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Sec. 10.50.100. CERTIFICATES REPRESENTING SHARES. The shares of a corporation shall be represented by certificates signed by the president or vice-president and the secretary or an assistant secretary of the corporation, and may be sealed with the seal of the corporation or a facsimile of the seal. The signatures of the president or vice-president and the secretary or assistant secretary on a certificate may be facsimiles if the certificate is countersigned by a transfer agent, or registered by a registrar, other than the corporation itself or an employee of the corporation. If an officer who has signed or whose facsimile signature has been placed on a certificate ceases to be an officer before the certificate is issued, it may be issued by the corporation with the same effect as if he were an officer at the date of its issue.

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

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

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

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

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

Sec. 10.50.110. FULL PAYMENT REQUIRED FOR CERTIFICATE. A certificate may not be issued for a share until the share is fully paid if consideration is required.

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

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

Sec. 10.50.120. LIABILITY OF SUBSCRIBERS AND SHAREHOLDERS. (a) A

holder of or subscriber to shares of a corporation is under no obligation to the corporation or its creditors with respect to the shares other than the obligation to pay to the corporation the full consideration for which the shares were issued or to be issued.

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

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

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

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

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

(b) An annual meeting of the shareholders shall be held at the time provided in the bylaws. Failure to hold the annual meeting at the designated time does not work a forfeiture or dissolution of the corporation.

(c) Special meetings of the shareholders may be called by the president, by the board of directors, by the holders of not less than

1,000 shares, or by the other officers or persons provided in the articles of incorporation or the bylaws.

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

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

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

Sec. 10.50.140. CLOSING OF TRANSFER BOOKS AND FIXING RECORD DATE. (a) To determine the shareholders entitled to notice of or to vote at a meeting of shareholders or an adjournment of a meeting, or entitled to receive payment of a dividend, or in order to make a determination of

shareholders for any other proper purpose, the board of directors of a corporation may provide that the stock transfer books shall be closed for a stated period not exceeding 90 days. If the stock transfer books are closed to determine shareholders entitled to notice of or to vote at a meeting of shareholders, they shall be closed for at least 60 days immediately preceding the meeting.

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

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

registered office of the corporation and is subject to inspection by a shareholder at any time during usual business hours for a period of 60 days before the meeting. The list shall also be produced and kept open at the time and place of the meeting and shall be subject to the inspection of a shareholder during the meeting. The original stock transfer books are prima facie evidence as to who are the shareholders entitled to examine the list or transfer books or to vote at a meeting of shareholders.

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

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

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

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

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

the shares into his name.

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

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

Sec. 10.50.175. CORPORATION BALLOT. (a) The corporation shall prepare one ballot for each meeting of the shareholders. The ballot shall be mailed to the shareholders with the notice of meeting. Candidates for the board of directors and proposals for shareholder consideration shall be included in the ballot as provided in this section.

(b) A candidate for director shall be nominated by

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

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

(c) A proposal for amendment of the bylaws or other proper corporate purpose shall be included on the ballot if authorized by

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

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

(d) A written or printed notice setting out the candidates' qualifications for office and the proposals to be put to a vote of the shareholders and any materials in opposition to the proposals shall be given to each shareholder of record entitled to vote within the time and in the manner provided in this chapter for the giving of notice of meetings of shareholders.

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

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

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

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

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

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

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

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

Sec. 10.50.190. ELECTION OF DIRECTORS. At the first annual meeting of shareholders and at each annual meeting thereafter the shareholders shall elect directors. Each director holds office for the term for which he is elected and until his successor is elected and qualified.

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

Sec. 10.50.200. QUORUM OF DIRECTORS. A majority of the number of directors fixed by the bylaws, or in the absence of a bylaw fixing the number of directors, then of the number stated in the articles of incorporation, constitutes a quorum for the transaction of business unless a

greater number is required by the articles of incorporation or the bylaws. The act of the majority of the directors present at a meeting at which a quorum is present is the act of the board of directors, unless the act of a greater number is required by the articles of incorporation or the bylaws.

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

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

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

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

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

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

(2) immediately after giving effect to the proposed distribution

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

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

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

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

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

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

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

(1) A distribution may not be made at a time when the corporation is insolvent or when the distribution would render the corporation insolvent.

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

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

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

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

value of assets distributed in excess of the amount of the dividend or distribution which could have been paid or distributed without a violation of the provisions of this chapter or the restrictions in the articles of incorporation.

(b) Directors who vote for or assent to the purchase by a corporation of its own shares contrary to the provisions of this chapter are jointly and severally liable to the corporation for the amount of consideration paid in excess of the maximum amount which could have been paid without a violation of the provisions of this chapter.

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

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

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

(1) he relied and acted in good faith upon financial statements of the corporation represented to him to be correct by the president or the officer of the corporation having charge of its books of account, or certified by an independent public or certified public accountant or firm of certified public accountants fairly to reflect the financial condition of the corporation; or

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

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

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

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

Sec. 10.50.255. DUTIES OF OFFICERS. Officers and agents of the corporation, as between themselves and the corporation, may perform duties in the management of the corporation as provided in the bylaws, or as determined by resolution of the board of directors not inconsistent with the bylaws.

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

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

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

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

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

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

Sec. 10.50.280. COURT MAY COMPEL INSPECTION. AS 10.50.265 - 10.50.285 do not impair the power of a court, upon proof by a shareholder of proper purpose, to compel the production for examination by the shareholder of the books and records of account, minutes, and record of shareholders of a corporation.

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

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

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

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

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

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

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

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

(d) An action under this section may not be discontinued, compromised or settled, without the approval of the court having jurisdiction of the action. If the court determines that the interests of the shareholders will be substantially affected by a discontinuance, compromise, or settlement, the court, in its discretion, may direct that notice, by publication or otherwise, be given to the shareholders whose interests it determines will be affected. If notice is required, the court may determine which one or more of the parties to the action must bear the expense of giving the notice, in an amount the court determines and finds to be reasonable, and the amount determined shall be awarded as special costs of the action and recoverable by the prevailing party.

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

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

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

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

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

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

aggregate for all defendants. If the court, upon motion, decides that security must be furnished by the plaintiff as to any one or more defendants, the action shall be dismissed as to the defendant or defendants, unless the security required by the court is furnished within a reasonable time fixed by the court. The corporation and the moving party have recourse to the security in the amount the court determines upon the termination of the action.

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

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

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

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

(1) make contributions or spend money to influence the nomination or election of a candidate for office or the outcome of a ballot proposition or question;

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

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

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

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

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

ARTICLE 2. FORMATION OF CORPORATIONS.

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

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

(1) the name of the corporation;

(2) the period of duration, which may be perpetual;

(3) the purpose or purposes for which the corporation is organized;

(4) the aggregate number of shares which the corporation may issue;

(5) that only one class of stock may be issued by the corporation;

(6) that shares of stock may be issued only to individuals

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

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

(8) that no share of stock may be voluntarily or involuntarily transferred

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

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

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

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

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

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

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

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

(13) the name and address of each incorporator.

(b) It is not necessary to set out in the articles of incorporation any of the corporate powers enumerated in this chapter.

Sec. 10.50.325. FILING OF ARTICLES OF INCORPORATION. (a) Duplicate originals of the articles of incorporation shall be delivered to the commissioner. If the commissioner finds that the articles of incorporation conform to law, he shall, when all fees prescribed in AS 10.-05.708 - 10.05.774 have been paid,

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

(2) file one duplicate original in his office;

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

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

Sec. 10.50.330. EFFECT OF ISSUANCE OF CERTIFICATE OF INCORPORATION. Upon the issuance of the certificate of incorporation, the corporate existence begins. The certificate of incorporation is conclusive evidence that all conditions required to be performed by the incorporators have been complied with and that the corporation has been incorporated. The issuance of the certificate does not affect the right of the state to bring a proceeding to cancel or revoke the certificate of incorporation or for involuntary dissolution of the corporation.

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

poration and the initial bylaws adopted under AS 10.05.340 to the legislature within 30 days of the issuance of the certificate of incorporation.

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

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

Sec. 10.50.340. ORGANIZATION MEETING OF DIRECTORS. After the issuance of the certificate of incorporation an organizational meeting of the board of directors named in the articles of incorporation shall be held in the state, at the call of a majority of the incorporators, for the purpose of adopting bylaws, electing officers, and the transaction of other business as may come before the meeting. The incorporators calling the meeting shall give at least 10 days notice of the meeting by mail to each director named. The notice shall state the time and place of the meeting.

ARTICLE 3. APPLICATION FOR SHARES.

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

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

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

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

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

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

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

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

ARTICLE 4. AMENDMENT.

Sec. 10.50.365. RIGHT TO AMEND ARTICLES OF INCORPORATION. A corporation may amend its articles of incorporation so long as its articles of incorporation as amended contain provisions which could be lawfully contained in original articles of incorporation at the time the amendment is made.

Sec. 10.50.370. PURPOSES FOR WHICH ARTICLES MAY BE AMENDED. Without limitation on the general power of amendment, a corporation may amend its articles of incorporation to

(1) change its corporate name;

(2) change its period of duration;

(3) change, enlarge or diminish its corporate purposes;

(4) increase or decrease the aggregate number of shares, or shares of a class, which the corporation may issue;

(5) exchange or cancel its shares, whether issued or unissued.

Sec. 10.50.375. PROCEDURE TO AMEND ARTICLES OF INCORPORATION. Amendments to the articles of incorporation shall be made in the following manner.

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

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

least 1,000 shareholders.

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

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

(5) More than one amendment may be submitted to the shareholders and voted upon at one meeting.

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

(1) the name of the corporation;

(2) the amendment adopted;

(3) the date of the adoption of the amendment by the shareholders;

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

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

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

Sec. 10.50.385. FILING OF ARTICLES OF AMENDMENT. (a) Duplicate originals of the articles of amendment shall be delivered to the commissioner. If the commissioner finds that the articles of amendment conform to law, he shall, when all fees and franchise taxes prescribed in this chapter have been paid,

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

(2) file one duplicate original in his office;

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

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

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

(b) No amendment may affect an existing cause of action in favor of or against the corporation, or a pending suit to which the corporation is a party, or the existing rights of persons other than shareholders. In the event the corporate name is changed by amendment, no suit brought by or against the corporation under its former name abates for that reason.

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

one of the officers signing the articles and shall set out all of the operative provisions of the articles of incorporation as amended up to that time together with a statement that the restated articles of incorporation correctly set out without change the corresponding provisions of the articles of incorporation as amended up to that time and that the restated articles of incorporation supersede the original articles of incorporation and all amendments to them.

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

Sec. 10.50.405. CONTENTS OF RESTATED ARTICLES OF INCORPORATION. The restated articles of incorporation shall set out

(1) the name of the corporation;

(2) the period of its duration;

(3) the purpose or purposes which the corporation is authorized to pursue;

(4) the aggregate number of shares which the corporation may issue;

(5) any provisions, not inconsistent with law, which are set out in the articles of incorporation as amended, for the regulation of the internal affairs of the corporation;

(6) a statement that the restated articles of incorporation correctly set out without change the corresponding provisions of the articles of incorporation as amended, and that the restated articles of incorporation supersede the original articles of incorporation and all amendments to the original articles of incorporation.

Sec. 10.50.410. FILING OF RESTATED ARTICLES OF INCORPORATION WITH

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

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

(2) file one duplicate original in his office;

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

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

Sec. 10.50.415. EFFECT OF ISSUANCE OF RESTATED CERTIFICATE OF INCORPORATION. Upon the issuance of the restated certificate of incorporation, the restated articles of incorporation become effective and supersede the original articles of incorporation and all amendments.

ARTICLE 5. SALE OF ASSETS.

Sec. 10.50.420. SALE OR MORTGAGE OF ASSETS IN REGULAR COURSE OF BUSINESS. The sale, lease, exchange, mortgage, pledge, or other disposition of all, or substantially all, the property and assets of a corporation, when made in the usual and regular course of the business of the corporation, may be made upon the terms and conditions and for the consideration, which may consist in whole or in part of money or property, real or personal, including shares of another corporation, domestic or foreign, authorized by the board of directors. No authorization or consent of the shareholders is required.

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

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

(1) The board of directors shall adopt a resolution recommending the sale, lease, exchange, mortgage, pledge, or other disposition and directing the submission of the resolution to a vote at the next meeting of shareholders.

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 6. DISSOLUTION.

Sec. 10.50.470. EFFECT OF CERTIFICATE OF DISSOLUTION. Upon the issuance of the certificate of dissolution, the existence of the corporation ceases.

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

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

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

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

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

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

intent to dissolve shall set out

(1) the name of the corporation;

(2) the names and addresses of its officers;

(3) the names and addresses of its directors;

(4) a copy of the resolution adopted by the shareholders authorizing the dissolution of the corporation;

(5) the number of shares outstanding;

(6) the number of shares voted for and against the resolution.

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

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

(2) file one duplicate original in his office;

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

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

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

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

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

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

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

Sec. 10.50.500. MANNER OF REVOKING A VOLUNTARY DISSOLUTION PROCEEDING. (a) The board of directors may adopt a resolution recommending that the voluntary dissolution proceedings be revoked, and directing that the question of revocation be submitted to a vote at a special meeting of shareholders.

(b) A proposed revocation of a voluntary dissolution of the corporation shall be submitted to a vote at the next meeting of shareholders if the secretary of the corporation receives a petition proposing revocation signed by at least 1,000 shareholders.

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

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

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

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

(1) the name of the corporation;

(2) the names and addresses of its officers;

(3) the names and addresses of its directors;

(4) a copy of the resolution adopted by the shareholders revoking the voluntary dissolution proceedings;

(5) the number of shares outstanding;

(6) the number of shares voted for and against the resolution.

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

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

(2) file one duplicate original in his office;

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

Sec. 10.50.510. EFFECT OF STATEMENT OF REVOCATION OF A VOLUNTARY DISSOLUTION PROCEEDING. Upon the filing by the commissioner of a statement of revocation of a voluntary dissolution proceeding, the revocation of the proceeding becomes effective and the corporation may again carry on its business.

Sec. 10.50.515. EXECUTION OF ARTICLES OF DISSOLUTION. If a voluntary dissolution proceeding has not been revoked, then when all debts, liabilities, and obligations of the corporation have been paid and discharged, or adequate provision has been made for payment, and all of the remaining property and assets of the corporation have been distributed to its shareholders, articles of dissolution shall be executed in duplicate by the corporation by its president or vice-president and by its secretary or an assistant secretary, and verified by one of the officers signing the articles. The articles of dissolution shall set out

(1) the name of the corporation;

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

(3) that all debts, obligations and liabilities of the corporation have been paid and discharged or that adequate provision has been made for payment;

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

(5) that there are no suits pending against the corporation, or that adequate provison has been made for the satisfaction of a judgment, order or decree which may be entered against the corporation in a

pending suit.

Sec. 10.50.520. FILING OF ARTICLES OF DISSOLUTION. (a) Duplicate originals of the articles of dissolution shall be delivered to the commissioner. If the commissioner finds that the articles of dissolution conform to law, he shall, when all fees and franchise taxes prescribed in this chapter have been paid,

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

(2) file one duplicate original in his office;

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

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

Sec. 10.50.525. EFFECT OF CERTIFICATE OF DISSOLUTION. Upon the issuance of the certificate of dissolution the existence of the corporation ceases, except for the purpose of suits, other proceedings and appropriate corporate action by shareholders, directors and officers as provided in this chapter.

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

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

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

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

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

dissolution under a statement of intent to dissolve; or

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

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

(c) When a corporation has given cause for involuntary dissolution and has failed to correct the neglect, omission or delinquency as provided in this section, the commissioner shall dissolve the corporation by issuing a certificate of involuntary dissolution containing a statement that the corporation has been dissolved, the date, and the reason for which it was dissolved. The original certificate of dissolution shall be placed in the department files and a copy of it mailed to the corporation at its registered office or in care of one of its principal officers or directors, at the last known address of the officer or director, as shown by the records of the commissioner. Upon the issuance of the certificate of involuntary dissolution, the existence of the corporation shall cease, except as otherwise provided in this section, and its name shall be available to and may be adopted by another corporation no less than six months after the dissolution.

(d) A corporation dissolved by the commissioner under the provisions of this section may be reinstated by the commissioner at any time within two years from the date of the certificate of involuntary dissolution whenever it is established to the satisfaction of the commis-

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

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

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

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

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

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

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

Sec. 10.50.535. VENUE AND PROCESS. (a) An action for the involuntary dissolution of a corporation shall be commenced by the attorney general in the superior court.

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

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

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

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

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

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

business of a corporation when it is established

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

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

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

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

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

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

(2) the corporation has admitted in writing that the claim of the creditor is due and owning and it is established that the corporation is insolvent.

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

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

business and affairs should precede the entry of a decree of dissolution, the superior court may liquidate the assets and business of a corporation.

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

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

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

Sec. 10.50.580. DISPOSITION OF ASSETS OR PROCEEDS FROM SALE OF ASSETS. The assets of the corporation or the proceeds from a sale, conveyance or other disposition of assets shall be applied to the expenses of liquidation and to the payment of the liabilities and obligations of the corporation. Remaining assets or proceeds shall be

distributed among shareholders according to their respective rights and interests.

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

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

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

Sec. 10.50.600. APPOINTING COURT HAS EXCLUSIVE JURISDICTION. The court appointing the receiver has exclusive jurisdiction of the corporation and its property, wherever situated.

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

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

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

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

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

Sec. 10.50.615. DISCONTINUANCE OF LIQUIDATION PROCEEDINGS. The liquidation of the assets and business of a corporation may be discontinued at any time during the liquidation proceeding when it is established that cause for liquidation no longer exists. In this event, the court shall dismiss the proceeding and direct the receiver to redeliver to the corporation its remaining property and assets.

Sec. 10.50.620. DECREE OF INVOLUNTARY DISSOLUTION. In a proceeding to liquidate the assets and business of a corporation, when the costs and expenses of the proceeding and the debts, obligations and liabilities of the corporation have been paid and discharged and the remaining property and assets are not sufficient to satisfy and discharge the costs, expenses, debts and obligations, and all the property and assets have been applied to their payment, the court shall enter a decree dissolving the corporation.

ARTICLE 7. GENERAL PROVISIONS.

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

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

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

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

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

Sec. 10.50.645. DEFINITIONS. In this chapter,

(1) "articles of incorporation" means the original or restated articles of incorporation and all amendments;

(2) "authorized shares" means the shares which the corporation may issue;

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

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

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

(6) "corporation" means a general stock ownership corporation;

(7) "department" means the Department of Commerce and Economic Development;

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

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

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

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

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

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

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

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

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

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

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

(6) other securities, including [CORPORATE] securities <u>of corporations other than general stock ownership corporations</u>;

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

(b) A copy of all annual reports, ballots, consent authorizations and other materials relating to the shareholder ballots, published or made available by any person to the shareholders of a general stock ownership corporation, shall be filed with the administrator concurrently with its distribution to the shareholders. The administrator shall have authority to review all documents submitted and make regulations regarding content of shareholder materials to insure fairness, completeness, and nondiscrimination.

* Sec. 4. (a) The Alaska General Stock Ownership Corporation shall be created in accordance with this section. This section constitutes the chartering legislation for the Alaska General Stock Ownership Corporation as the term is defined in AS 10.50.645(4).

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

(c) The articles of incorporation of the Alaska General Stock Ownership Corporation shall provide that all shareholders of the corporation shall be residents of the state as defined in AS 10.50.645(11), and that if a shareholder ceases to be a resident of the state or his shares pass by operation of law to a nonresident,

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

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

(d) There is a special fund of the state known as the "Alaska General Stock Ownership Corporation loan guarantee fund", which may not exceed $5,000,000, which shall be completely segregated from all other funds of the state, and which shall be used by the commissioner of revenue to guarantee

loans made to the Alaska General Stock Ownership Corporation by lenders other than the state solely for initial costs of the corporation and not for the acquisition by the corporation of major investments. In guaranteeing a loan, the commissioner of revenue shall review the loan for the purposes of ascertaining the general soundness of the proposed loan and guarding against fraud and misrepresentation. The guarantee of a loan may not be for an amount in excess of the unobligated balance of the fund at the time the guarantee is made.

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

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

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

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

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

Introduced: 3/6/79
Referred: Commerce

IN THE SENATE BY COLLETTA, STIMSON AND FAHRENKAMP

SPONSOR SUBSTITUTE FOR SENATE BILL NO. 170

IN THE LEGISLATURE OF THE STATE OF ALASKA

ELEVENTH LEGISLATURE - FIRST SESSION

A BILL

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

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

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

CHAPTER 50. ALASKA GENERAL STOCK OWNERSHIP CORPORATION.

Sec. 10.50.010. ALASKA GENERAL STOCK OWNERSHIP CORPORATION CREATED. (a) The governor shall appoint nine persons, at least five of whom are residents of the state, to act as incorporators of the Alaska General Stock Ownership Corporation.

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

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

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

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

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

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

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

(4) that no share of stock may be voluntarily or involuntarily transferred

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

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

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

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

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

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

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

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

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

(b) The initial board of directors shall consist of the incorporators of the corporation. The board shall, as nearly as possible, be equally divided into three classes of directors. The initial class one directors shall serve one-year terms of office; the initial class two directors shall serve two-year terms of office; and the initial class three directors shall serve three-year terms of office.

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

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

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

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

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

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

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

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

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

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

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

(b) The commissioner of revenue shall use the fund to guarantee loans made to the corporation by lenders other than the state. In guaranteeing loans the commissioner of revenue shall review the loans for the purpose of guarding against fraud and misrepresentation. A guarantee of a loar may not be for an amount in excess of the unobligated balance of the fund at the time the guarantee is made.

Sec. 10.50.900. DEFINITIONS. In this chapter,

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

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

(3) "fund" means the Alaska General Stock Ownership Corporation loan guarantee fund;

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

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

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

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

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

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

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

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

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

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

is void in its entirety.

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

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

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

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

ALASKA STATE LEGISLATURE

ELEVENTH Legislature FIRST Session

SS

SENATE BILL ..... NO. 179...

By COLLETTA, STIMSON AND ..... FAHRENKAMP

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

Introduced in the Senate ..2/13.., 19...79

HISTORY IN THE SENATE

19	79	
		Read first time and referred to Committee on 3/9 Finance
2	13	Commerce
3	6	SS introduced - To Commerce
		Reported back with Commerce recommendation that 3 do pass Incred, 2 further Sleeve To Finance replace SS
4	27	Finance
1990		2 reports - 3 to RC - to Rules
1	15	Referred from Rules to Finance
		Read second time and
		Read third time and

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 President
Sent to House

SECRETARY OF THE SENATE

HISTORY IN THE HOUSE

19	
	Read first time and referred to Committee on
	Reported back with recommendation that
	Read second time and
	Read third time and

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
Returned to Senate

CHIEF CLERK OF THE HOUSE

HISTORY IN THE SENATE

19	
	Received from House
	To enrolling
	Reported correctly enrolled
	Sent to Governor
	..... by Governor
	Filed with Lt. Governor
	Chapter No. .....

31-001

BP's Consideration to Sell their share of TAPS

I General Information

- BP's investment in TAPS is $1.3-1.5 billion
- Several TAPS owners have tried to sell but could not find buyers even at a discount
- Producers considering add'l investment of $1 billion to increase capacity to 1.6-2 billion barrels per day

II Reasons for BP's consideration

- 1/3 of BP long term debt is in TAPS while revenue is less than 5% of BP's overall operation
- Considerable risk FERC will establish a low tariff rate
- BP has increased ownership in Sohio + therefore has indirect interest in TAPS
- Amount of add'l oil reserves is unknown so life of pipeline use is unknown

III Alaska General Stock Ownership Corporation

Income distribution to shareholders would depend on the following:

BP's Price tag	Interest Rate	Tariff Rate	Initial Yearly Income Distribution
$1.5 billion	10%	$4.68	less than $100
1.3	7%	4.68	approx 150
1.3	7%	$5.00-5.50	" 200
1.3	7%	6.35	" 400
With expanded production to 1.66 barrels			
1.3	7.9%	$5.50	= or greater 400

Assumed no change in Price + Qo

Possible Solution B.P.: actual debt

New owner could assume ~$1.1 billion debt and pay cash for BP's equity

KELSO & CO.
INCORPORATED
INVESTMENT BANKERS
GREENSBORO, N.C. SAN FRANCISCO LOS ANGELES

December 7, 1978

CHAPTER I

EXECUTIVE SUMMARY

In this report we present a review of British Petroleum's position as it relates to their interest in TAPS. British Petroleum on a consolidated basis has debt outstanding of approximately 1.1 to 1.2 billion dollars representing their loans to finance the Alaskan Pipeline. That portion of their long-term debt represents in the order of 1/3 of their total long-term debt although the pipeline generates revenues and profits of less than 5% and in some cases significantly less than 5% of BP's overall operation.

British Petroleum's current operations (see BP 3rd Quarter tab) are significantly enhanced through the recent increase in net production from Sohio's Prudhoe Bay properties. A reduction in BP's debt position and an increase in their ownership of Sohio might be one of the primary objections for BP to divest itself of its' direct interest in the pipeline and retain a significant indirect interest through Sohio.

Other factors influencing an interest in divesting in the pipeline are most likely the risks in the current FERC rate investigation hearings. There is considerable risk that FERC will establish a low tariff for pipeline owners to increase

but the Arco interest as well. It is also public knowledge through the testimony at the FERC hearings that several owners have tried to sell their interest in TAPS, but could not find buyers even at a discounted figure. Phillips was one of these companies. Furthermore, many companies who have an interest in the pipeline have declined to increase their share on a pro rata basis in the proposed expansion to the 1.6 million barrels per day.

Valuation of BP Interest in the Pipeline

In general BP wishes to sell their interest in TAPS to eliminate debt from their balance sheet and receive cash for their equity investment. In round numbers the total value on BP's TAPS investment range from 1.3 to 1.5 billion dollars. Current debt outstanding is approximately $1.1 billion and the true equity interest may be as low as $200 million or as high as $400 million. A complete sale may cause a readjustment in BP's financing arrangements through their loan agreements, but initial indications from BP are that a full cash sale for the equity and the debt portion may be a solution to a change in ownership in TAPS. The alternative would be to have the new owner assume the debt of BP Pipelines, Inc. and pay cash for the equity share.

A complete description of the loan agreements with amortization schedules and guarantees are included in this report. In summary the major problems in assuming the debt would be a number of

CORRECTION

THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY

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Other factors influencing an interest in divesting in the pipeline are most likely the risks in the current FERC rate investigation hearings. There is considerable risk that FERC will establish a low tariff for pipeline owners to increase

well head values of oil. Such an action would enhance Sohio's operations, but have a negative impact on BP's interest in the pipeline without a corresponding oil interest. (See Prehearing FERC Briefs tab.) In addition current oil producers are considering an increase in the capacity of the pipeline either to 1.6 million barrels per day or 2 million barrel per day through put. The additional investment required by the owners may be over $1 billion for such increase in capacity. That would suggest that if BP were to retain its interest in the pipeline an additional investment of $100 to $200 million may be required on their part.

Other unknowns in the BP position are the estimates for the amount of additional reserves which may flow through the pipeline in the mid to late 1980's when oil production from the Prudhoe Bay field may begin to decline. In such a case pipeline owners would have a reduction in the through put and, therefore, a reduction in revenues. In the longer term, new oil reserves have been predicted for Northern Alaska and may provide an offset. There are enough uncertainties in the near future that some of the pipeline owners may desire divestiture at this time.

It has been publicly stated that a number of pipeline owners wish to sell their interests in TAPS. Sohio and BP have generally been considered as two of those owners. It has also been rumored around Washington, D. C. that the Alaskan GSOP is exploring the purchase of not only BP's interest in the pipeline

but the Arco interest as well. It is also public knowledge through the testimony at the FERC hearings that several owners have tried to sell their interest in TAPS, but could not find buyers even at a discounted figure. Phillips was one of these companies. Furthermore, many companies who have an interest in the pipeline have declined to increase their share on a pro rata basis in the proposed expansion to the 1.6 million barrels per day.

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A complete description of the loan agreements with amortization schedules and guarantees are included in this report. In summary the major problems in assuming the debt would be a number of

clauses which indicate that the BP's share or the new owner for the BP share must prepay in the same ratio as Sohio and at the same time for their proportionate debt in the pipeline. Other than that restriction, a transer of interest in TAPS does not appear to be a difficult problem. Additional research is still necessary, but there appears to be agreement that the loan requirements do not impose major restrictions on transferring of an interest in TAPS. In addition BP recognizes and seems comfortable with the fact that they would still remain a guarantor on the debt, but if the State of Alaska is also a guarantor of the Alaskan GSOP debt then BP is not overly concerned with their guarantee.

GSOP Financial Position - (See Summary Table IV - 1)

A thorough analysis has been prepared showing estimated cash flows for the Alaskan GSOP if they were to purchase an interest in TAPS. At a $4.68 tariff which is the FERC interim tariff, the GSOP under a 1.5 billion dollar price and 10% interest rate or assumption of the BP debt, would have an initial distribution well under $100 to shareholders. In addition cash flow would be negative after ten years or so. The only feasible situation at a low tariff would be a $1.3 billion price and a 7% overall interest rate producing an initial shareholder distribution slightly over $150.00. As the tariff increases to $5.00 or $5.50, a $200 distribution per share holder in the first year is likely especially at a $1.3 billion purchase price. At the $6.35

tariff, shareholder income is somewhat under $400 even at a low valuation purchase price.

Under an expanded pipeline to the 1.6 billion barrels per day level, at tariffs of approximately $5.50 which is midrange between the owners' requested tariff and the FERC interim tariff, shareholder distribution may reach over $400 in the first few years and significant cash flow would be available for future expansion or for shareholder distribution throughout the range of a 20 year period.

Remaining Steps

The remaining steps to be taken in achieving a transfer of BP's interest would be a determination of value which BP would agree to. In addition, agreement with Sohio on its shipping arrangements with the new owner of BP's share of the pipeline, determination of the Sohio position as it regards partnership with the Alaskan GSOP and the existing loan agreements. Furthermore, decisions will have to be made on whether the GSOP should and can raise capital through revenue bonds or general obligation bonds also whether to pay cash to BP or have the GSOP assume BP's notes are additional decisions for the future. These two alternatives would dictate the price that would be reasonable to the GSOP in order to achieve significant distributions and cash flow for the early years.

SUMMARY OF MEETING

The meetings in.....were attended by..... In the first meeting .....discussed the hearings at FERC (OR 78-1) and the two phases, (1) the valuation and the rate of return phase and (2) a depreciation schedule, tear down, and cost overrun phase. .....statement that the TAPS owners will forever be involved in a rate case of some type may be well founded. The OR 78-1 rate investigation will probably not conclude until late 1980 or beyond. After that time, anyone protesting the established rate may file for a new hearing.

One of the subjects discussed was the financial reporting for the pipelines. .....was not too open as regards these issues, but did admit that the dismantling expense was strictly an internal cash flow expense and that no funded reserve was set up for the final expense.

Alyeska does submit a monthly budget report which includes summaries of their expenses. One point admitted by.....but not to be made public was that the Alyeska operating expenses for 1979 might be approximately $350 million versus a $420 million budget for 1978. This reduction is due to a reduction in personnel and expenses that were basically start-up costs for the pipeline. .....at one time was going to provide us with a 1979 budget, but declined to do so after checking with superiors. Prior to final agreements we may wish to see these budgets. However, we must recognize the sensitivity of having these budgets distributed in view of the current FERC hearings.

Much of the budget for the Alyeska operating expense is due to the use of outside contractors especially for maintenance at the Valdez terminals and the service roads along the pipeline. Pipeline taxes in the form of ad valorem taxes total approximately $167 million per year or almost half of the Alyeska budget.

.....also stated at our second meeting that as of now BP Pipelines has not used any investment tax credit and, therefore, would not be liable for any recapture of investment tax credits upon sale of the system. In addition.....cautioned us as to the tax treatment in setting tariff rates which might be substantially different for the GSOP. The GSOP tariff, based on no income tax liability could be set at far less than other carrier tariffs at least in theory.

SUMMARY OF MEETING

The meetings in.....were attended by..... .....will be present in the meetings in.....on.....

The purpose of the meeting was to discuss the technical considerations in achieving a transfer of interest of the BP share of TAPS to the Alaska GSOP. There were some generalized discussions during lunch which will be summarized first and detailed discussions after lunch on the mechanics of the BP debt agreements and the effect these agreements would have on the transfer of ownership in TAPS.

GENERAL DISCUSSIONS

During the luncheon meeting prior to the more formal detail discussions, the general topics of discussion were the timing for formation of an Alaskan GSOP and when a transfer of interest of TAPS might take place. There was a question from British Petroleum as to whether the State of Alaska would in effect be able to raise the revenue and pass the debt onto the Alaskan GSOP or whether the GSOP would be able to raise a significant amount of cash to affect a sale from British Petroleum to the GSOP. In general British Petroleum stated that a sale of their interest in TAPS would have to be affected by British Petroleum eliminating all of its debt for the TAPS project from their balance sheet and in addition be compensated for their equity investment in the pipeline. There were no specific numbers discussed at these meetings other than the general figures surrounding the debt outstanding on the note agreement. In addition to the interest of BP in effecting a sale, BP was inquiring as to whether or not the Kelso consultants along with any state committees were investigating other investment opportunities for the GSOP. It was understood that the purchase of British Petroleum's share or another oil company share in the pipeline would be highly considered for the Alaska GSOP's first investment

avenue. A further topic of interest to British Petroleum was "who is the client of the Kelso Company for this report." It was discussed that the client was part of the State legislature and not particularly the state government itself; and that there would be a differentiation between the State and the GSOP for our work and the negotiations with British Petroleum.

BP stated that, according to the loan agreements, it cannot actively seek a buyer. We mentioned that it is on public record at the FERC hearings that many owners, including BP wish to sell their ownership interest. We confirmed that we would not state that BP is actively shopping their TAPS interest.

We discussed in general the expansion possibilities on the pipeline. Discussions for expansion are underway at the owner's meetings. BP or the GSOP rights during expansion are detailed in the TAPS agreements. First expansion would be to 1.6 mm bbls/day and then to 2 million.

These thoughts cover the general issues discussed prior to the detailed discussions at the meeting regarding the loan agreements.

SPECIFIC ISSUES DISCUSSED WITH BRITISH PETROLEUM

Some preliminary issues were discussed concerning the purchase of fuel for the pump stations by British Petroleum Pipelines. Natural gas is used for the first four pump stations. British Petroleum purchases through Sohio. This purchase agreement is terminable at the sale of British Petroleum's interest in the pipeline. The gas flows through a parallel gas line to the pipeline. The tariff for this gas is the tariff set by the FERC at the rate hearings. British Petroleum Pipeline uses approximately 100,000 MCF per month of natural gas. The remainder of the oil used for the other pump stations are from topping plants at each pump station. This oil is not paid for by British Petroleum. It is essentially part of the oil retrieved from the pipeline and does not come out of the pipeline owner's share of the oil or of the tariff.

A question was brought up by us as to the change in the amount of reserves now stated at the FERC hearings to be 9.1 billion barrels. The old reserve was 9.6 billion barrels. It was not known by.....or the BP people why the reserve estimate was changed however,.....from BP stated that the number to be used for planning purposes should be 9.1 billion and that that would now be a good number.

The major subject of the meetings were the problems that would be encountered in transferring ownership interest in TAPS as it would regard the various debt issues that Sohio and BP have issued through the capital company jointly owned by Sohio and BP. There are two public issues, two private placements and two issues of the Valdez bonds. It was a general conclusion of the BP people that the biggest problems would be encountered in the private placement issues and the biggest problem of all would be to get BP out as the obligor position in regard to the debts.

Any transfer of interest in the TAPS line as far as the private placements are concerned would require a 50% or a majority of the lenders' agreement. A full elimination of BP on the loan would require a 100% agreement; that is thought to be impossible to obtain. BP did not see any real opposition to a transfer of interest if the State of Alaska were to be a guarantor on the loans to the Alaskan GSOP.

One of the requirements that BP clean its balance sheet from the debt is to keep the level of the BP guarantee far down the line. For example, BP would have to dispose of the asset involved and not be the prime guarantor on the loan. If the State of Alaska were to guarantee the loan for the GSOP, BP would be in a comfortable position to eliminate these debts from their balance sheet. There is another problem with BP as to the amount of loans it carries through the Sohio Company and how that may appear on the balance sheet. There are new British accounting standards labeled FSAB-14 which would allow them to eliminate reference to the BP/Sohio investment joint debts on their balance sheet.

BP sees as one of the biggest problems the elimination of the BP/Sohio proportionate interest in the debt agreements. That appears to be the most significant obstacle to overcome in transferring interest in TAPS.

As it stands now BP and Sohio have to make payments, both prepayments and future payments in the same ratio as ownership in the capital company. In order to change this ratio a majority of the lenders would have to agree to a change in that clause of the contract. This occurs in Article IV in the Private Placement agreements. In the Public Agreements it appears in Section IV of the Note Purchase Agreement. It is the general feeling that these problems would all be overcome by raising all capital initially and paying BP in cash upon transfer of the assets. The problems occur when the new owner of TAPS would assume the obligations of BP on the debt agreements. Under this condition there is a BP/Sohio or

Sohio/GSOP relationship which forces proportionate payments. There has been general discussions during the meetings that it may not be in the best interest of the GSOP to be a partner with Sohio on these capital agreements and on the other hand it might not be in the best interest of Sohio (BP really) to be in partners with the GSOP on these agreements.

Under the Valdez loans Sohio and BP remain liable for the 68/32% share regardless of the amount of prepayment. This 68/32% share would be on the remaining liability.

BP stressed that the equity portion of their investment would have to be paid in cash and that a note for payment to occur at some future time would not be acceptable to BP for the purchase. This really would cause BP problems in consents on agreements and other aspects for transfer of ownership in TAPS. BP saw no problem in extending time periods for closing of a deal in regards to consent of other owners and waiving their preemptive rights to a sale.

On page 65 of the Public Issue Agreement, it is noted that 2/3rds of the holders of the debt would have to agree as to what price would be acceptable for the lenders to get out of such agreement. Under the Public Issue the GSOP can take all obligations; however, BP would remain a guarantor.

Under the Private Placement consent of 50% of the lenders as stated before would be required to transfer ownership.

The best way for BP to achieve a sale would be cash up front for the Private Placement portions. This would amount to approximately $700 million with a possible discount for the purchase through the Private Placement portion. This kind of a deal would also solve any problems with Sohio. The buyers must assume all obligations under any cash however.

On the Valdez side, the problem in assuming the BP obligations would be the relationship between GSOP and Sohio. Any change in this relationship stated on the agreements would require a majority of the holders of the bonds to approve. This may be a very difficult situation since as of now we do not know who owns the majority of the bonds. However, we may be able to obtain a list of the original purchasers of these bonds and may get some clues from this. Naturally the problem with these prepayments would be the fact that Sohio and the GSOP may not be in the same position at the same time to make these prepayments.

This is a general summary of the specific problems discussed at the meeting. The details of the bond issues and the agreements were provided with summaries attached for our review. We would have access to.....for questions based on our review of these agreements.

SUMMARY OF PREHEARING BRIEFS IN TAPS CASE

The following is a summary of prehearing briefs filed during December 1977 and January 1978 in Phase I of the Trans Alaska Pipeline System rate investigation (OR78-1).

This investigation was instituted on 6/28/77 when the Interstate Commerce Commission suspended initial rates filed by the TAPS carriers in May and June 1977 for the seven-month statutory period and prescribed interim rates which it would accept during the suspension period. The initial rates — which ranged from $6.04 to $6.44 per barrel — were protested by the State of Alaska, the Arctic Slope Regional Corp., the Department of Justice, and the ICC's Bureau of Investigation and Enforcement. The interim rates prescribed by the ICC ranged from $4.68 to $5.10/bbl., or from $1.13 to $1.59 lower than the initial rates filed by the respective companies. Several of the TAPS carriers appealed the 6/28/77 order to the Fifth Circuit which upheld the ICC's action. Subsequently, however, the Supreme Court granted requests to stay the ICC's suspension of the proposed initial rates, conditioned upon agreement of the petitioners to keep separate accounts of amounts collected thereunder and to refund any portion ultimately determined to be unlawful. The Supreme Court also granted petitions for writ of certiorari to review the ICC's suspension action.

Meanwhile, the Energy Co. of Alaska — which has built a new refinery at North Pole near Fairbanks, Alaska and receives crude oil shipments through TAPS — filed protests against in-transit rules filed by five of the TAPS carriers as part of their interstate tariffs. Issues raised by these protests are consolidated in Phase I of this case.

Following a prehearing conference in August 1977, an ICC Administrative Law Judge adopted a request by the Department of Justice and the State of Alaska to phase the proceeding. Phase I will deal with questions of appropriate rate base, rate of return, treatment of taxes, and method of calculating total revenues. For the purposes of Phase I, amounts claimed by Respondents for construction or operating costs, depreciation charges, and removal costs will not be challenged. Phase II will consider the prudency of the TAPS expenditures, depreciation charges, removal costs, and all other issues not adjudicated in Phase I.

The TAPS proceeding was shifted on 10/1/77 to the new Federal Energy Regulatory Commission which, under the Department of Energy Organization Act, was assigned the ICC's responsibilities for oil pipeline rates and valuations.

Evidence was served by Respondents in Phase I on 11/30/77. Prehearing briefs were filed by the Protestants (and the Department of Energy as an intervener) in December and by the Respondents at the end of January. Hearings will commence for cross-examination on 2/7/78.

The prehearing briefs highlight the differences in positions of the protestant and respondent parties. Except for Energy Co. of Alaska which is concerned only with in-transit tariff provisions, the other protestants -- State of Alaska, Arctic Slope Regional Corp., Department of Justice, and the FERC Staff (successor here to the ICC Bureau of Investigation and Enforcement) — all concur in recommending a net original cost rate base and determination of a rate of return applicable to such a rate base, and in contending that the FERC is not bound by previous ICC methodology in any way. While none of the protestant parties made any specific recommendation as to rate of return level, Alaska, Arctic Slope and the Justice Department urged that TAPS — as a transportation monopoly with an assured supply and market demand — involves

"minimal relevant risks" for equity investors and is "at least as attractive an investment opportunity as public utilities and natural gas pipelines." These parties further recommend consideration of flow through treatment of liberalized depreciation tax benefits and the investment tax credit. By contrast, the TAPS carriers (Respondents) contend that adherence to an ICC-type valuation rate base is required both by law and public policy considerations, that the unusual risks of the TAPS project justify a rate of return on a valuation rate base of 20%, and that any departure from normalization of accelerated depreciation tax benefits would be contrary to Congressional intent and regulatory practice.

Department of Justice, State of Alaska and Arctic Slope Regional Corporation

A joint prehearing brief filed by the Justice Department, State of Alaska and Arctic Slope Regional Corporation (Protestants) on 12/15/77 urged rejection of a valuation rate base determined according to past ICC methodology, adoption instead of a net original cost rate base, determination of a reasonable rate of return on a net original cost rate base -- treating TAPS equity investment as no more risky than that in public utilities or natural gas pipelines, and consideration of flowthrough of tax benefits flowing from accelerated depreciation.

Initially, the Protestants urged that TAPS be regulated as a distinct entity separate from other pipeline interests of the eight owners. TAPS is a new pipeline and represents an enormous investment relative to other pipelines, the Protestants stated. Moreover, "whatever the competitive environment in the Lower 48 States, it is clear that the magnitude of the investment, the economics of a 48-inch pipeline and its unique location makes the TAPS transportation system a classical natural monopoly and, quite possibly, a legal one as well." Therefore, "it would be singularly inappropriate to treat the owner companies' interests in TAPS as segments of their overall pipeline interests."

The Protestants argued that use of a valuation rate base — including an element of reproduction cost new — is neither legally required nor economically justified. The concept of including reproduction cost in the rate base, the brief noted, stems from a Supreme Court decision in 1898 (Smyth v. Ames) holding that regulated entities were entitled to earn a fair return on the "fair value" of property dedicated to public service. At that time, reproduction cost was considered to provide greater certainty regarding property valuation than the inflated values reflected in company accounts. During the ensuing 50 years, however, reproduction cost came under increasing attack as a reliable measure of value and was effectively rejected by the Supreme Court in 1944 (FPC v. Hope Natural Gas Co.). Since that time, the Protestants observed, most state and federal regulatory agencies (including the FCC and the former FPC) have rejected the use of any element of reproduction cost in the rate base and have adopted an original cost less depreciation or similar standard.

Moreover, the Protestants emphasized, while Section 19(a) of the Interstate Commerce Act requires the Commission to value property owned or used by every common carrier oil pipeline subject to its jurisdiction and to consider the cost of reproduction new (and the cost of reproduction new less depreciation) in making such valuation, nothing in that provision prohibits the Commission from finding some other basis of value — such as net original cost — to be more appropriate for ratemaking purposes. Nor, the Protestants added, is there anything in the Department of Energy Organization Act which requires the FERC to follow the ICC regulatory methodology. Rather, the legislative history of that Act makes clear that the FERC "is free to make any changes that it deems appropriate in the ICC method of regulating oil pipelines."

Economically, the Protestants added, an ICC valuation rate base reflecting reproduction cost leads to arbitrary and irrational results because (1) the so-called "condition percent" factor used to determine reproduction cost less depreciation -- which factor represents an estimate of physical depreciation based on an approximation of the average useful life span of property of a certain class -- does not conform with the straight line method used to estimate annual depreciation expense for rate-making purposes, ignores the basic purpose of depreciation (to reflect the rate and extent of capital recovery) and could result in a return being paid on capital that had long been recouped by investors; (2) addition of a 6% "going concern value" before consideration of land, rights-of-way and working capital -- intended to reflect the difference in value between an operative and an inoperative pipeline -- bears no apparent relation to any element of value and is completely unjustified; and (3) inflation becomes incorporated in the rate base, thereby preventing meaningful comparisons between oil pipeline rates of return and those experienced by other regulated and unregulated industries.

By contrast, the Protestants continued, a net original cost rate base suffers from none of the above deficiencies. "It is readily and verifiably ascertainable and provides a basis for comparability necessary to assess the appropriate rate of return in light of the risks of the enterprise."

With respect to rate of return, the Protestants declared that overall return allowances up to 20% requested by the TAPS carriers on a valuation rate base are "excessive" and inconsistent with the standards set by the Supreme Court in the Hope and Bluefield cases, i.e., that the rate of return permitted a regulated entity should be commensurate with "returns on investments in other enterprises having comparable risks" and no greater than that necessary to attract capital to the enterprise. While making no specific recommendation at this time, the Protestants said the TAPS carriers are entitled to a reasonable rate of return on an original cost rate base commensurate with the "real" risks of the enterprise. In assessing the nature of such risk, the Protestants took the position that the bulk of the TAPS equity investment is subject to only "minimal relevant risks and uncertainties" and that TAPS "is at least as attractive an investment opportunity as public utilities and natural gas pipelines or, indeed, as integrated oil companies." Specifically, the Protestants noted, the TAPS line represents a monopoly over the transportation of North Slope oil, a market for this oil is assured, and there is little danger of insufficient oil volumes to permit recoupment of invested capital. While the carriers stress the difficulties and uncertainties of constructing and operating a pipeline in Alaska, the Protestants added, these uncertainties related only to ultimate construction and operational costs and "afforded no major risk to the TAPS investor." Hence, they "are irrelevant to an appropriate rate of return analysis."

In short, "despite the logistic, geotechnic and climatic challenges which characterized the project, the risk to the TAPS equity investment was minimal. The enterprise enjoys a transportation monopoly of a commodity whose supply and market demand are assured. Furthermore, it possesses -- for risk analysis purposes -- all of the relevant characteristics of a public utility or natural gas pipeline."

The Protestants further recommended that the FERC reject the carriers' proposal to use their parent company capital structures for purposes of determining an appropriate rate of return, and that it instead employ either the actual investment in TAPS or alternatively a hypothetical capitalization reflecting the financial and business risks of TAPS.

In the event a valuation rate base is adopted, the Protestants said the rate of return level must be adjusted downward in order to preclude "double counting" of inflation factors.

Turning to the treatment of taxes, the Protestants noted the magnitude of tax-related expenses to overall costs reflected in the initially filed TAPS tariffs -- ranging from 20% (ARCO) to 25% (Phillips) -- thereby demonstrating the importance of this issue. Again, the Protestants made no specific recommendation at this time but said the Commission is free to consider alternative methods. Specifically (1) the Commission may require flowthrough of the tax benefits resulting from the use of accelerated depreciation; 1/ (2) assuming normalization, the related deferred tax account should either be deducted from the rate base or included as part of the capital structure at a zero rate of return; (3) the net economic cost to the carriers of property on which the investment tax credit is taken should be reflected in the rate base; and (4) carriers which chose to deduct interest during construction should be required to subtract such accounts from the rate base.

The Protestants' brief also stressed the Commission's responsibility to carry out the national energy goals set forth in the Department of Energy Organization Act, including the goal of fostering and assuring competition among persons engaged in the energy supply industries. This goal "is particularly meaningful in the case of TAPS because excessive rates can have a direct effect upon the competitive development of North Slope crude oil reserves." Specifically, given the inverse relationship between the wellhead price of North Slope oil and the level of the TAPS tariff, "excessive TAPS rates would not only deter potential non-TAPS owner development of the North Slope, because of an artificially low wellhead value, but would also create a disincentive for TAPS owner development except in proportion to pipeline ownership interests." If pipeline rates are excessive, the Protestants explained, it would be uneconomical, or at least less economical, for an oil company without a TAPS pipeline affiliate to invest in the Prudhoe Bay Field because that oil company "would not be assured that excessive pipeline earnings stemming from the shipment of its crude oil would ultimately be returned in the form of pipeline company dividends." The same disincentive would apply to an oil company which has a TAPS affiliate but proposed to develop a share of North Slope production substantially greater than its percentage ownership of TAPS because of the necessity to ship much of its oil over another company's share of the pipeline, "thus surrendering an amount equal to the excessive pipeline profits." It therefore follows that "unless all oil companies with substantial ownership interest in TAPS' subsidiaries are willing to participate in further development, pro rata with their share of TAPS, such oil companies might be deterred from aggressively developing North Slope oil reserves. Such a result would be contrary to National Energy and Competition Policies."

In conclusion, the Protestants concluded that the Commission has full authority to issue an interim rate order, with a refund condition, following the conclusion of hearings in Phase I and before a resolution of the issues in Phase II. In support, the Protestants cited an interim rate order issued by the FPC in 1960 -- ultimately affirmed by the Supreme Court (FPC v. Tennessee Gas Transmission Co., 375 U.S. 145) -- which required immediate refunds of amounts collected by Tennessee prior to the interim order and made the interim rates subject to further refund depending on the Commission's final determination of just and reasonable rates.

1/ The brief noted that the former FPC adopted normalization of deferred taxes for electric and gas utilities in an effort to provide improved cash flow and ameliorate the poor financial condition of these industries. However, the brief stressed, this rationale does not apply to the oil pipeline industry which, "judged by any standard, is in excellent financial health," nor to TAPS, "an enterprise whose need for additional cash flow to finance expansion is minimal."

FERC Staff

The FERC Staff brief, filed 12'30/77, recommended adoption of a net original cost rate base, and determination of all other issues — including rate of return, interest during construction and federal income taxes — consistent with that rate base.

The FERC Staff contended that a net original cost rate base should be adopted for the TAPS carriers because it (1) rests on relatively accurate figures, (2) entails a "much less expensive and time consuming" computation than a valuation standard; (3) "reduces administrative problems by speeding the disposition of cases and permitting greater precision in the writing of decisions"; and (4) is used by the great majority of state and federal jurisdictions, including the FERC. The Staff further declared that the FERC is under no statutory or judicial obligation to employ a valuation rate base. While Congress intended the valuation process set forth in Section 19(a) of the Interstate Commerce Act to produce information that might be necessary in later proceedings covering such matters as rates, bankruptcy, finance, taxation and others, the Staff stated, Congress did not require the use of such valuation for rate base. In short, "valuations are informational only and achieve a greater level of significance only when offered in evidence in proceedings; they have little other importance in and of themselves." Had the ICC believed it was statutorily bound to use a valuation formula for rate base, Staff added, it would not have instituted the Ex Parte 308 investigation.

Staff next stressed the relationship between a fair rate of return and the type of rate base to which it is applied. Specifically, a fair rate of return on a net original cost rate base must be adjusted downward if applied to a valuation rate base. Otherwise, the result would be to provide double coverage of inflation in both the rate base (through inclusion of a reproduction cost element) and rate of return.

In further connection with a fair rate of return, the FERC Staff contended that (1) interest on long-term debt is part of the return element and hence should not be treated as an above-the-line operating expense; (2) management inefficiencies during the construction period should not be reflected either as part of the rate base or fair rate of return; and (3) the capital structure should be compatible with the treatment of interest-during-construction capitalized in the rate base as well as with the treatment of interest in the determination of income taxes. As to this last point, the Staff said the TAPS carriers are totally inconsistent. Specifically, Staff explained, the oil company parents of the TAPS carriers have assigned high debt ratios to each of their subsidiaries for capitalization of interest-during-construction. However, the parent companies in most cases either obtained the financing themselves and later created a subsidiary pipeline company, or simply lent their credit to the subsidiary to obtain financing in the form of a parent guaranty of the subsidiary's debt. Parent companies obtaining financing in their own names, Staff continued, implicitly pledged that the equity on their books would be subject to a contingent liability upon default on the loans, while those companies lending their credit in the form of debt guarantees also created only contingent liabilities upon default of the loans by the subsidiaries. Therefore, in now seeking compensation on behalf of their parent companies who bear these contingent responsibilities as if the contingencies are capitalized, "the carriers ignore the fact that their parents were not required to raise equity equivalent to the sums financed by the debt investors. If the parents are entitled to a return on 100% equity, they cannot at the same time book up to 94% debt in their subsidiaries and capitalize over $1 billion in interest-during-construction."

The Staff added that the carriers followed several different methods of computing interest-during-construction, and that most of these methods appear to violate ICC accounting regulations prohibiting accrual of any allowance for equity funds used during construction. In short, "interest during construction may have been inflated beyond a reasonable level" by the TAPS carriers.

In regard to income taxes, Staff said a first question is whether income taxes for ratemaking purposes should be calculated on the basis of (1) each carrier as an independent entity, (2) the consolidated tax return of each of the parent oil companies, or (3) TAPS as one independent entity. Whatever alternative is chosen, Staff said, must be compatible with the treatment of other issues (e.g., capital structure, flowthrough versus normalization of liberalized depreciation tax benefits, interest-during-construction, and the investment tax credit).

A second question, Staff added, is whether to adopt normalization or flow-through treatment for liberalized depreciation tax benefits, investment tax credits, and other interperiod timing differences which result from the use of different treatment for book and tax purposes. "The selection of normalization or flow through should be made on an issue-by-issue basis to assure that total revenue requirements are developed on a reasonable and consistent basis; that tax benefits are not lost due to specific IRS rulings; that the selection is consistent with prior options taken by the parent oil companies; and that the tax burden comports with the present and future tax obligation and is fairly distributed to present and future customers." In the event of normalized treatment, Staff added that accumulated deferred tax reserves should either be deducted from the rate base or included in the capital structure at zero cost.

Finally, Staff indicated its intent to inquire into the need for cash working capital allowances by the TAPS carriers; the basis for accruing depreciation reserves (straight line or unit of production); the need for an annual expense and associated reserve for removal costs supposedly applicable at the end of the service life of the pipeline; the validity of including various overheads and intercompany charges in capitalized investment; and the inclusion of any startup expenses in the projected cost of service. Staff said some of these issues will be involved in Phase II as to particular cost levels, but it may be possible in Phase I to develop a means for making appropriate adjustments should that later become necessary.

Department of Energy

The Department of Energy -- which intervened to assist the FERC in arriving at "just and reasonable" tariffs for TAPS -- said its principal interest is the apportionment of the delivered cost of Alaskan North Slope (ANS) oil between wellhead prices and transportation charges in such a way as to (1) compensate the owners of TAPS for their investment expenses and risks "only to the extent required by law"; and (2) provide the greatest possible incentive to produce existing reserves, discover and produce new reserves, as well as promote competition among ANS producers.

The transfer to FERC of the ICC's authority over oil pipelines and the FPC's authority over natural gas pipelines, the DOE asserted, demonstrates a Congressional intent that the FERC "develop a coherent national policy with respect to the establishment of tariffs for energy-related pipelines which takes into account the national energy interest." This case provides "an opportunity to incorporate standards of transportation system regulation that are simultaneously fair to the owners of TAPS and consistent with the needs and goals of the country. In balancing these considerations, DOE believes that the national economic interest and national energy policy to reduce national reliance on imported oil militate in favor of minimum tariffs consistent with the costs and risks prudently incurred by the pipeline owners."

Establishment of TAPS tariffs at levels higher than the lowest reasonable level, DOE added, would be likely to diminish incentives to produce and discover maximum ANS reserves, reduce the total flow of ANS oil to the Lower 48 States, aggravate the nation's dependence on imported foreign oil, and entail "negative implications" for domestic employment, growth, tax revenues and stability.

Based on the above principles, DOE supports adoption of an original cost rate base, a rate of return "as low as possible without being confiscatory," flow through tax treatment, and disallowance of any imprudent costs in the rate base or as an operating expense.

The DOE also stressed that the FERC is not obligated to follow prior ICC precedents and policy in determining just and reasonable tariffs. Rather, the FERC is free "to regulate oil pipelines and to establish new standards for determination of what constitutes just and reasonable tariffs, unfettered by prior ICC policy decisions . . . ."

Energy Co. of Alaska

Energy Co. of Alaska (ECA) -- which operates a newly constructed refinery at North Pole, Alaska located 14 miles from Fairbanks and three miles from TAPS -- protested "in-transit" rules filed by five of the TAPS carriers 1/ as part of their interstate tariffs. These in-transit rules, in the case of each carrier, permit the withdrawal from TAPS of oil originating at Prudhoe Bay, and the return of part or all of the withdrawn oil to TAPS for transportation to Valdez and loading on vessels. However, ECA declared, all of the rules are sufficiently unclear and ambiguous that they appear to apply the carriers' interstate rates for shipments from Prudhoe Bay to Valdez to purely intrastate shipments which are withdrawn at North Pole and never redelivered to TAPS. For example, ECA noted, Exxon Pipeline's proposed in-transit provision specifies that the "applicable rate from the initial point of origin of the shipment to Valdez, Alaska shall be paid upon withdrawal of such Petroleum from the System or in advance thereof . . . ." Similar provisions are contained in the tariffs of other carriers. On their face, ECA declared, these transit rules purport to apply to North Slope oil refined at North Pole since that oil is withdrawn from TAPS at an established delivery point, and a portion of the withdrawn oil is returned to the pipeline carriers for delivery to Valdez. 2/ To remove the resultant ambiguity and uncertainty, ECA urged that the in-transit rules be modified to make clear that the respective carriers' rates from the point of origin to Valdez apply only to those volumes withdrawn which are designated by the shipper for reforwarding and not to volumes withdrawn which represent intrastate shipments solely within the State of Alaska.

1/ The five companies are ARCO Pipeline Co., BP Pipelines, Inc., Exxon Pipeline Co., Sohio Pipeline Co., and Union Alaska Pipeline Co. Additionally, Exxon, Sohio, ARCO and Union have filed tariffs with the Alaska Pipeline Commission (APC) requesting that the identical rates and identical governing rules contained in the FERC tariffs be approved for the intrastate movement of oil via TAPS. These filings have been suspended temporarily by the APC.

2/ ECA made clear that it does not object to application of the pipeline companies' interstate rates to the return oil, which will be moved via TAPS to Valdez for delivery to destinations outside Alaska, but only to application of these rates to oil processed at the refinery into other products for distribution around Fairbanks and elsewhere in Alaska's interior.

ECA contended that the movement of crude oil by TAPS from Prudhoe Bay to the North Pole refinery is clearly an intrastate movement and not subject to the Interstate Commerce Act or FERC jurisdiction. Moreover, ECA continued, no jurisdiction can be asserted over these purely intrastate shipments on the basis of any "commingling" doctrine. Cases relevant to "commingling" (e.g., FPC v. Amerada Petroleum Corp., 379 U.S. 687, and California v. Lo-Vaca Gathering Co., 379 U.S. 366) have all concerned natural gas pipelines and are not applicable to oil pipelines, ECA declared. Even assuming that these cases had some bearing on the jurisdiction of the Alaska Pipeline Commission to fix rates for the movement of oil from Prudhoe Bay to North Pole, ECA added, they do not give the FERC jurisdiction over such movements since the Supreme Court specifically left open the question of whether separate nonjurisdictional transactions might occur in spite of original commingling. "The instant case clearly presents that so-called nonjurisdictional transaction [since] a precise amount of crude oil . . . is delivered to the North Pole refinery for use solely within the State of Alaska. While the molecular identification of this crude oil is destroyed as a result of commingling with oil destined for Valdez, this is not a sufficient basis for concluding that it is no longer in intrastate commerce."

In addition, ECA argued that the carriers' apparent attempt to impose their interstate rates on intrastate shipments to the North Pole refinery through the device of in-transit rules represents a "perversion" of the transit privilege. The "extraordinary legal fiction" of transit, ECA stated, has generally developed as the right of a shipper to stop at an intermediate point and change the form or substance of the commodity shipped, and thereafter to reship the commodity so changed to a point of final destination, with the total charge for transportation not exceeding the level which would have pertained if the commodity had been shipped directly from point of origin to final destination. In other words, transit "implies a through movement from a specific origin via a transit point to a specific destination." However, ECA declared, this concept has no applicability to petroleum withdrawn from TAPS at North Pole and never reforwarded to TAPS. Therefore, the in-transit device may not be used to exact a through, interstate rate for a movement solely in intrastate commerce.

Finally, ECA contended, even assuming that the pipeline companies' in-transit rules did govern volumes of oil shipped to the North Pole refinery and not reforwarded, application of the entire interstate rates from Prudhoe Bay to Valdez to these shipments would be unreasonable because of the difference in distance of transportation, i.e., the distance from Prudhoe Bay to the North Pole refinery is 340 miles less than from Prudhoe Bay to Valdez. Also, any such application would destroy the advantage of the refinery's geographic proximity to the Prudhoe Bay field and, in turn, deprive the refinery's Alaskan customers of the benefits of lower energy prices.

TAPS Respondents

A joint prehearing brief filed by the Respondents on 1/27/78 set forth the following positions on the major issues: 1/ (1) a valuation rate base is required both by statute and sound public policy; (2) determination of an appropriate rate of return must give consideration to the unusually large risks involved in construction and operation of the TAPS project and, to the extent capital structure is taken into account, must regard all investment as 100% equity; (3) normalized treatment must be accorded to accelerated depreciation tax benefits and the investment tax credit; and

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1/ Several individual TAPS carriers also submitted supplemental prehearing briefs amplifying arguments in the joint brief, addressing certain issues in greater detail (e.g., treatment of costs of dismantling TAPS at the end of its economic life and restoring the right-of-way), and describing issues or evidence relating to specific companies.

(4) the Commission should approve both the in-transit rules filed by certain of the TAPS carriers, as well as intermediate rate rules which authorize uniform rates by each carrier for all shipments through TAPS irrespective of distance the oil is transported.

Initially, the Respondents' brief stressed that the transfer of the ICC's ratemaking and valuation authority to FERC under the Department of Energy Organization Act does not change the substantive rules governing oil pipelines. The Senate Committee report on the DOE bill, for example, made clear that, in the interest of regulatory continuity, no substantive changes were proposed in the existing method of regulation under the Interstate Commerce Act. Similarly, the Conference Report on this bill stated that the precedents and procedures established by the ICC, until changed in accordance with law, "will continue to apply to actions taken by the [FERC] in this area, to the extent they would be applicable under the ICC." Therefore, the brief declared, "to impose radical changes in ratemaking methodology during a ratemaking proceeding comprising less than all pipelines in the industry would be completely out of line with past ICC practice and with the clearly stated Congressional intent that 'the transferred ICC regulatory functions . . . will be fully and completely exercised by the new Commission with a maximum degree of continuity and consistency.'"

The brief further emphasized the differences between regulation of oil pipelines and gas pipelines due to fundamental differences between the two industries. While natural gas pipelines in general enjoy an effective monopoly, mainly serve franchised utilities under firm long-term contracts, and purchase gas under long-term commitments, oil pipelines do not own the products they carry, cannot as common carriers enter into long-term contracts which guarantee access by customers, and face unrestricted entry by competitors. "Because of these greater risks, oil pipelines are not generally viewed as attractive investments by independent investors." Also, the brief continued, an oil pipeline project of efficient size is often too expensive for any one company to finance, and a joint venture must be used to obtain the economies of scale. In the case of TAPS, the brief stated, the form of joint venture is that of an undivided interest pipeline, in which the owners are treated as independent entities for ratemaking purposes, operate as separate common carriers in accepting tenders, file separate tariffs, and compete with each other for shipments. The claim of the Justice Department, State of Alaska and the Arctic Slope Regional Corporation that TAPS is a "natural monopoly in which prices are unrestrained by competition," the brief declared, totally ignores the legal status of undivided interest pipelines. "There is as much competition as there would be if eight competing pipelines had been built side-by-side."

Turning to the specific issues involved in Phase I, the Respondents contended that use of a valuation rate base is both mandated by statute and required by policy considerations. The ICC has historically used valuations determined under Section 19(a) of the Interstate Commerce Act for rate base purposes, the brief stated, and the legislative history of Section 19(a) plainly supports that use. Moreover, Congress expressly excluded oil pipelines from regulatory changes enacted for railroads in 1976 and also stressed the need for continuity in oil pipeline regulation in enacting the DOE bill in 1977. Therefore, "the FERC is dealing with an administrative practice which has its roots in the history of the statute and which has received Congressional endorsement. These factors restrict an agency's discretion to change its practices."

Even if the FERC had authority to abandon use of a valuation rate base, the Respondents added, "such action would be a blow to this country's energy program, since it could seriously impede further construction of much-needed oil pipelines." A

change in methodology would not only be "grievously unfair" to the TAPS owners who invested billions of dollars in a project declared by Congress to be in the national interest "in the legitimate expectation that the accepted, traditional method of calculating rates would continue to apply," but also would generate the kind of regulatory uncertainty which inhibits further industry development. The Respondents also rejected any suggestion that the current method of pipeline ratemaking has resulted in unduly high rates tending to restrict entry by independent oil producers into exploration and development of oil resources. The allegation has no significance here since "there are, in fact, nonaffiliated shippers and producers on the North Slope as well as at least one pipeline carrier which has no direct or indirect ownership of production, and traffic from the shippers is now moving via that pipeline and via the pipelines of other TAPS owners."

Further, the Respondents asserted, use of a valuation rate base, by factoring in reproduction costs, protects rates from inflationary erosion. The inflation problem is especially severe for oil pipelines which, unlike utilities continually undergoing new construction, are "generally one-shot commitments of capital." Moreover, the Respondents added, a rate base which reflects inflation experienced in the past is not "double counting" of inflation. This is because the inflation incorporated in a rate of return based on an opportunity cost of capital reflects only expected "future inflation," not that which has already occurred.

The Respondents summed up the valuation approach as follows: "It works. An entire industry has grown up in reliance on this approach. Shippers have received, and consumers have benefitted from, low stable rates. The twin problems of inflationary erosion and loss of investor confidence, which have plagued most regulated industries, have not been a source of difficulty for oil pipelines. Radical surgery on a successful regulatory scheme is both uncalled for and unwise."

Additionally, the brief declared, this case is not the proper proceeding in which to revise valuation methodology. Questions raised by the Protestants regarding the allowance for going-concern value and use of a conditioned percent to measure property depreciation are clearly outside the scope of the issues defined in a pre-trial order issued 8/16/77. "The purpose of this proceeding is to examine the tariffs filed by respondents, not to investigate every theoretical question which can be raised relating to oil pipeline ratemaking," and the Commission "should not endorse attempts to sidetrack the proceeding into an academic exercise in ratemaking theory."

With respect to rate of return, the brief stressed that several factors must be considered in addition to the standards set forth by the Supreme Court in the Bluefield case (i.e., the return must correspond to that offered by investments of comparable risk and must be sufficient to attract new capital). First, the brief asserted, since the FERC lacks authority to set wellhead prices for crude oil, any profits or losses at the wellhead are outside the scope of this hearing. Second, the pipeline carriers must be allowed a rate of return adequate to compensate them for the risks they have taken. Otherwise, investment in future expansions will be discouraged, and "future projects (such as the Alaskan gas pipeline) will find financing more difficult, perhaps impossible, because investors will be unsure of receiving a fair return." Were the FERC to adopt DOE's recommendation to set the rate of return at the constitutional minimum of nonconfiscation, "TAPS may be not only the largest pipeline in history, but also the last major pipeline to be built with private funds."

Third, the Respondents stated, investment in the TAPS project should be recognized as the equivalent of a 100% equity investment. In order to obtain any debt funding, the brief explained, the parents of the pipeline companies were required not only to provide an equity investment, but also to guarantee the debt of the pipeline