

LEG. FINANCE - BILLS

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1 shareholders for any other proper purpose, the board of directors of a
2 corporation may provide that the stock transfer books shall be closed
3 for a stated period not exceeding 90 days. If the stock transfer books
4 are closed to determine shareholders entitled to notice of or to vote at
5 a meeting of shareholders, they shall be closed for at least 50 days
6 immediately preceding the meeting.

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

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

1 registered office of the corporation and is subject to inspection by a
2 shareholder at any time during usual business hours for a period of 60
3 days before the meeting. The list shall also be produced and kept open
4 at the time and place of the meeting and shall be subject to the inspec-
5 tion of a shareholder during the meeting. The original stock transfer
6 books are prima facie evidence as to who are the shareholders entitled
7 to examine the list or transfer books or to vote at a meeting of share-
8 holders.

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

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

20 Sec. 10.50.155. PROXY VOTING PROHIBITED. A shareholder may not
21 vote by proxy.

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

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

1 the shares into his name.

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

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

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

16 (b) A candidate for director shall be nominated by
17 (1) a resolution adopted by the board of directors; or
18 (2) a petition signed by at least 1,000 shareholders and
19 filed with the secretary of the corporation at least 120 days before the
20 meeting at which the election is to be held.

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

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

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

1 (d) A written or printed notice setting out the candidates' quali-
2 fications for office or the proposals to be put to a vote of the share-
3 holders and any materials in opposition to the proposals shall be given
4 to each shareholder of record entitled to vote within the time and in
5 the manner provided in this chapter for the giving of notice of meetings
6 of shareholders.

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

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

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

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

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

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

28 (d) The board of directors shall be divided into two classes, each
29 class to be as nearly equal in number as possible, with the term of

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

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

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

26 Sec. 10.50.200. QUORUM OF DIRECTORS. A majority of the number of
27 directors fixed by the bylaws, or in the absence of a bylaw fixing the
28 number of directors, then of the number stated in the articles of incor-
29 poration, constitutes a quorum for the transaction of business unless a

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

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

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

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

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

29 (1) the amount of the retained earning of the corporation

1 immediately before the proposed distribution equals or exceeds the
2 amount of the proposed distribution; or

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

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

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

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

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

1 (d) The amount of a distribution payable in property shall, for
2 the purpose of this chapter, be determined on the basis of the value at
3 which the property is carried on the corporation's financial statements
4 in accordance with generally accepted accounting principles.

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

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

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

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

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

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

24 Sec. 10.50.230. LIABILITY OF DIRECTORS IN CERTAIN CASES. (a)
25 Directors who vote for or assent to the declaration of a dividend or
26 other distribution of the assets of a corporation to its shareholders
27 contrary to the provisions of this chapter or contrary to restrictions
28 contained in the articles of incorporation are jointly and severally
29 liable to the corporation for the amount of the dividend paid, or the

1 value of assets distributed in excess of the amount of the dividend or
2 distribution which could have been paid or distributed without a viola-
3 tion of the provisions of this chapter or the restrictions in the arti-
4 cles of incorporation.

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

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

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

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

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

1 (2) in good faith in determining the amount available for a
2 dividend or distribution he considered the assets to be of their book
3 value.

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

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

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

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

1 tent with the bylaws.

2 Sec. 10.50.260. REMOVAL OF OFFICERS. An officer or agent may be
3 removed by the board of directors when, in its judgment, the best inter-
4 ests of the corporation will be served. Removal is without prejudice to
5 the contract rights of the person removed. Election or appointment of
6 an officer or agent does not of itself create contract rights.

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

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

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

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

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

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

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

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

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

1 (b) An individual director may be removed if the majority of votes
2 cast for his removal exceeds the number of votes he received at the last
3 preceding election during which he was a candidate for the office of
4 director.

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

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

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

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

27 (e) If the action on behalf of the corporation is successful, in
28 whole or in part, or if anything is received by the plaintiff as the
29 result of a judgment, compromise or settlement of an action, the court

1 may award the plaintiff reasonable expenses, including reasonable attorney
2 fees, and shall direct the plaintiff to account to the corporation
3 for the remainder of the proceeds received by him. This subsection does
4 not apply to a judgment rendered only for the benefit of an injured
5 shareholder and limited to a recovery of the loss or damage sustained by
6 him.

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

14 (1) that there is no reasonable possibility that the prosecution
15 of the cause of action alleged in the complaint will benefit the
16 corporation or its shareholders; or

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

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

1 ity provided has or may become inadequate or excessive, but the court
2 may not increase the total amount of the security beyond \$50,000 in the
3 aggregate for all defendants. If the court, upon motion, decides that
4 security must be furnished by the plaintiff as to any one or more defen-
5 dants, the action shall be dismissed as to the defendant or defendants,
6 unless the security required by the court is furnished within a reason-
7 able time fixed by the court. The corporation and the moving party have
8 recourse to the security in the amount the court determines upon the
9 termination of the action.

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

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

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

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

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

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

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

6 (b) A corporation that knowingly violates this section or that
7 knowingly causes, participates in, aids, or confirms a violation of this
8 section is, upon conviction, punishable by a fine of not more than
9 \$10,000 for each offense.

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

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

16 ARTICLE 2. FORMATION OF CORPORATIONS.

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

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

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

1 poration;

2 (6) that shares of stock may be issued only to individuals
3 who were residents of the state on the effective date of its chartering
4 legislation and who continued to be residents until the date of issuance
5 of the shares;

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

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

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

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

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

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

22 (9) that the corporation must qualify as a general stock
23 ownership corporation under subchapter U of the Internal Revenue Code of
24 1954, as amended (26 U.S.C. secs. 1391 - 1397);

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

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

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

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

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

9 Sec. 10.50.325. FILING OF ARTICLES OF INCORPORATION. (a) Dupli-
10 cate originals of the articles of incorporation shall be delivered to
11 the commissioner. If the commissioner finds that the articles of incor-
12 poration conform to law, he shall, when all fees prescribed in AS 10.05.-
13 708 - 10.05.774 have been paid,

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

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

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

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

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

1 Sec. 10.50.335. ARTICLES OF INCORPORATION AND INITIAL BYLAWS. (a)
2 The corporation shall submit copies of the original articles of incor-
3 poration and the initial bylaws adopted under AS 10.50.340 to the legis-
4 lature within 30 days of the issuance of the certificate of incorpora-
5 tion.

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

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

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

27 ARTICLE 3. APPLICATION FOR SHARES.

28 Sec. 10.50.345. NOTIFICATION OF ELIGIBLE SHAREHOLDERS. Beginning
29 not less than 90 days before the initial issue of stock, the corporation

1 shall at least weekly notify the public of its intention to issue stock
2 and the method for qualifying and applying for shares. The notice shall
3 be by publication in newspapers of all regions of the state, by radio
4 and television announcements, and by other means the corporation deter-
5 mines to be appropriate and reasonable, and shall be continued at least
6 one each month for 11 months following the date of issuance of shares.

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

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

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

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

24 Sec. 10.50.360. PENALTIES FOR MISREPRESENTATION OF ELIGIBILITY AS
25 SHAREHOLDER. The ownership interest in shares of the corporation's
26 stock issued to an individual ineligible to receive the initial shares,
27 who has presented fraudulent or misleading information regarding his
28 eligibility to own those shares, is void upon the issuance of an appro-
29 priate order by the superior court. The ineligible individual is also

1 liable for the full amount of dividends, or other distributions to
2 shareholders received by him plus interest from the date of distribu-
3 tion, and legal fees and costs of recovery incurred by the corporation.
4 This section applies to an individual who has presented fraudulent or
5 misleading information regarding the eligibility of another person for
6 whom he acts in the capacity of legal guardian.

7 ARTICLE 4. AMENDMENT.

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

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

- 16 (1) change its corporate name;
17 (2) change its period of duration;
18 (3) change, enlarge or diminish its corporate purposes;
19 (4) exchange or cancel its shares, whether issued or un-
20 issued.

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

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

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

1 least 1,000 shareholders.

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

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

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

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

18 (1) the name of the corporation;

19 (2) the amendment adopted;

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

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

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

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

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

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

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

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

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

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

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

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

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

8 Sec. 10.50.400. EXECUTION OF RESTATED ARTICLES OF INCORPORATION.
9 Upon approval of the restated articles of incorporation, they shall be
10 executed in duplicate by the corporation by its president or vice-presi-
11 dent and by its secretary or assistant secretary, and verified by one of
12 the officers signing the articles.

13 Sec. 10.50.405. CONTENTS OF RESTATED ARTICLES OF INCORPORATION.
14 The restated articles of incorporation shall set out
15 (1) the name of the corporation;
16 (2) the period of its duration;
17 (3) the purpose or purposes which the corporation is autho-
18 rized to pursue;
19 (4) the aggregate number of shares which the corporation may
20 issue;
21 (5) any provisions, not inconsistent with law, which are set
22 out in the articles of incorporation as amended, for the regulation of
23 the internal affairs of the corporation;
24 (6) a statement that the restated articles of incorporation
25 correctly set out without change the corresponding provisions of the
26 articles of incorporation as amended, and that the restated articles of
27 incorporation supersede the original articles of incorporation and all
28 amendments to the original articles of incorporation.

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

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

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

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

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

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

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

19 ARTICLE 5. SALE OF ASSETS.

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

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

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

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

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

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

27 Sec. 10.50.435. ABANDONMENT OF PLAN BY BOARD OF DIRECTORS. After
28 authorization by a vote of shareholders, the board of directors may,
29 nevertheless, abandon the sale, lease, exchange, mortgage, pledge, or

1 other disposition of assets, subject to the rights of third parties
2 under contracts relating to the disposition, without further action or
3 approval by shareholders.

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

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

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

1 within 90 days after the date the sale or exchange was effected, upon
2 the surrender of his certificate or certificates representing the
3 shares. Upon payment of the agreed value, the dissenting shareholder
4 ceases to have an interest in the shares or in the corporation.

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

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

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

1 ARTICLE 6. DISSOLUTION.

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

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

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

11 (c) A proposed dissolution of the corporation shall be submitted
12 to a vote at the next meeting of shareholders if the secretary of the
13 corporation receives a petition proposing dissolution signed by at least
14 100 shareholders.

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

21 (e) At the meeting, if a quorum is present, a vote of shareholders
22 entitled to vote shall be taken on the resolution to dissolve the cor-
23 poration. Each outstanding share of the corporation may vote on the
24 resolution. The resolution is adopted if it receives the affirmative
25 vote of the holders of at least two-thirds of the shares entitled to
26 vote.

27 Sec. 10.50.480. EXECUTION OF STATEMENT OF INTENT TO DISSOLVE.
28 Upon the adoption of the resolution, a statement of intent to dissolve
29 shall be executed in duplicate by the corporation by its president or

CORRECTION

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1 other disposition of assets, subject to the rights of third parties
2 under contracts relating to the disposition, without further action or
3 approval by shareholders.

4 Sec. 10.50.440. RIGHTS OF DISSENTING SHAREHOLDERS UPON SALE OR
5 EXCHANGE OF ASSETS. If a sale or exchange of all or substantially all
6 of the property and assets of a corporation other than in the usual and
7 regular course of its business, or in connection with the dissolution
8 and liquidation of the corporation, is authorized by a vote of the
9 shareholders of the corporation, a shareholder who files a written
10 objection with the corporation, before or at the meeting of shareholders
11 at which the sale or exchange is authorized, and who does not vote in
12 its favor may, within 10 days after the date on which the vote was
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25 his shares.

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10 fair value of the shares, and is entitled to judgment against the cor-
11 poration for the amount of the fair value as of the day before the date
12 on which the vote was taken approving the sale or exchange, together
13 with interest to the date of the judgment. The judgment is payable only
14 upon and simultaneously with the surrender to the corporation of the
15 certificate or other evidence of ownership representing the shares.
16 Upon payment of the judgment, the dissenting shareholder ceases to have
17 an interest in the shares or in the corporation. Unless the dissenting
18 shareholder files the petition within the 60-day period, he and all
19 persons claiming under him are bound by the terms of the sale or ex-
20 change.

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

26 Sec. 10.50.465. STATUS OF SHARES ACQUIRED FROM DISSENTING SHARE-
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5 Sec. 10.50.475. VOLUNTARY DISSOLUTION BY ACT OF CORPORATION. (a)
6 A corporation may be dissolved by the act of the corporation when autho-
7 rized in the manner provided in this section and in AS 10.50.485.

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

11 (c) A proposed dissolution of the corporation shall be submitted
12 to a vote at the next meeting of shareholders if the secretary of the
13 corporation receives a petition proposing dissolution signed by at least
14 100 shareholders.

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

21 (e) At the meeting, if a quorum is present, a vote of shareholders
22 entitled to vote shall be taken on the resolution to dissolve the cor-
23 poration. Each outstanding share of the corporation may vote on the
24 resolution. The resolution is adopted if it receives the affirmative
25 vote of the holders of at least two-thirds of the shares entitled to
26 vote.

27 Sec. 10.50.480. EXECUTION OF STATEMENT OF INTENT TO DISSOLVE.
28 Upon the adoption of the resolution, a statement of intent to dissolve
29 shall be executed in duplicate by the corporation by its president or

1 vice-president and by the secretary or an assistant secretary, and
2 verified by one of the officers signing the statement. The statement of
3 intent to dissolve shall set out

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

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

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

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

29 Sec. 10.50.495. PROCEDURE AFTER FILING OF STATEMENT OF INTENT TO

1 DISSOLVE. After the commissioner has filed the statement of intent to
2 dissolve, the corporation

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

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

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

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

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

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

28 (c) Written or printed notice, stating that the purpose of the
29 meeting is to consider the advisability of revoking the voluntary dis-

1 solution proceedings, shall be given to each shareholder of record
2 entitled to vote at the meeting within the time and in the manner pro-
3 vided in this chapter for the giving of notice of special meetings of
4 shareholders.

5 (d) At the meeting, if a quorum is present, a vote of the share-
6 holders entitled to vote shall be taken on the resolution to revoke the
7 voluntary dissolution proceeding. Adoption of the resolution requires
8 the affirmative vote of the holders of at least two-thirds of the shares
9 voting.

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

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

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

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

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

4 (3) return the other duplicate original to the corporation or
5 its representative.

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

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

21 (1) the name of the corporation;

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

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

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

1 (5) that there are no suits pending against the corporation,
2 or that adequate provision has been made for the satisfaction of a judg-
3 ment, order or decree which may be entered against the corporation in a
4 pending suit.

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

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

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

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

15 (b) The certificate of dissolution, together with the duplicate
16 original of the articles of dissolution affixed, shall be returned to
17 the representative of the dissolved corporation.

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

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

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

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

29 (3) the corporation has failed for 30 days after change of

1 its registered office or registered agent to file in the office of the
2 commissioner a statement of the change;

3 (4) the corporation has failed for two years to complete
4 dissolution under a statement of intent to dissolve; or

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

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

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

29 (d) A corporation dissolved by the commissioner under the provi-

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

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

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

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

28 (h) In addition to any other remedies provided by law a corpora-
29 tion may be dissolved involuntarily by a decree of the superior court in

1 an action filed by the attorney general when it is established that

2 (1) the corporation procured its certificate of incorporation
3 through fraud; or

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

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

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

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

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

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

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

1 10.50.560.

2 Sec. 10.50.545. ACTION BY SHAREHOLDER FOR LIQUIDATION. In an
3 action by a shareholder, the superior court may liquidate the assets and
4 business of a corporation when it is established

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

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

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

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

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

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

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

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

1 Sec. 10.50.560. LIQUIDATION IN ACTION BY ATTORNEY GENERAL FOR
2 DISSOLUTION. When an action has been filed by the attorney general to
3 dissolve a corporation and it is established that liquidation of its
4 business and affairs should precede the entry of a decree of dissolu-
5 tion, the superior court may liquidate the assets and business of a
6 corporation.

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

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

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

28 Sec. 10.50.580. DISPOSITION OF ASSETS OR PROCEEDS FROM SALE OF
29 ASSETS. The assets of the corporation or the proceeds from a sale,

1 conveyance or other disposition of assets shall be applied to the ex-
2 penses of liquidation and to the payment of the liabilities and obli-
3 gations of the corporation. Remaining assets or proceeds shall be
4 distributed among shareholders according to their respective rights and
5 interests.

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

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

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

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

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

26 Sec. 10.50.610. FILING OF CLAIMS IN LIQUIDATION PROCEEDINGS. (a)
27 In a proceeding to liquidate the assets and business of a corporation,
28 the court may require creditors of the corporation to file with the
29 clerk of the court or with the receiver, in the form the court pre-

1 scribes, proof under oath of their respective claims.

2 (b) If the court requires the filing of claims, it shall fix a
3 date, not less than four months from the date of the order, as the last
4 day for the filing of claims, and shall prescribe the notice to be given
5 to creditors and claimants of the date fixed. Before the date fixed,
6 the court may extend the time for the filing of claims.

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

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

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

24 ARTICLE 7. GENERAL PROVISIONS.

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

29 Sec. 10.50.630. FALSE STATEMENTS AFFECTING VALUE OF SHARES. A

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

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

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

26 Sec. 10.50.645. DEFINITIONS. In this chapter,

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

29 (2) "authorized shares" means the shares which the corpora-

1 tion may issue;

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

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

7 (5) "commissisoner" means the commissioner of commerce and
8 economic development;

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

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

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

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

17 (10) "net assets" means the amount by which the total assets
18 of a corporation, excluding treasury shares, exceed the total debts of
19 the corporation;

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

1 student at an educational institution, while in an institution at public
2 expense, while confined in prison, while engaged in the navigation of
3 waters of this state, of the United States, or of the high seas, or
4 while residing upon an Indian or military reservation; a minor takes the
5 residence of his parent or of his legal guardian; a married woman may
6 establish her own residence and does not presumptively take the resi-
7 dence of her husband;

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

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

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

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

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

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

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

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

25 (b) A copy of all annual reports, ballots, consent authorizations
26 and other materials relating to the shareholder ballots, published or
27 made available by any person to the shareholders of a general stock
28 ownership corporation, shall be filed with the administrator concur-
29 rently with its distribution to the shareholders. The administrator

1 shall have authority to review all documents submitted and make regula-
2 tions regarding content of shareholder materials to insure fairness,
3 completeness, and nondiscrimination.

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

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

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

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

25 (c) There is a special fund of the state known as the "Alaska General
26 Stock Ownership Corporation loan guarantee fund", which may not exceed
27 \$5,000,000, which shall be completely segregated from all other funds of the
28 state, and which shall be used by the commissioner of revenue to guarantee
29 loans made to the Alaska General Stock Ownership Corporation by lenders other

1 than the state solely for initial costs of the corporation and not for the
2 acquisition by the corporation of major investments. In guaranteeing a loan,
3 the commissioner of revenue shall review the loan for the purposes of ascer-
4 taining the general soundness of the proposed loan and guarding against fraud
5 and misrepresentation. The guarantee of a loan may not be for an amount in
6 excess of the unobligated balance of the fund at the time the guarantee is
7 made.

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

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

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

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

18 * Sec. 6. This Act takes effect immediately in accordance with AS 01.10.-
19 070(c).

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Introduced: 3/6/79
Referred: State Affairs and
Finance

Rosenstein

BY DUNCAN, COTTEN, HURLBERT,
MCKINNON, MILES, MILLER,
MUNSON, PARKER AND GARDINER

1 IN THE HOUSE

2 SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 240

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 ELEVENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act creating the Alaska General Stock Ownership
7 Corporation; and providing for an effective date."

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

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

10 CHAPTER 50. ALASKA GENERAL STOCK OWNERSHIP CORPORATION.

11 Sec. 10.50.010. ALASKA GENERAL STOCK OWNERSHIP CORPORATION

12 CREATED. (a) The governor shall appoint nine persons, at least five of
13 whom are residents of the state, to act as incorporators of the Alaska
14 General Stock Ownership Corporation.

15 (b) The corporation is a general stock ownership corporation and
16 shall be formed in accordance with subchapter U of the Internal Revenue
17 Code of 1954, as amended, (26 U.S.C. secs. 1391 - 1397), and with
18 AS 10.05. The corporation is subject to the provisions of AS 10.05,
19 except when inconsistent with this chapter or 26 U.S.C. sec. 1391(a).

20 (c) The corporation is not and may not be considered to be an
21 agency, instrumentality, or political subdivision of the state for any
22 purpose.

23 Sec. 10.50.020. ARTICLES OF INCORPORATION. The corporation's
24 articles of incorporation shall provide

25 (1) for the issuance of only one class of stock;

26 (2) that shares of stock may be issued only to individuals
27 who were residents of the state on the effective date of this Act, and
28 who continued to be residents until the date of issuance of the shares;

29 (3) for the issuance of at least one share of stock to each

1 individual eligible under (2) of this section, unless that individual
2 elects within one year after the date of issuance not to receive the
3 share;

4 (4) that no share of stock may be voluntarily or involun-
5 tarily transferred

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

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

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

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

16 (5) that the corporation must qualify as a *general stock*
17 ownership corporation under subchapter U of the Internal Revenue Code of
18 1954, as amended, (26 U.S.C. secs. 1391 - 1397);

19 (6) that the corporation may not invest in properties
20 acquired by it, or for its benefit, through the right of eminent domain;

21 (7) that the corporation has a first option to purchase, at
22 book value, its shares of stock offered to be transferred by a share-
23 holder within five years after the date of issuance of the shares; if
24 the corporation exercises the right to purchase, shares purchased shall
25 be considered treasury stock and not entitled to dividends, if any, or
26 to voting privileges.

27 Sec. 10.50.030. BOARD OF DIRECTORS. (a) The corporation shall be
28 governed by a board of directors. A majority of the members of the
29 board of directors shall be residents of the state at all times during

1 their terms of office. Except as provided in (b) of this section, the
2 term of office of each director is three years. A director, upon the
3 expiration of his term, shall continue to hold office until his succes-
4 sor is elected and qualified.

5 (b) The initial board of directors shall consist of the incorpor-
6 ators of the corporation. The board shall, as nearly as possible, be
7 equally divided into three classes of directors. The initial class one
8 directors shall serve one-year terms of office; the initial class two
9 directors shall serve two-year terms of office; and the initial class
10 three directors shall serve three-year terms of office.

11 Sec. 10.50.040. NOTIFICATION OF ELIGIBLE SHAREHOLDERS. Beginning
12 not less than 90 days before the issuance of any stock, the corporation
13 shall at least weekly notify the public of its intention to issue stock
14 and the method for qualifying and applying for shares. The notice shall
15 be by publication in at least one newspaper of statewide circulation, by
16 radio and television announcements, and by other means the corporation
17 determines to be appropriate and reasonable, and shall be continued at
18 least once each month for 11 months following the date of issuance of
19 shares.

20 Sec. 10.50.050. CORPORATION NOT LIABLE TO SHAREHOLDERS. Registra-
21 tion as a shareholder of the corporation is a responsibility solely of
22 an individual eligible under AS 10.50.020(2) to receive shares of the
23 corporation. The corporation may not be held liable for

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

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

29 Sec. 10.50.060. LATE APPLICATION FOR SHARES. An individual eli-

1 gible under AS 10.50.020(2) to receive shares of the corporation who
2 failed to apply for the shares before their issuance may apply for and
3 receive the shares any time within one year after the date of issuance
4 if he is otherwise qualified to own stock of the corporation and upon
5 the payment of the book value of the shares.

6 Sec. 10.50.070. PENALTIES FOR MISREPRESENTATION OF ELIGIBILITY AS
7 SHAREHOLDER. (a) The ownership interest in shares of the corporation's
8 stock issued to an individual ineligible to receive the shares who has
9 presented fraudulent or misleading information regarding his eligibility
10 to own the shares, is void upon the issuance of an appropriate order by
11 the superior court. The ineligible individual is also liable for the
12 full amount of dividends, or other distributions to shareholders re-
13 ceived by him plus interest from the date of distribution, and legal
14 fees and costs of recovery incurred by the corporation. This section
15 applies to an individual who has presented fraudulent or misleading
16 information regarding the eligibility of another person for whom he acts
17 in the capacity of legal guardian.

18 (b) An individual who transfers or obtains shares of the
19 corporation, or in his capacity as legal guardian obtains shares of the
20 corporation for another, through fraud, misrepresentation, or any
21 deceitful or illegal means is guilty of a felony.

22 Sec. 10.50.080. DIVIDENDS OF THE CORPORATION. Dividends, or other
23 distributions, may be declared and paid by the corporation at any time
24 and from any source to the extent considered necessary by the board in
25 order to comply with the distribution requirements of subchapter U of
26 the Internal Revenue Code of 1954, as amended, (26 U.S.C. secs. 1391 -
27 1397), except that no dividend or other distribution may be declared if
28 the corporation is insolvent or if the declaration would cause the
29 corporation to become insolvent.

1 Sec. 10.50.090. EXEMPTION FROM AS 10.05. The corporation is
2 exempt from the requirements of AS 10.05.012, 10.05.216(e), 10.05.255(7),
3 and 10.05.264.

4 Sec. 10.50.100. LOAN GUARANTEE FUND. (a) There is a special fund
5 of the state known as the "Alaska General Stock Ownership Corporation
6 loan guarantee fund" which shall be completely segregated from all other
7 funds of the state, and which is a trust fund for the uses and purposes
8 of this section.

9 (b) The commissioner of revenue shall use the fund to guarantee
10 loans made to the corporation by lenders other than the state. In
11 guaranteeing loans the commissioner of revenue shall review the loans
12 for the purpose of guarding against fraud and misrepresentation. A
13 guarantee of a loan may not be for an amount in excess of the un-
14 obligated balance of the fund at the time the guarantee is made.

15 Sec. 10.50.900. DEFINITIONS. In this chapter,

16 (1) "board" means the board of directors of the Alaska
17 General Stock Ownership Corporation;

18 (2) "corporation" means the Alaska General Stock Ownership
19 Corporation;

20 (3) "fund" means the Alaska General Stock Ownership Corpora-
21 tion loan guarantee fund;

22 (4) "resident" means an individual who maintains a permanent
23 place of abode in the state with the intention of making the state his
24 permanent place of residence and who resides in the state continuously
25 except for temporary purposes only and with the intent of returning; a
26 person may not be considered to have gained a residence solely by reason
27 of his presence and he may not lose it solely by reason of his absence
28 while in the civil or military service of this state or of the United
29 States or of his absence because of marriage to a person engaged in the

1 civil or military service of this state or the United States; while a
2 student at an institution of learning; while in an institution or asylum
3 at public expense; while confined in public prison; while engaged in the
4 navigation of waters of this state, of the United States, or of the high
5 seas; or while residing upon an Indian or military reservation; a minor
6 takes the residence of his parent or of his legal guardian; a married
7 woman may establish her own residence and does not presumptively take
8 the residence of her husband.

9 * Sec. 2. AS 37.10.065(a) is amended by adding a new paragraph to read:

10 (9) secured loans to the Alaska General Stock Ownership
11 Corporation.

12 * Sec. 3. AS 37.10.070(a) is amended by adding a new paragraph to read:

13 (14) bonds or other forms of indebtedness of the Alaska
14 General Stock Ownership Corporation.

15 * Sec. 4. AS 45.55.140(a) is amended by adding a new paragraph to read:

16 (12) a security issued by the Alaska General Stock Ownership
17 Corporation.

18 * Sec. 5. Notwithstanding any other provision of law, a civil action to
19 contest the legality of this Act is barred unless the complaint is filed
20 within one year of the effective date of this Act. The purpose of this
21 limitation on suits is to insure that, after the expiration of a reasonable
22 period of time, the right, title, and interest of shareholders of the Alaska
23 General Stock Ownership Corporation will be vested with certainty and that
24 the corporation will be able to carry on its business activities with cer-
25 tainty.

26 * Sec. 6. Notwithstanding AS 01.10.030, the requirements of this Act for
27 eligibility to receive original issue shares of the Alaska General Stock
28 Ownership Corporation are not severable. If those requirements, or the
29 application of them to any person or circumstance, are held invalid, this Act

1 is void in its entirety.

2 * Sec. 7. AS 10.50.070(b) is amended to read:

3 (b) An individual who transfers or obtains shares of the corpora-
4 tion, or in his capacity as legal guardian obtains shares of the
5 corporation for another, through fraud, misrepresentation, or any
6 deceitful or illegal means is guilty of a class C felony.

7 * Sec. 8. Sections 1 - 6 of this Act take effect immediately in accor-
8 dance with AS 01.10.070(c).

9 * Sec. 9. Section 7 of this Act takes effect January 1, 1980.
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ALASKA STATE LEGISLATURE

ELEVENTH Legislature FIRST Session

SPONSOR SUBSTITUTE

HOUSE ... BILL..... NO. ...240

By DUNCAN, COTTEN, HURLBERT,

MCKINNON, MILES, MILLER,
MUNSON, PARKER AND GARDINER

"An Act creating the Alaska
General Stock Ownership Corpor-
ation; and providing for an
effective date."

Alaska General Stock Ownership
Corporation

Introduced in the House 3-6....., 19...79

HISTORY IN THE HOUSE

19 79	Read first time and referred to Committee on																												
Mar. 6	State Affairs and Finance Reported back with recommendation that																												
	Read second time and																												
	Read third time and																												
	<table border="0"> <tr> <td>PASS</td> <td>Effective Date</td> </tr> <tr> <td>Yeas</td> <td>Yeas</td> </tr> <tr> <td>Nays</td> <td>Nays</td> </tr> <tr> <td>Absent</td> <td>Absent</td> </tr> <tr> <td>Excused</td> <td>Excused</td> </tr> <tr> <td colspan="2">Reconsideration</td> </tr> <tr> <td>PASS</td> <td>Effective Date</td> </tr> <tr> <td>Yeas</td> <td>Yeas</td> </tr> <tr> <td>Nays</td> <td>Nays</td> </tr> <tr> <td>Absent</td> <td>Absent</td> </tr> <tr> <td>Excused</td> <td>Excused</td> </tr> <tr> <td colspan="2">Reported correctly engrossed</td> </tr> <tr> <td colspan="2">Signed by Speaker</td> </tr> <tr> <td colspan="2">Sent to Senate</td> </tr> </table>	PASS	Effective Date	Yeas	Yeas	Nays	Nays	Absent	Absent	Excused	Excused	Reconsideration		PASS	Effective Date	Yeas	Yeas	Nays	Nays	Absent	Absent	Excused	Excused	Reported correctly engrossed		Signed by Speaker		Sent to Senate	
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HISTORY IN THE SENATE

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HISTORY IN THE HOUSE

19	Received from Senate
	Concurred in Senate amendment thus adopting: VOTE
	Failed to concur in Senate amendment; asked Senate to recede VOTE
	Senate receded from amendment VOTE
	Senate failed to recede from amendment VOTE
	CC appointed by House
	CC appointed by Senate
	CC adopted by House VOTE
	CC adopted by Senate VOTE
	To enrolling Reported correctly enrolled Sent to Governor by Governor
	Filed with Lt. Governor
	Chapter No.

THE LEGISLATURE OF THE STATE OF ALASKA
ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. SSHB 240 / SSSB 170
 Title Creating the Alaska General Stock Ownership Corporation
 Requested by Legislative Finance Date 3/12/79

II. FISCAL DETAIL

Agency Affected Department of Revenue
 Program Category Affected Development
 BRU, Program, or Subprogram(s) Affected new BRU
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 79	FY 80	FY 81	FY 82	FY 83	FY 84
100 PERSONAL SERVICES		834.0 *				
200 TRAVEL		163.2 *				
300 CONTRACTUAL		1184.4 *				
400 COMMODITIES		180.0 *				
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
800 MISC. & INTEREST		276.0 *				
TOTAL		2,637.6				

FUNDING (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

* Breakout is for informational purposes only. Funds would be appropriated as a grant to AGSOC or as capital to a reserve fund to guarantee a loan to AGSOC. Attachment provides further cost breakout.

IV. DATE 3/12/79 PREPARED BY Milt Barker
 AGENCY Legislative Finance Division
 Original: Legislative Finance PHONE 465-3795 (from information provided
 cc: Budget and Management by Kelso & Co., Inc. --
 Prime Sponsor (First Legislator Named) attached)

AGSOC ESTIMATED
(First 12 Months)

EXPENSE AND VARIANCE STATEMENT

Department Total - All Departments Ex. Operating

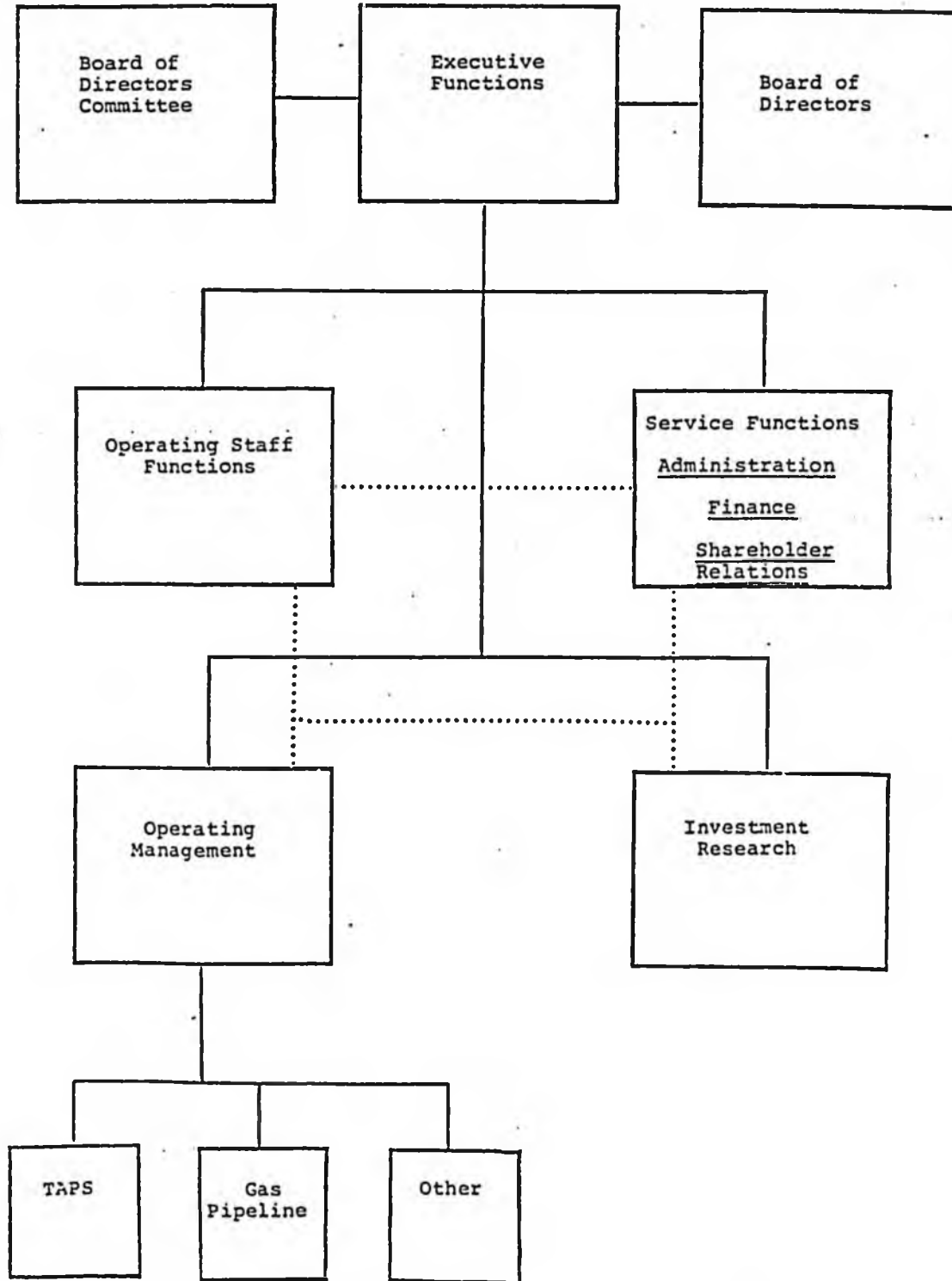
THIS MONTH			L I N E N O. E.	_____ 19 ____	YEAR-TO-DATE	
ACTUAL	BUDGET	VARIANCE *			ACTUAL	VARIANCE *
	17,000		1	OFFICERS SALARIES		
	38,500		2	OTHER SALARIES		
	---		3	BONUSES PAID		
	14,000		4	EMPLOYEE BENEFITS		
	12,500		5	RECRUITMENT & TRAINING		
			6			
	82,000		7	TOTAL PAYROLL & PERSONNEL		
	2,500		8	TELEPHONE & TELETYPE		
	100		9	TELEGRAMS & CABLES		
	---		10	TICKERS & QUOTATION SERVICES		
	15,000		11	PRINTING & SUPPLIES		
	12,500		12	POSTAGE		
			13			
	30,100		14	TOTAL COMMUNICATIONS		
	7,500		15	RENT		
	---		16	DEPRECIATION & AMORTIZATION		
	1,000		17	EQUIPMENT RENTAL		
	200		18	MAINTENANCE & REPAIRS		
	65,000		19	E.D.P. SERVICE BUREAU EXPENSES		
	750		20	INSURANCE - NON PAYROLL		
			21			
	74,450		22	TOTAL OCCUPANCY & EQUIPMENT		
	1,000		23	ADVERTISING & PROMOTIONAL		
	250		24	PUBLICATIONS		
	1,000		25	TRAVEL		
	100		26	ENTERTAINMENT & MEETINGS		
	200		27	MEMBERSHIP DUES & ASSESSMENTS		
	200		28	ASSOCIATION DUES & ASSESSMENTS		
			29			
	2,750		30	TOTAL BUSINESS DEVELOPMENT		
	---		31	ERRORS & BAD DEBTS		
	3,000		32	OUTSIDE RESEARCH SERVICES		
	4,500		33	PROFESSIONAL SERVICES		
	---		34	TAXES PAID		
	20,000		35	INTEREST PAID - SUB. CAPITAL		
	---		36	INTEREST PAID - OTHER		
	---		37	BANK SERVICE CHARGES		
	3,000		38	MISCELLANEOUS OTHER		
			39			
	30,500		40	TOTAL OTHER EXPENSE		
	219,800+		41	TOTAL PERIOD EXPENSES		
			42			
			43			
			44			
			45			

* () Unfavorable Variance

+ Annualized = \$2,637,600

Kelso & Co., Incorporated
March 5, 1979

AGSOC
Functional Block Diagram



Kelso & Co., Incorporated
March 5, 1979

THE LEGISLATURE OF THE STATE OF ALASKA
ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. SSHB 240 / SSSB 170
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GENERAL FUND						
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POSITIONS

	FY 79	FY 80	FY 81	FY 82	FY 83	FY 84
FULL TIME						
PART TIME						
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III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

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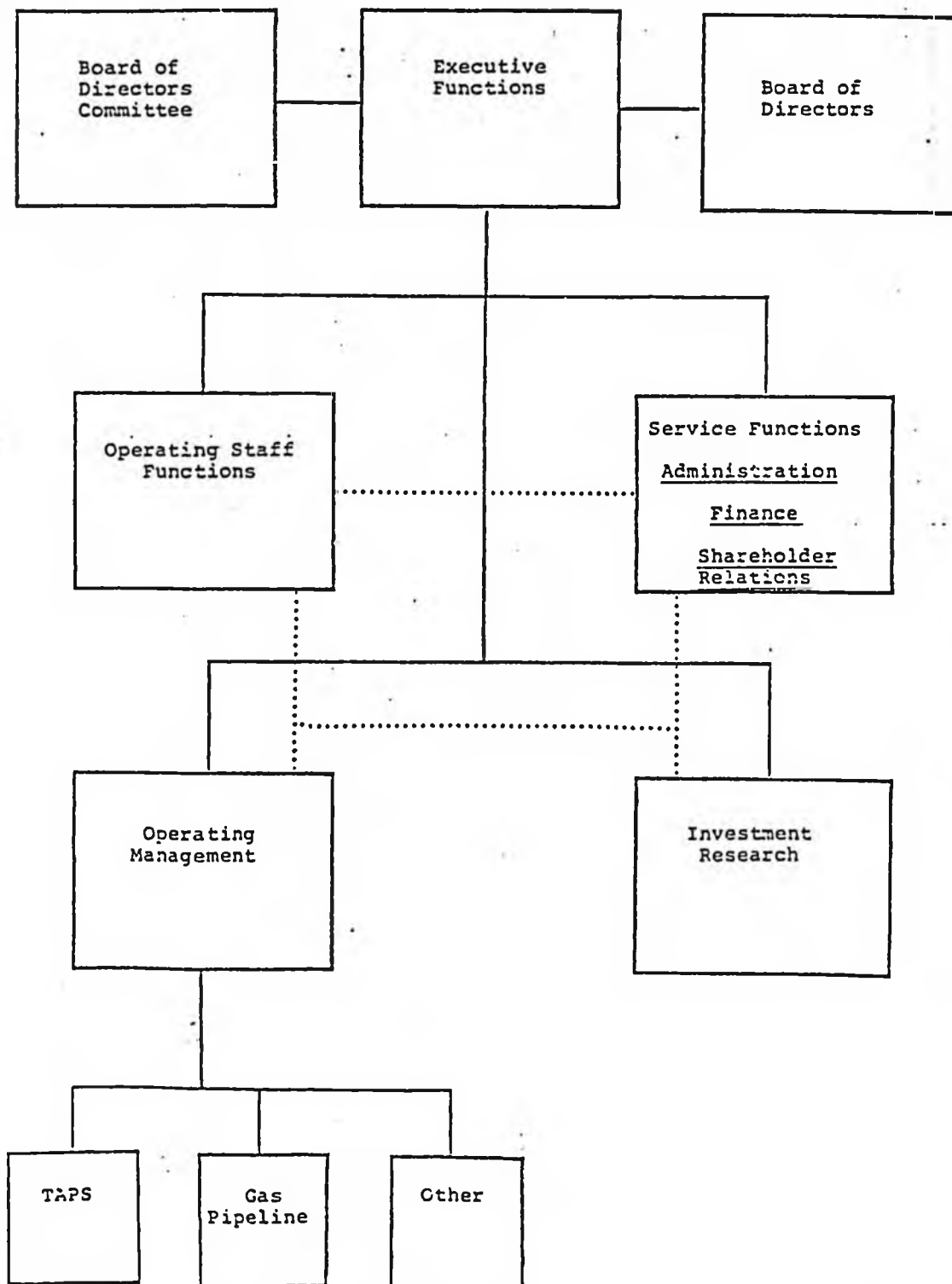
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+ Annualized = \$2,637,600

Kelso & Co., Incorporated
March 5, 1979

AGSOC
Functional Block Diagram



Kelso & Co., Incorporated
March 5, 1979

Original

THE LEGISLATURE OF THE STATE OF ALASKA
ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 240
Title An Act relating to general stock ownership corporations and creating the Alaska
~~XXXXXXXXXX~~ General Stock Ownership Corporation; changing Date 3/11/80
Requested by Rule 23.1, Rules of Civil Procedure & providing for an effective date.
REQUESTED by House Finance Committee

II. FISCAL DETAIL

Agency Affected Department of Revenue
Program Category Affected Revenue Collection and Management
BRU, Program, or Subprogram(s) Affected Treasury Management
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 80	FY 81	FY 82	FY 83	FY 84	FY 85
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS. CLAIMS. ETC.	-0-	5,000.0	-0-	-0-	-0-	-0-
TOTAL	-0-	5,000.0	-0-	-0-	-0-	-0-

FUNDING (Thousands of Dollars)

GENERAL FUND	-0-	5,000.0	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

\$5,000,000 to be transferred to special fund, 'Alaska General Stock Ownership Corporation Loan Guarantee Fund". (Sec. 4(c)). This Fund used to guarantee loans made to the AGSOC for initial organization/operations costs only. Limit of guarantee is \$5,000,000.

Anselm C. Staack

IV. DATE 3/21/80 PREPARED BY Anselm C. Staack, Treasury Comptroller
AGENCY Department of Revenue/Treasury
Original: Legislative Finance PHONE 465-2351
cc: Budget and Management
Prime Sponsor (First Legislator Named)

Bill Analysis with Comments

CS for SS for HB 240 (3/11/80)

The bill's basic purpose is to create an Alaska General Stock Ownership Corporation (AGSOC).

1. Language throughout Sec 1 of the bill is plural; ie. more than one such corporation may be established.

2. Three or more natural persons at least 18 years of age may act as incorporators.

3. Articles of Incorporation (which are filed through the usual private sector manner with the Department of Commerce) and initial by-laws must be submitted for review by the Legislature. Legislative disapproval may be overridden by a majority of the shares voting on the matter.

4. Voting of shares must be done in person or by ballot; proxies are prohibited.

5. Only one class of shares is allowed.

6. Purpose of such corporations is to be set out in the articles; no blanket purpose is indicated in the bill.

7. At least 90 days prior to the initial issue of stock, the public must be notified as to method of qualifying and applying for shares.

8. Shares may be issued only to individuals who were residents of the State on the effective date of the enabling legislation and who continued to be residents until the date of the issue of shares.

9. No mention is made of the price of shares of the initial issue but eligible persons who do not apply for shares within one year of issue date may apply for and receive shares within two years upon payment of book value.

All of the above is contained in Section 1 of CSSS HB 240. Sections 2 and 3 made minor amendments to general corporate statutes to include references to this kind of corporation. In contrast to the first three sections of the bill which relate to general stock ownership corporations as a type, Section 4 refers to a specific corporation, namely the Alaska General Stock Ownership Corporation. Provisions relating to just this Corporation include:

1. Appointment of one each of the incorporators by the Governor, the Speaker of the House and the President of the Senate.

CORRECTION

**THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY**

Bill Analysis with Comments

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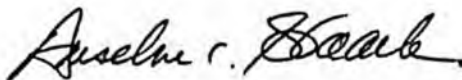
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1. Appointment of one each of the incorporators by the Governor, the Speaker of the House and the President of the Senate.

2. Selection by the three incorporators of nine persons (who may be disapproved by a majority of the Governor, the Speaker and the President) to act as the initial Board of Directors.
3. Establishment of a special fund (AGSOC Loan Guarantee Fund) not to exceed \$5,000,000 to be used by the Commissioner of Revenue to guarantee loans made to the AGSOC by non-State lenders solely for initial costs of the Corporation.

One can only assume the constitutionality of the various shareholder resident requirements was thoroughly explored during preparation of the bill and the language used falls within the allowable parameters. Once the incorporators and initial board of directors have been approved the the Governor, the Speaker of the House and the President of the Senate, in the specific case of the AGSOC, and the articles by the Legislature, in all cases, such corporations (general stock ownership) appear to become autonomous, free of direct political control.

Direct fiscal impact of the bill on the State is limited to the \$5,000,000 ceiling of the AGSOC Loan Guarantee Fund (Sec. 4(c).) Use of these loans for acquisition of major investments by the Corporation is prohibited. It is also explicitly required that the Commissioner of Revenue review loans to be guaranteed to determine their "general soundness" and to guard against fraud and misrepresentation. (In any case, the State guarantee limit is \$5 million.)



Anselm C. Staack, Treasury Comptroller
Department of Revenue/Treasury Division
465-2351
March 21, 1980

THE RELATIONSHIP
BETWEEN
CASH FLOW AND TAXABLE INCOME
IN
GENERAL STOCK OWNERSHIP CORPORATIONS

Senator Mike Gravel

CONTENTS

Executive Summary	(a)
The Potential Problem	1
When Can the Problem Occur	2
Non-deductible Expenditures	3
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Depreciation Recapture	5
Investment Credit Recapture	7
Installment Sales	9
Protection for Shareholders	10
The Election	10
Management	13
Termination of Election	14
Revocation of Charter	16
Conclusion	17

EXECUTIVE SUMMARY

The Potential Problem

The law governing GSOCs attributes GSOC taxable income to GSOC shareholders raising the possibility of shareholder tax liability on attributed GSOC income in excess of GSOC cash distributions. This could present hardships for the shareholders who might not have sufficient funds to pay the taxes due.

When Can It Occur

Shareholder tax liability in excess of cash available for distribution can occur when the corporation has (1) cash flow expenditures which are non-deductible for tax purposes or (2) items included in taxable income which do not represent cash flow income.

Examples of non-deductible cash flow expenditures include principal amortization on installment debt, some political and charitable contributions, the excess portion of unreasonably high salaries, illegal payments and contributions to non-qualified or disqualified retirement plans. Examples of items included in taxable income which do not represent cash flow income include depreciation and investment tax credit recapture income and income from installment sales with excessive down payments.

Shareholder Protection

The special tax treatment for GSOCs must be elected. If no election is filed the GSOC is taxed as a regular business corporation. To qualify for the election the corporation must meet the requirements of a GSOC which include limitations desirable in any state chartered broadly owned corporation.

GSOC management is the shareholders' first line of defense. Potential problems can be avoided with careful planning. However, since corporate management may err the law provides for termination of the special tax treatment voluntarily upon request of the corporation or involuntarily by operation of law. Termination closes off the attribution of corporate taxable income to the shareholders and the corporation is taxed as a normal business corporation. As a last resort the state legislature can revoke the GSOC corporate charter terminating its existence.

Conclusion

GSOC management has the tools to prevent shareholder tax liability in excess of GSOC distributions. Failing this the law allows the termination of special tax status in a number of ways closing off the attribution of income to the shareholders and protecting them regardless of management decisions.



The General Stock Ownership Corporation (GSOC) provisions of the Internal Revenue Code (Subchapter U, Sections 1391-1397) present an interesting question regarding the relationship between taxable income and cash flow of the corporation and distributions to its shareholders. Several witnesses before the State Affairs Committee have commented upon this issue during consideration of HB 240. This paper analyses the potential problem and the protections for the shareholders built into the statutes.

THE POTENTIAL PROBLEM

Subchapter U of the Internal Revenue Code (Code) provides that the taxable income of a GSOC is attributed annually to its shareholders. With minor exceptions taxable income of a GSOC is computed in a manner similar to other corporations. Shareholders must include in income for tax purposes their share of GSOC income for the year. The tax liability of a GSOC shareholder arising because of his share ownership is determined by multiplying the income attributed to him from the GSOC by his marginal tax rate. This tax is increased by the shareholder's portion of any net investment recapture tax and reduced by his share of any net investment credit.

To provide shareholders cash sufficient to meet the tax liability created by the attribution of GSOC income the Code requires a GSOC to distribute annually to its shareholders an amount equal to at least 90 percent of its taxable income. This distribution requirement applies irrespective of corporate

cash flow. However, if the GSOC fails to make the required distribution the only penalty is a 20 percent deficiency tax assessed against the corporation. Application of this tax does not absolve GSOC shareholders from the obligation to pay tax on the income attributed to them from the corporation.

Taxable income does not necessarily reflect cash flow available for distribution to shareholders. It is an artificial number arrived at in an effort to determine on an annual basis the average earnings of a company or individual over a lifetime. Some items such as depreciation on capital assets reduce taxable income without affecting cash flow while other items which are actual cash flow expenses, such as the repayment of debt principal, do not reduce taxable income. Thus, cash flow after expenses may be either more or less than taxable income.

Concerns have been expressed that GSOC cash flow could be insufficient to meet the distribution requirements and perhaps so low that no distributions occur at all. In such a case GSOC shareholders might have income tax liability as a result of income attributed to them from the GSOC and yet have no cash distributions from the corporation with which to pay the taxes. We shall attempt to analyse the risks presented by this scenario and the protections afforded the shareholders.

WHEN CAN THE PROBLEM OCCUR

Two general types of situations can cause taxable income to exceed cash flow. Taxable income can exceed cash flow where (1) cash flow expenditures are non-deductible for tax purposes

and (2) items of taxable income do not represent cash flow income. The first category of transactions includes the amortization of debt principal, illegal payments and unreasonably high salaries. The second category includes recapture of depreciation and investment tax credits and installment sales with excessive down payments.

Non-deductible Expenditures

Non-deductible expenditures reduce GSOC cash flow available for distribution to the shareholders without reducing taxable income attributed to shareholders for income tax purposes. Carried to an extreme these expenditures could eliminate all the cash in a corporation, but still not reduce the taxable income. The taxable income would be attributed to the shareholders who would incur tax liability based on the attributed income, but the corporation would have no cash to distribute and the shareholders would be required to finance the additional tax liability out of other income. This could work considerable hardship upon many shareholders.

There are many expenses which do not reduce taxable income. The more common of these include contributions to disqualified retirement plans, some charitable and political contributions and the excess portion of unreasonably high salaries. Amortization of debt principal is also a very common non-deductible cash flow expense. Although interest payments on a loan are deductible for Federal income tax purposes payments which reduce the principal amount due on the loan are not. In many cases the non-deductible principal portion of a loan payment may

represent the lion's share of the annual loan amortization cash flow. Since this principal amortization component of debt service requires cash payments from the corporation it is the type of non-deductible expenditure which could cause problems for the shareholders of a GSOC.

Other non-deductible corporate expenses can result in GSOC expenditures which do not reduce taxable income. Generally all ordinary and necessary business expenses are deductible in computing taxable income. However, some political and charitable contributions, the excess portion of unreasonably high salaries, illegal payments and contributions to non-qualified or disqualified retirement plans are not deductible. While this list of items is not exclusive these are the more common non-deductible corporate expenses. The common thread through all of these transactions is that they are avoidable with careful planning by management. There is no event which could involuntarily trigger large increases in taxable income without a corresponding increase in cash flow. The problem presented by loan amortization principal can be avoided through the installment purchase solely of depreciable assets with depreciation schedules carefully arranged to provide tax protection for principal amortization cash flow. This solution is workable because, over the life of an asset, depreciation and principal amortization will be the same. Thus, if a problem should occur in this area it will almost certainly be the result of bad management.

Taxable Income Without Cash Flow

The other situation in which cash flow available for distribution may not be adequate to cover the additional shareholder tax liability occurs where items which are included in taxable income do not represent cash flow income to the corporation. Generally, this occurs where a taxpayer has received cash flow income in the past which was non-taxable at the time of receipt. The inclusion of this cash flow in taxable income occurs at a later date when recognition for tax purposes is triggered by some event. The most common of this income type is recapture income. The law "recaptures" the tax on income which avoided tax at the time it was earned. This prevents the permanent deferral of tax on certain types of income. There are two major kinds of recapture income, depreciation recapture and recapture of investment credits.

Depreciation Recapture

Tax law allows the owner of a capital asset used in a trade or business to recover his initial investment tax free over the life of the asset. The mechanism used to provide this recovery of investment is depreciation. The depreciation deduction reduces taxable income sheltering income from tax. If a taxpayer holds a capital asset for its full useful life he is allowed depreciation deductions equal to its initial cost and can shelter that amount of income from tax.

Depreciation recapture may occur where a taxpayer elects to use accelerated depreciation. Accelerated depreciation

allows additional depreciation deductions protecting from tax income which would otherwise be taxed currently. Accelerated depreciation provides deductions larger in the early years than straight line depreciation. It allows rapid capital cost recovery on depreciable assets in an effort to encourage modernization of capital stocks.

To prevent additional income sheltered by accelerated depreciation from permanently escaping taxation when the asset is disposed of taxable income is increased by the amount by which accelerated depreciation on the asset exceeded straight line depreciation. When this occurs taxpayers may have taxable income without cash flow and other income will be required to pay off the tax liability. Planning can save taxpayers in these situations. Accelerated depreciation shelters cash flow from tax which would otherwise be taxable at the time of receipt. If the taxpayer sets aside this income or a portion of it into a fund for depreciation recapture taxes at the time the asset is disposed of he will have sufficient funds available to pay the tax generated by the recapture income. An example might help to clarify the operation of the depreciation recapture provisions.

John owns a rental apartment for which he paid \$100,000. The unit will last for 20 years. John takes a depreciation deduction each year equal to one-twentieth of his investment or \$5,000. This uniform annual depreciation deduction is known as straight line depreciation. After 20 years John will have taken depreciation deductions equal to the \$100,000 he paid for the apartment. He will have recovered his investment through income on which he paid no tax.

To encourage investment in rental housing the law allows John to recover his investment in a shorter period of time through accelerated depreciation. In some cases John can elect to take twice the normal depreciation deduction. If he takes a \$10,000 depreciation deduction in the first year he will shelter \$10,000 from tax. If he then sells the property

for \$100,000 he will have a capital gain of \$10,000 because he has been allowed to recover \$10,000 of his investment tax free. The \$10,000 depreciation deduction reduces his basis in the property for capital gains purposes resulting in a basis of \$90,000 at the time of the sale.

If John had taken straight line depreciation on the apartment he would have had a capital gain of only \$5,000 upon the sale because his basis would have been \$95,000 at the end of the first year due to depreciation deductions of \$5,000. The additional \$5,000 deduction in year one has sheltered from tax \$5,000 of additional income for John. However, as we have seen, this \$5,000 which is sheltered by accelerated depreciation appears upon the sale of the property as a capital gain receiving special favorable tax treatment.

Through accelerated depreciation John has converted ordinary income into capital gain income taxed at 40% of ordinary income rates. To prevent this conversion of ordinary income into capital gains, or the permanent sheltering of ordinary income, the depreciation recapture provisions step in and require that \$5,000 of John's \$10,000 gain on the sale be taxed as ordinary income.

This description of one transaction subject to the depreciation recapture rules is for illustration purposes only. These rules are complex and many of the ramifications of these provisions have been excluded from the example in the interests of simplicity.

Investment Tax Credit Recapture

The Code allows an investment tax credit equal to ten percent of the purchase price of certain types of new and used property. This ten percent credit reduces taxes rather than reducing gross income as does a deduction. The property eligible for the investment tax credit is generally depreciable tangible personal property, excluding buildings and structural components, used by an individual or corporation engaged in a trade or business and having a useful life of at least three years.

The investment tax credit may be taken for the year in which the taxpayer places the asset into use in his trade or business.

To prevent the sheltering of income through the investment tax credit Congress provided recapture provisions similar to the depreciation recapture rules. If a taxpayer disposes prematurely of an asset on which he has received an investment tax credit the disposition triggers the recognition of investment tax credit recapture income to the taxpayer in an amount designed to generate tax liability equal to the credit which he earlier received. This investment tax credit recapture income is included in income for the year of disposition and may increase the taxpayer's liability. The recapture income is income only in the tax sense and may or may not represent cash flow. It is an effort to recover tax on income which was earlier sheltered by the investment tax credit. Planning for investment tax credit recapture income involves steps similar to those followed in planning for depreciation recapture income. It can be avoided entirely by not disposing of the asset or it can be funded through a reserve set aside from the income sheltered by the credit.

The law sets up special rules for the treatment of investment tax credits and investment credit recapture in GSOCs. The investment tax credit is not allowed to GSOCs. The investment tax credit to which a GSOC would be entitled if it were taxable flows through to the shareholders in much the same manner as income. The credit and any recapture of investment credit are netted at the corporate level. Thus, if a GSOC has both

investment credits and investment credit recapture income in the same year these items will be set off against each other and only the net credit or recapture will flow out to the shareholders. If there is a net investment tax credit, that amount will be prorated to the shareholders in the same manner as income. The credit will reduce the shareholders' tax liability. Net investment credit recapture is prorated to the shareholders and characterized as additional tax liability. Net investment credit recapture is not treated by the shareholders as additional taxable income, but as a direct addition to tax liability. It is different than depreciation recapture income which is treated as an addition to shareholder income. Investment credit recapture presents a more serious problem for the corporation and its shareholders because it increases tax liability rather than income. However, in nearly every case the generation of net investment credit recapture is avoidable or can be anticipated at the time the asset is acquired.

Installment Sales

The installment sale of an asset can generate taxable income without cash flow. The law allows a taxpayer to defer reporting income on an installment sale until the time payments are made. This allows the income from such a sale to be spread out over the life of the sales contract. However, if the seller receives more than 30 percent of the total contract price in the year of sale the entire gain is taxed as income in the year of sale in spite of the fact that the seller did not receive

the full sales price at that time and may not do so for several years. this can mean that a seller has tax liability on gains from the sale in excess of the cash he received in the year of sale from the buyer. GSOCs, like other sellers, must operate within these rules.

PROTECTION FOR SHAREHOLDERS

GSOCs must elect to be subject to the flow through character and distribution requirements of subchapter U. Although the GSOC charter must provide "that such corporation shall qualify as a GSOC under the Internal Revenue Code," election of special tax treatment is not mandatory. If no election is filed a GSOC is taxed as a regular business corporation. GSOCs can qualify as such without making the election, however, in such a situation the primary advantage of GSOC status would be foregone.

The Election

There may be good reasons why a corporation might want to qualify as a GSOC and forego the election. If a corporation expected cash flow problems in the early years of operation or invested in projects with high reinvestment requirements it might desire to delay making the election until a more appropriate time. Comparable situations occur in closely held corporations where the owners may elect during loss years to be taxed under subchapter S, a provision allowing flow through of corporate losses and income to the shareholders of small corporations. But, when the corporation begins to turn a profit the election may be revoked and the income taxed to the corporation

rather than the shareholders. This is standard tax planning for high income shareholders of closely held corporations whose personal income tax rates may reach 70 percent. Since the maximum Federal corporate income tax rate is 46 percent, these individuals want losses to flow through to their personal returns and income to be taxed to the corporation. The subchapter S election allows such an outcome in certain cases.

Just as the subchapter S election provides flexibility in tax planning for high income shareholders of closely held corporations the subchapter U election provides flexibility for GSOC tax planning. The special tax treatment provided by subchapter U is not automatic. Election must be made by the GSOC or it will be treated as an ordinary business corporation subject to tax under the provisions of subchapter C, the general corporate tax provisions. The determination of whether or not to elect subchapter U treatment is one of the most important decisions to be made by the board of directors of a GSOC. The election need not be filed immediately upon formation of the corporation.

If the GSOC upon creation does not file an election one might ask why create a GSOC at all. Why not simply create a broadly owned conventional corporation not subject to the strictures of subchapter U? To answer this question we must separate those aspects of subchapter U required to qualify as a GSOC and those which flow from making the election. In so doing we find that the elements necessary to qualify as a GSOC are relatively innocuous. They include:

1. Chartered after 12/31/78 and before 1/1/84,

2. Chartered by legislation or initiative,
3. Charter providing-
 - Only one class of stock
 - Issuance of at least one share to each resident
 - Issuance of shares only to "eligible individuals"
 - Election to reject shares
 - Transfer restrictions
 - Intent to qualify as a GSOC
4. Limitations on use of state's condemnation powers, and
5. Affiliated group limitations.

Most of these limitations might be appropriate to any broadly owned corporation initiated by a state. The affiliated group limitation is applicable only at the time an election is filed and a defect here could be cured by a reduction in GSOC subsidiary share ownership below the 20 percent limit prior to filing.

The special tax and distribution provisions of subchapter U apply only to those corporations making the election. In some cases inadequate drafting left ambiguities in this regard which are being clarified by a bill, S.2275, currently pending in the United States Senate. Thus, a corporation can qualify as a GSOC and be taxed as a normal business corporation leaving open the option to be taxed under subchapter U if it becomes appropriate at a later date. However, if a corporation does not meet the requirements of a GSOC upon creation it will be difficult to cure the defect if, at some point, the special tax treatment becomes attractive. In fact, if the defect were not cured prior to January 1, 1984, it is likely that attempts to cure the defect and elect subchapter U status for tax purposes would fail. However, if the corporation qualifies as a GSOC prior to January 1, 1984, the statute does not preclude election of

the special tax status subsequent to that date.

Management

The first and most important protection for GSOC shareholders is good management. GSOCs are not foolproof. Like any corporation they can be successful only if carefully managed. This is true with respect to investment decisions and day to day operations as well as tax planning. Timing by GSOCs of an election for special tax status is an important management responsibility, but in order to analyse the protections for shareholders from tax liability in excess of cash distributions, we shall assume that the decision to be taxed under subchapter U has been made and a timely election filed.

GSOC management has a responsibility to protect the shareholders from tax liability on GSOC income in excess of distributions from the corporation. It would appear to be a violation of the shareholders' trust to allow any substantial amount of tax liability to befall them without providing distributions adequate, at least, to cover the liability for tax. If the management of a GSOC allowed such an event to occur without a vote of the shareholders it would seem appropriate for the shareholders to replace that management at the next opportunity.

Most of the events which could generate tax liability in excess of cash distributions involve discretionary acts by the corporation. Careful planning and attention to detail can avoid this undesirable result. In some cases the planning must occur at the time an asset is acquired to assure that principal amortization is accompanied by depreciation deductions to preclude