>29.28</u>	Fed Tax (70%)	
12.55		

16.49 to State
~~14.50~~

AGSOC

100		
<u>0</u>	- Cp Tax (Ak excluding 0.6 tax)	
100		
<u>0</u>	Cp Tax (Fed)	
100		
<u>14.50</u>	State Tax (14.5%)	14.50
85.50		
<u>59.85</u>	Fed Tax (70%)	
25.65	to stockholder after tax	

\$1.99

Get ^{Bois} ~~Frans~~ Questions

Dr. Daniel Fessler
Davis University

Jeff Gates Newitt Assoc.
Ron Ludwig, ~~Bob~~ } ESOC

Bob Smiley UCLD Inst for Soc. Research

Stephen ~~Robert~~ Buser Ohio Econ

Bill Behn Cert Econ Studies

A GSOC

State Affairs
1:30 Wed

3-27-99 Dr. David Essler U C Davis

review or Governed from within

1. enabling leg - legislature only
2. Art of inc. > incorporators only
3. By Laws

Governance Structure

1965 NK Business Corp Act modeled after Ill act
between Delaware + Calif. Acts

Size of Quorum
and majority of Quorum
to pass issues

NK act requires 20% vote to call meeting

✓ Impairment of Contracts Clause U.S. Const.

Board

Gov's officers dominate for first 9 yrs

Votes ? Proxies or public mtg of stockholders

Stock will fall under S.E.C. Proxies

? Management state of Director nominees

Title 10 AS structured to govern different kind of
a corp. insty

Suggestions via Kelso report Vol I

How would we get rid of a Director pg 60 Sec 13

Must at least have
this provision

1. add to AS 10 removal by judicial action

must provide for or
against this

2. Shareholder - derivative suit is shareholder

may sue in names of the Corp.

Supreme Court Order 258
1976 (in favor of derivative suits)
based on Fed rule

these came about following WWII

methods of bring derivative sue should be amended into RS10

These Methods must be very carefully thought out

Note: damages in these suits are turned over to the Corp.

3. Removal by the share holders at any time

in NY "For Cause" "Notice + justification"

act of 1947 ~~without effect~~

Calif; removed at anytime for any reason in concept should have removal provision by statute

Stating

What about restricting ^{spending} campaigning of prospective Directors and including proxies with State Income Tax Returns

Legislature must from time to time be able via statute to change the rules

Checks on members while in office

accountability of Directors is, under statute

- * 1. "a Director is presumed to be knowledgeable of"
- * 2. must be responsible for criminal liability
- * 3. criminal offense to falsify reports etc.

Note: Some of the proposed Bylaws are in violation of St. Corp. Statute

Ken Presentation

Enabling Legislation could establish Articles of Inc. or By Laws

Statute

Articles + By Laws could stand confirmation of the Legislature

enabling Legislation could mutually exclude all corp involvement in any other than TAPS

Gardner 10:15. Corp Statute

Fessler recommending Legislature determine what it wants in this legislation - then he would assist in writing a viable law

Book p 104 Article I ss I

Minor non voting stock and yet only one class of stock ? IRS

p 105

SS K

NK Law $\frac{2}{3}$ Quorum or $\frac{2}{3}$ 100%

By Laws are really Constitution of Corp. and are under the explicit creation & repeal of the board

Note: Share holder should have right to vote on by laws

what about
Legislation or
its confirmation

p 112

SS 2.01 20%

Statute 10%

both may be high

113 or 4

5 or 10 days

115

2.11 b

Let sent. should be mandatory and send to all stock holders

p11546

2.11 c first sent. disclosure
needs clarification

117

3.05 X 10,05,183 Conflict

3.07

5 days mail notice + possible
quorum problem

3.08

X 10,05,912

4.03

stock option is ridiculous

4.06

no enforceable right of attendance

3-28

Get Memo from
Asst. Att. Gen.

10.05.240 rights of shareholder to view records

10.05.243 obstruction of right by officer
liability penalty

may need more penalty

low quorum & short notice/ptgs.

p. 50

10.05.198

Sec 13. d. of Chabling Act

suggested use of teleconference as in Calif Law

Get

? Willmont, Cutler + Pickering report re: SEC

1933 SEC act ^{also 34 act} purchase or sale of securities ^{perspective}

intra state exemption: if lost, ^{stock out of state} then in "put" or forced buy back
from rest of stockholder position

office 916-752-2896 or Joe Home 756.0605
Dr. Fessler } to work up suggested changes
Ken Rosenstern } to problem areas ~~in~~ identified
Gerry Baucke } in enabling leg.
Milt Barker }

3-29 Derivative Actions (requires $\frac{2}{3}$ vote ^{of legislature} change rule of court)
are share holder ^{required} Bonding ~~or~~ representatives of say 100 shares
1. contemporaneous stock ownership 2. exhaustion of remedies
live with this
or go
for a new statute

rule 23.1 not tight enough
Judge to determine if Bond for amount ^{and time allotted for posting} but max. maybe \$100k

NY rule on non court settlements or 23.1

BCV 626D ^{NY} notice of filing of suite to share holders

626E accountability for amount of settlement

? 10.50 GSO C Model Act then enabling
sec. to conclude that

$\frac{1}{6}$ or $\frac{2}{3}$ of a quorum to remove ^{original} director or board member
individual removal with same # votes as elected by
full board removal by majority of shares voting
at mtg where quorum is present

Sec 302 Calif. inc no to

Calif 831, ~~is~~ is out should be in California co
1511, Dividends ^{Sec.} 2253

13,19,3019 Sec. 2254

30,20 Sec. 2255

4-5-79 ^{5:30} St. Affairs NBSC

Sat mtg 9:00 AM Out of session 1:30 with
Marten wants response from Chamber of Commerce
Metcalf wants SBA + PIC response

Questions from Admin Hammond

1. How can NBSC be structured to prevent
conflict with other private organizations

2. limit Corps. political activities

4. leave it as it is ... tax on personal level

5. State financing assistance

? 5 yrs to trade residency + retention of stock transfers

Directors number + residency

? regional memberships representation on Board

? any Bd. mem. as full time employee of corp.

? right of eminent domain

? loan guarantee fund Note: start up only

Max 5%, 1st to start up only

? investments p. 6 line 9-17 remove (Gardner)

on file in
St. Affairs Committee
Tentative Decisions
4-5-79

4-7-79

Stockholder may amend Bylaws
restrict lobbying + campaigning
limit stock to AK residents
Chairman must be Alaskan

4-7-79

Proposals / Fessler
minors voting & dividends

Board elections every 2 yrs with 2 yr terms
L Hy Break

Milt to prepare study of resolutions to problems
of existing AK Corps, re: proxies problems i.e.
native corps etc.

SEC '33 Act

34 Act Fraud

Muller requested CS less voting sec.

Fessler to respond to proxies & elections

4-17-79
~~4-12-79~~

Lobbying restrictions

cannot restrict and individual

Ch 24 Lobby definition with exception

Kearwill draft 1. corp cannot make any contribution

2. related not spend to lobby leg.

3. related " " " " Admin.

ALASKA
GENERAL STOCK OWNERSHIP
CORPORATION

HOUSE STATE AFFAIRS COMMITTEE
Committee Action to April 27, 1979

BILL SUMMARY

ALASKA GENERAL STOCK OWNERSHIP CORPORATION

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.

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).
- Helso →* .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).
*not paid for shares
Value paid now
Does not have to have*
- .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 incompetence of a board member. (AS 10.05.183).

.195. VACANCIES. Vacancies in the board caused by death, resignation or incompetence 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. 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.

Jim Palmer

2 media spots mid July then Aug. to be filmed in Nov.
need 3-4 sponsors for initiative to canvass for
signature

Beverly Long

Put George together with Mike Miller to attend
St. Aff's Con. hearings

MIKE GRAVEL
ALASKA

United States Senate

WASHINGTON, D.C. 20510

May 25, 1979

Dale Staley
Office of Rep. Jim Duncan
Pouch V
Juneau, Alaska 99811

Dear Dale:

Thanks for all your help and counsel during my work in Juneau with the State Legislature. I certainly enjoyed the opportunity to make your acquaintance and to work with you and look forward to our working together in the future. I hope you have a very pleasant and relaxing summer and ask that you feel free to call upon me if there is anything I can do for you or Jim's office down here in Washington.

With best regards,

Sincerely,


Jerry Gauche

JG/rl