

ALASKA LEGISLATURE SPECIAL COMMITTEE / SUBJECT FILES 8672

899 SCOMM32: AK GENERAL STOCK OWNERSHIP CORP. 1979-80

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1 of corporate name may be renewed for one year.

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

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

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

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

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

28 (1) the name of the corporation;

29 (2) the address of its registered office;

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

3 (4) the name of its registered agent;

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

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

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

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

17 (1) the name of the agent;

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

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

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

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

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

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

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

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

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

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

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1 incorporation. The shares shall be without par value.

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

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

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

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

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

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

27 Sec. 10.50.100. CERTIFICATES REPRESENTING SHARES. The shares of a
28 corporation shall be represented by certificates or other nonnegotiable
29 evidences of ownership signed by the president or vice-president and the

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

11 Sec. 10.50.105. INFORMATION REQUIRED TO BE STATED ON CERTIFICATE.

12 (a) Every certificate or other evidence of ownership representing
13 shares issued by a corporation authorized to issue shares of more than
14 one class shall set out on the face or back of the certificate, or state
15 that the corporation will furnish to a shareholder upon request and
16 without charge, a full or summary statement of the designations, prefer-
17 ences, limitations, and relative rights of the shares of each class
18 authorized to be issued and, if the corporation is authorized to issue
19 preferred or special class in series, the variations in the relative
20 rights and preferences between the shares of each series so far as they
21 have been fixed and determined and the authority of the board of
22 directors to fix and determine the relative rights and preferences of
23 subsequent series.

24 (b) Each certificate representing shares shall state on the face

25 (1) that the corporation is organized under the law of the
26 state;

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

28 (3) the number and class of shares, and the designation of
29 the series, if any, which the certificate represents;

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1 (4) the par value of each share represented by the certifi-
2 cate, or a statement that the shares are without par value.

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

6 Sec. 10.50.115. ISSUANCE OF FRACTIONAL SHARES. (a) A corporation
7 may issue a certificate or other nonnegotiable evidence of ownership for
8 a fractional share.

9 (b) A certificate or other evidence of ownership for a fractional
10 share entitles the holder to exercise voting rights, to receive divi-
11 dends, and to participate in the assets of the corporation in the event
12 of liquidation.

13 Sec. 10.50.120. LIABILITY OF SUBSCRIBERS AND SHAREHOLDERS. (a) A
14 holder of or subscriber to shares of a corporation is under no obliga-
15 tion to the corporation or its creditors with respect to the shares
16 other than the obligation to pay to the corporation the full considera-
17 tion for which the shares were issued or to be issued.

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

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

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

28 Sec. 10.50.125. BYLAWS. The board of directors shall adopt the
29 initial bylaws of a corporation in accordance with AS 10.50.330. The

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1 power to alter, amend or repeal the bylaws or to adopt new bylaws is
2 vested in the shareholders. The bylaws may contain provisions for the
3 regulation and management of the affairs of the corporation not incon-
4 sistent with law or the articles of incorporation.

5 Sec. 10.50.130. MEETINGS OF SHAREHOLDERS. (a) Meetings of share-
6 holders may be held in a community or locality in the state, as may be
7 provided in the bylaws. The board of directors shall designate the
8 place of the meeting.

9 (b) An annual meeting of the shareholders shall be held at the
10 time provided in the bylaws. Failure to hold the annual meeting at the
11 designated time does not work a forfeiture or dissolution of the corpor-
12 ation.

13 (c) Special meetings of the shareholders may be called by the
14 president, the board of directors, the holders of not less than 500
15 shares, or the other officers or persons provided in the articles of
16 incorporation or the bylaws.

17 Sec. 10.50.135. NOTICE OF SHAREHOLDERS' MEETINGS. Written or
18 printed notice stating the place, day and hour of the meeting and, in
19 case of a special meeting, the purpose for which the meeting is called,
20 shall be delivered not less than 60 nor more than 90 days before the
21 date of the meeting, either personally or by mail, by or at the
22 direction of the president, the secretary, or the officer or persons
23 calling the meeting, to each shareholder of record entitled to vote at
24 the meeting. If mailed, the notice is considered delivered when
25 deposited in the United States mail addressed to the shareholder at his
26 address as it appears on the stock transfer books of the corporation,
27 with postage prepaid.

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

29 (a) To determine the shareholders entitled to notice of or to vote at a

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1 meeting of shareholders or an adjournment of a meeting, or entitled to
2 receive payment of a dividend, or in order to make a determination of
3 shareholders for any other proper purpose, the board of directors of a
4 corporation may provide that the stock transfer books shall be closed
5 for a stated period not exceeding 90 days. If the stock transfer books
6 are closed to determine shareholders entitled to notice of or to vote at
7 a meeting of shareholders, they shall be closed for at least 60 days
8 immediately preceding the meeting.

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

26 Sec. 10.50.145. VOTING LIST. (a) At least 60 days before each
27 meeting of shareholders, the officer or agent having charge of the stock
28 transfer books for shares of a corporation shall make a list of the
29 shareholders entitled to vote at the meeting or an adjournment of the

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1 meeting, arranged in alphabetical order, with the address of and the
2 number of shares held by each. The list shall be kept on file at the
3 registered office of the corporation and is subject to inspection by a
4 shareholder at any time during usual business hours for a period of 60
5 days before the meeting. The list shall also be produced and kept open
6 at the time and place of the meeting and shall be subject to the
7 inspection of a shareholder during the meeting. The original stock
8 transfer books are prima facie evidence as to who are the shareholders
9 entitled to examine the list or transfer books or to vote at a meeting
10 of shareholders.

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

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

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

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

29 Sec. 10.50.165. VOTING OF SHARES IN THE NAME OF ANOTHER. (a)

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1 Shares held by an administrator, executor, guardian or conservator may
2 be voted by him, either in person or by ballot, without a transfer of
3 the shares into his name.

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

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

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

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

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

20 (2) a petition signed by at least 100 shareholders and filed
21 with the secretary of the corporation at least 120 days before the
22 meeting at which the election is to be held.

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

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

28 (2) a petition, setting out the proposal and directing that
29 it be submitted to a vote at the next meeting of shareholders, signed by

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1 at least 100 shareholders and filed with the secretary of the corpora-
2 tion at least 120 days before the next meeting of shareholders, except
3 that the directors may not propose to amend any proposal proposed and
4 approved by the shareholders for a period of one year after the meeting
5 at which the proposal was approved.

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

12 Sec. 10.50.180. BOARD OF DIRECTORS. The business and affairs of a
13 corporation shall be managed by a board of directors. At least three-
14 quarters of the board of directors must be residents of the state. The
15 articles of incorporation or bylaws may prescribe other qualifications
16 for directors. The compensation of directors shall be fixed by the
17 bylaws.

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

22 (b) The number of directors may be increased or decreased from
23 time to time by amendment to the bylaws, but no decrease may have the
24 effect of shortening the term of an incumbent director.

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

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

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

8 Sec. 10.50.190. ELECTION OF DIRECTORS. At the first annual
9 meeting of shareholders and at each annual meeting thereafter the share-
10 holders shall elect directors to hold office until the next annual
11 meeting, except in case of the classification of directors as permitted
12 by this chapter. Each director holds office for the term for which he
13 is elected and until his successor is elected and qualified.

14 Sec. 10.50.195. VACANCIES. A vacancy occurring in the board of
15 directors may be filled by the affirmative vote of a majority of the
16 remaining directors though the majority is less than a quorum of the
17 board. *until the Annual Meeting*
18 unexpired term of his predecessor in office. A directorship ~~to be~~
19 filled by reason of an increase in the number of directors shall be
20 filled by election at an annual meeting or at a special meeting of
21 shareholders called for that purpose. In no case may a vacancy continue
22 for longer than six months or until the next annual meeting, whichever
23 occurs first.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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1 tion of the provisions of this chapter or the restrictions in the
2 articles of incorporation.

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

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

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

19 Sec. 10.50.235. EFFECT OF GOOD FAITH RELIANCE ON FINANCIAL
20 STATEMENTS OR BOOK VALUE. A director is not liable under AS 10.50.-
21 230(a), (b) or (c) if

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

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

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1 value.

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

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

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

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

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

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

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

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

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

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

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

7 Sec. 10.50.280. COURT MAY COMPEL INSPECTION. AS 10.50.265 -
8 10.50.285 does not impair the power of a competent court, upon proof by
9 a shareholder of proper purpose, to compel the production for examina-
10 tion by the shareholder of the books and records of account, minutes,
11 and record of shareholders of a corporation.

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

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

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

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

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

3 Sec. 10.50.300. SHAREHOLDERS' DERIVATIVE ACTION. (a) An action
4 may be brought on behalf of a corporation, by at least 100 shareholders
5 of the corporation, for a judgment in its favor.

6 (b) The persons bringing suit under this section shall be share-
7 holders at the time of bringing the action, and either were shareholders
8 at the time of the transaction of which they complain or received their
9 shares by operation of law.

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

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

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

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1 attorney fees, and shall direct them to account to the corporation for
2 the remainder of the proceeds received by them. This subsection does
3 not apply to any judgment rendered for the benefit of injured share-
4 holders only and limited to a recovery of the loss or damage sustained
5 by them.

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

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

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

18 (g) At the hearing upon a motion under (c) of this section, the
19 court shall consider such evidence, written or oral, by witnesses or
20 affidavit, as may be material (1) to the grounds upon which the motion
21 is based, or (2) to a determination of the probable reasonable expenses,
22 including attorney fees, of the corporation and the moving party which
23 will be incurred in the defense of the action. If the court determines,
24 after hearing the evidence adduced by the parties, that the moving party
25 has established by a preponderance of the evidence any of the grounds
26 upon which the motion is based, the court shall fix the nature and
27 amount of security, not to exceed \$50,000, to be furnished by the plain-
28 tiff for reasonable expenses, including attorney fees, which may be
29 incurred by the moving party or the corporation in connection with the

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1 action, including expenses for which the corporation may become liable
2 under AS 10.50. A ruling by the court on the motion is not considered a
3 determination of any issue in the action or of its merits. The amount
4 of the security may be increased or decreased in the discretion of the
5 court upon a showing that the security provided has or may become inade-
6 quate or excessive, but the court may not in any event increase the
7 total amount of the security beyond \$50,000 in the aggregate for all
8 defendants. If the court, upon any such motion, makes a determination
9 that security shall be furnished by the plaintiffs as to any one or more
10 defendants, the action shall be dismissed as to the defendant or defen-
11 dants, unless the security required by the court has been furnished
12 within a reasonable time as may be fixed by the court. The corporation
13 and the moving party shall have recourse to the security in the amount
14 the court determines upon the termination of the action.

15 (h) If the plaintiffs, before any order or determination pursuant
16 to a motion under (d) of this section, post good and sufficient bond in
17 the aggregate amount of \$50,000 to secure the reasonable expenses of the
18 parties entitled to make the motion, the plaintiff has complied with the
19 requirements of this section and with any order for security. A pending
20 motion under (d) of this section shall be dismissed and no further or
21 additional bond or other security may be required.

22 (i) If a motion is filed under (d) of this section, no pleadings
23 need be filed by the corporation or any other defendant and the prosecu-
24 tion of the action shall be stayed until 10 days after the motion has
25 been disposed of.

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

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1 a felony.

2 ARTICLE 2. FORMATION OF CORPORATIONS.

3 Sec. 10.50.310. INCORPORATORS. Three or more natural persons at
4 least 19 years of age may act as incorporators of a corporation by
5 signing, verifying and delivering in duplicate to the commissioner
6 articles of incorporation for the corporation.

7 Sec. 10.50.315. ARTICLES OF INCORPORATION. (a) The articles of
8 incorporation of a corporation shall set out

- 9 (1) the name of the corporation;
10 (2) the period of duration, which may be perpetual;
11 (3) the purpose or purposes for which the corporation is
12 organized;
13 (4) the aggregate number of shares which the corporation may
14 issue;
15 (5) that only one class of stock may be issued by the cor-
16 poration;
17 (6) that shares of stock may be issued only to individuals
18 who were residents of the state on the effective date of its enabling
19 legislation and who continued to be residents until the date of issuance
20 of the shares;
21 (7) that at least one share of stock shall be issued to each
22 individual eligible under (6) of this section, unless that individual
23 elects within one year after the date of issuance not to receive the
24 share;
25 (8) that no share of stock may be voluntarily or involun-
26 tarily transferred

27 (A) or encumbered by a shareholder, other than by will
28 or under the laws relating to intestate succession, until five
29 years after the date of issuance of the share, except if the share-

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holder 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 provision, not inconsistent 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. 10.50.320. 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 by this chapter have been paid,

(1) endorse on each duplicate original the word "filed" and

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1 the date of the filing;

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

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

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

8 Sec. 10.50.325. EFFECT OF ISSUANCE OF CERTIFICATE OF INCORPORA-
9 TION. Upon the issuance of the certificate of incorporation, the cor-
10 porate existence begins. The certificate of incorporation is conclusive
11 evidence that all conditions required to be performed by the incorpora-
12 tors have been complied with and that the corporation has been incor-
13 porated. The issuance of the certificate does not affect the right of
14 the state to bring a proceeding to cancel or revoke the certificate of
15 incorporation or for involuntary dissolution of the corporation.

16 Sec. 10.50.330. ARTICLES OF INCORPORATION AND INITIAL BYLAWS. (a)
17 The corporation shall submit copies of the original articles of incor-
18 poration and the initial bylaws to the legislature.

19 (b) The legislature, by the 60th day of the next legislative
20 session beginning after receipt of a copy of the original articles of
21 incorporation and the initial bylaws, may disapprove any provision of
22 the articles of incorporation or bylaws by concurrent resolution.

23 (c) Provisions of the articles of incorporation or the bylaws dis-
24 approved by the legislature are not effective unless approved by a
25 majority of the shares voting on the issue at the next meeting of the
26 shareholders.

27 Sec. 10.50.335. ORGANIZATION MEETING OF DIRECTORS. After the
28 issuance of the certificate of incorporation an organizational meeting
29 of the board of directors named in the articles of incorporation shall

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1 be held in the state, at the call of a majority of the incorporators,
2 for the purpose of adopting bylaws, electing officers, and the trans-
3 action of other business as may come before the meeting. The incor-
4 porators calling the meeting shall give at least 10 days notice of the
5 meeting by mail to each director named. The notice shall state the time
6 and place of the meeting.

7 Sec. 10.50.340. NOTIFICATION OF ELIGIBLE SHAREHOLDERS. Beginning
8 not less than 90 days before the initial issue of stock, the corporation
9 shall at least weekly notify the public of its intention to issue stock
10 and the method for qualifying and applying for shares. The notice shall
11 be by publication in newspapers of all regions of the state, by radio
12 and television announcements, and by other means the corporation deter-
13 mines to be appropriate and reasonable, and shall be continued at least
14 one each month for 11 months following the date of issuance of shares.

15 Sec. 10.50.345. CORPORATION NOT LIABLE TO SHAREHOLDERS. Regis-
16 tration for issuance of the initial shares of the corporation is a
17 responsibility solely of an individual eligible under AS 10.50.315(a)(6)
18 to receive the initial shares of the corporation. The corporation may
19 not be held liable for

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

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

25 Sec. 10.50.350. LATE APPLICATION FOR SHARES. An individual eli-
26 gible under AS 10.50.315(a)(6) to receive the initial shares of the
27 corporation who failed to apply for the shares before their issuance may
28 apply for and receive the shares any time within one year after the date
29 of issuance if he is otherwise qualified to own stock of the corporation

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1 and upon the payment of the book value of the shares.

2 Sec. 10.50.355. PENALTIES FOR MISREPRESENTATION OF ELIGIBILITY AS
3 SHAREHOLDER. (a) The ownership interest in shares of the corporation's
4 stock issued to an individual ineligible to receive the initial shares,
5 who has presented fraudulent or misleading information regarding his
6 eligibility to own those shares, is void upon the issuance of an appro-
7 priate order by the superior court. The ineligible individual is also
8 liable for the full amount of dividends, or other distributions to
9 shareholders received by him plus interest from the date of distribu-
10 tion, and legal fees and costs of recovery incurred by the corporation.
11 This section applies to an individual who has presented fraudulent or
12 misleading information regarding the eligibility of another person for
13 whom he acts in the capacity of legal guardian.

14 ARTICLE 3. AMENDMENT.

15 Sec. 10.50.360. RIGHT TO AMEND ARTICLES OF INCORPORATION. A cor-
16 poration may amend its articles of incorporation, from time to time, in
17 any and as many respects as may be desired, so long as its articles of
18 incorporation as amended contain provisions which might be lawfully
19 contained in original articles of incorporation at the time the amend-
20 ment is made.

21 Sec. 10.50.365. PURPOSES FOR WHICH ARTICLES MAY BE AMENDED. With-
22 out limitation on the general power of amendment, a corporation may
23 amend its articles of incorporation to

- 24 (1) change its corporate name;
25 (2) change its period of duration;
26 (3) change, enlarge or diminish its corporate purposes;
27 (4) increase or decrease the aggregate number of shares, or
28 shares of a class, which the corporation may issue;
29 (5) increase or decrease the par value of the authorized

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1 shares of a class having a par value, whether issued or unissued;

2 (6) exchange, classify, reclassify or cancel its shares,
3 whether issued or unissued;

4 (7) change the designation of its shares, whether issued or
5 unissued, and change the preferences, limitations, and the relative
6 rights of its shares, whether issued or unissued;

7 (8) change shares having a par value, whether issued or
8 unissued, into the same or a different number of shares without par
9 value, and change shares without par value, whether issued or unissued,
10 into the same or a different number of shares having a par value;

11 (9) change the shares of a class, whether issued or unissued,
12 and whether with or without par value, into a different number of shares
13 of the same class or into the same or a different number of shares,
14 either with or without par value, of other classes;

15 (10) create new classes of shares having rights and prefer-
16 ences either prior and superior or subordinate and inferior to the
17 shares of a class then authorized, whether issued or unissued;

18 (11) cancel or otherwise affect the rights of the holders of
19 the shares of a class to receive dividends which have accrued but have
20 not been declared;

21 (12) divide a preferred or special class of shares, whether
22 issued or unissued, into series and fix and determine the designations
23 of the series and the variations in the relative rights and preferences
24 between the shares of the series;

25 (13) authorize the board of directors to establish, out of
26 authorized but unissued shares, series of a preferred or special class
27 of shares and fix and determine the relative rights and preferences of
28 the shares of the series established;

29 (14) authorize the board of directors to fix and determine the

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1 relative rights and preferences of the authorized but unissued share
2 series previously established in which either the relative rights and
3 preferences have not been fixed and determined or the relative rights
4 and preferences previously fixed and determined are to be changed;

5 (15) revoke, diminish, or enlarge the authority of the board
6 of directors to establish series out of authorized but unissued shares
7 of a preferred or special class and fix and determine the relative
8 rights and preferences of the shares of a series so established;

9 (16) limit, deny, or grant to shareholders of a class the pre-
10 emptive right to acquire additional or treasury shares of the corpora-
11 tion, whether then or later authorized.

12 Sec. 10.50.370. PROCEDURE TO AMEND ARTICLES OF INCORPORATION.
13 Amendments to the articles of incorporation shall be made in the
14 following manner.

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

18 (2) A proposed amendment shall be submitted to a vote at the
19 next meeting of shareholders if the secretary of the corporation re-
20 ceives a petition setting out the proposed amendment and is signed by at
21 least 100 shareholders.

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

28 (4) At the meeting a vote of the shareholders entitled to
29 vote shall be taken on the proposed amendment. The proposed amendment

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1 shall be adopted if it receives the affirmative vote of the holders of
2 at least two-thirds of the shares voting.

3 (5) A number of amendments may be submitted to the share-
4 holders and voted upon at one meeting.

5 Sec. 10.50.375. ARTICLES OF AMENDMENT. The articles of amendment
6 shall be executed in duplicate by the corporation by its president or
7 vice-president and by its secretary or an assistant secretary, and
8 verified by one of the officers signing the articles, and shall set out

9 (1) the name of the corporation;

10 (2) the amendment adopted;

11 (3) the date of the adoption of the amendment by the share-
12 holders;

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

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

17 (6) if the amendment provides for an exchange, reclassifica-
18 tion or cancellation of issued shares, and if the manner in which this
19 is carried out is not set out in the amendment, a statement of the
20 manner in which it is to be carried out;

21 (7) if the amendment changes the amount of stated capital,
22 then a statement of the manner in which the change is carried out and a
23 statement, expressed in dollars, of the amount of stated capital changed
24 by the amendment.

25 Sec. 10.50.380. FILING OF ARTICLES OF AMENDMENT. (a) Duplicate
26 originals of the articles of amendment shall be delivered to the commis-
27 sioner. If the commissioner finds that the articles of amendment con-
28 form to law, he shall, when all fees and franchise taxes prescribed in
29 this chapter have been paid,

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

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

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

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

9 Sec. 10.50.385. EFFECT OF CERTIFICATE OF AMENDMENT. (a) Upon the
10 issuance of the certificate of amendment by the commissioner, the amend-
11 ment becomes effective and the articles of incorporation are considered
12 amended accordingly.

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

19 Sec. 10.50.390. RESTATED ARTICLES OF INCORPORATION. A corporation
20 may at any time, by resolution adopted by the board of directors, re-
21 state its articles of incorporation as amended up to that time. Upon
22 the adoption of the resolution, restated articles of incorporation shall
23 be executed in duplicate by the corporation by its president or a vice-
24 president and by its secretary or assistant secretary and verified by
25 one of the officers signing the articles and shall set out all of the
26 operative provisions of the articles of incorporation as amended up to
27 that time together with a statement that the restated articles of incor-
28 poration correctly set out without change the corresponding provisions
29 of the articles of incorporation as amended up to that time and that the

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

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

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

6 (b) The restated certificate of incorporation, together with the
7 duplicate original of the restated articles of incorporation affixed by
8 the commissioner, shall be returned to the corporation or its repre-
9 sentative.

10 Sec. 10.50.410. EFFECT OF ISSUANCE OF RESTATED CERTIFICATE OF
11 INCORPORATION. Upon the issuance of the restated certificate of incor-
12 poration, the restated articles of incorporation become effective and
13 supersede the original articles of incorporation and all amendments.

14 ARTICLE 4. SALE OF ASSETS.

15 Sec. 10.50.415. SALE OR MORTGAGE OF ASSETS IN REGULAR COURSE OF
16 BUSINESS. The sale, lease, exchange, mortgage, pledge, or other dispo-
17 sition of all, or substantially all, the property and assets of a cor-
18 poration, when made in the usual and regular course of the business of
19 the corporation, may be made upon the terms and conditions and for the
20 consideration, which may consist in whole or in part of money or pro-
21 perty, real or personal, including shares of another corporation,
22 domestic or foreign, authorized by the board of directors. No authori-
23 zation or consent of the shareholders is required.

24 Sec. 10.50.420. SALE OR MORTGAGE OF ASSETS OTHER THAN IN REGULAR
25 COURSE OF BUSINESS. A sale, lease, exchange, mortgage, pledge, or other
26 disposition of all, or substantially all, the property and assets, with
27 or without the good will, of a corporation, if not made in the usual and
28 regular course of its business, may be made upon the terms and condi-
29 tions and for the consideration, which may consist in whole or in part

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1 of money or property, real or personal, including shares of another
2 corporation, as authorized in the following manner.

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

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

14 Sec. 10.50.425. APPROVAL OF PLAN BY SHAREHOLDERS. At the meeting
15 the shareholders may authorize the sale, lease, exchange, mortgage,
16 pledge, or other disposition and may fix, or may authorize the board of
17 directors to fix the terms and conditions and the consideration to be
18 received by the corporation. Each outstanding share of the corporation
19 is entitled to vote. The authorization requires the affirmative vote of
20 the holders of at least two-thirds of the shares voting.

21 Sec. 10.50.430. ABANDONMENT OF PLAN BY BOARD OF DIRECTORS. After
22 authorization by a vote of shareholders, the board of directors may,
23 nevertheless, abandon the sale, lease, exchange, mortgage, pledge, or
24 other disposition of assets, subject to the rights of third parties
25 under contracts relating to the disposition, without further action or
26 approval by shareholders.

27 Sec. 10.50.435. RIGHTS OF DISSENTING SHAREHOLDERS UPON SALE OR
28 EXCHANGE OF ASSETS. If a sale or exchange of all or substantially all
29 of the property and assets of a corporation other than in the usual and

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1 regular course of its business, or in connection with the dissolution
2 and liquidation of the corporation, is authorized by a vote of the
3 shareholders of the corporation, a shareholder who files a written
4 objection with the corporation, before or at the meeting of shareholders
5 at which the sale or exchange is authorized, and who does not vote in
6 its favor may, within 10 days after the date on which the vote was
7 taken, make written demand on the corporation for the payment to him of
8 the fair value of his shares as of the day before the date on which the
9 vote was taken. If the sale or exchange is effected, the corporation
10 shall pay to the shareholder, upon surrender of his certificate or other
11 evidence of ownership representing the shares, their fair value. The
12 demand shall state the number of shares owned by the dissenting share-
13 holder. A shareholder failing to make demand within the 10-day period
14 is bound by the terms of the sale or exchange.

15 Sec. 10.50.440. NOTICE TO DISSENTING SHAREHOLDER. Within 10 days
16 after the sale or exchange is effected, the corporation shall give
17 notice that it is effected to each dissenting shareholder who has made
18 demand as provided in AS 10.50.435 for the payment of the fair value of
19 his shares.

20 Sec. 10.50.445. PAYMENT TO DISSENTING SHAREHOLDER AFTER AGREEMENT
21 ON VALUE OF SHARES. If within 60 days after the date on which the sale
22 or exchange was effected the value of the shares is agreed upon between
23 the dissenting shareholder and the corporation, payment shall be made
24 within 90 days after the date the sale or exchange was effected, upon
25 the surrender of his certificate or certificates representing the
26 shares. Upon payment of the agreed value, the dissenting shareholder
27 ceases to have an interest in the shares or in the corporation.

28 ◀ Sec. 10.50.450. ACTION BY DISSENTING SHAREHOLDER TO COMPEL PAYMENT
29 UPON FAILURE TO AGREE ON VALUE. If within the 60-day period the share-

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holder 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. 10.50.455. 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. 10.50.460. 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 5. DISSOLUTION.

Sec. 10.50.465. EFFECT OF CERTIFICATE OF DISSOLUTION. Upon the issuance of the certificate of dissolution, the existence of the corporation ceases.

Sec. 10.50.470. VOLUNTARY DISSOLUTION BY ACT OF CORPORATION. A corporation may be dissolved by the act of the corporation when autho-

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1 rized in the manner provided in this section and sec. 480 of this chap-
2 ter.

3 (1) The board of directors shall adopt a resolution recom-
4 mending that the corporation be dissolved, and directing that the ques-
5 tion of dissolution be submitted to a vote at the next meeting of share-
6 holders.

7 (2) A proposed dissolution of the corporation shall be sub-
8 mitted to a vote at the next meeting of shareholders if the secretary of
9 the corporation receives a petition proposing dissolution signed by at
10 least 100 shareholders.

11 (3) Written or printed notice shall be given to each share-
12 holder of record entitled to vote at the meeting within the time and in
13 the manner provided in this chapter for the giving of notice of meetings
14 of shareholders, and, whether the meeting is an annual or special
15 meeting, the notice shall state that the purpose of the meeting is to
16 consider the advisability of dissolving the corporation.

17 (3) At the meeting a vote of shareholders entitled to vote
18 shall be taken on the resolution to dissolve the corporation. Each
19 outstanding share of the corporation may vote on the resolution. The
20 resolution is adopted if it receives the affirmative vote of the holders
21 of at least two-thirds of the shares voting.

22 Sec. 10.50.475. EXECUTION OF STATEMENT OF INTENT TO DISSOLVE.
23 Upon the adoption of the resolution, a statement of intent to dissolve
24 shall be executed in duplicate by the corporation by its president or
25 vice-president and by the secretary or an assistant secretary, and
26 verified by one of the officers signing the statement. The statement of
27 intent to dissolve shall set out

28 (1) the name of the corporation;

29 (2) the names and addresses of its officers;

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1 (3) the names and addresses of its directors;

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

4 (5) the number of shares outstanding;

5 (6) the number of shares voted for and against the resolu-
6 tion.

7 Sec. 10.50.480. FILING OF STATEMENT OF INTENT TO DISSOLVE. Dupli-
8 cate originals of the statement of intent to dissolve shall be delivered
9 to the commissioner. If the commissioner finds that the statement
10 conforms to law, he shall, when all fees and franchise taxes prescribed
11 in this chapter have been paid,

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

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

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

17 Sec. 10.50.485. EFFECT OF STATEMENT OF INTENT TO DISSOLVE. On the
18 filing by the commissioner of a statement of intent to dissolve, whether
19 by consent of shareholders or by act of the corporation, the corporation
20 shall cease to carry on business, except that necessary for the winding
21 up of its business. However, corporate existence continued until a
22 certificate of dissolution has been issued by the commissioner or until
23 a decree dissolving the corporation has been entered by a competent
24 court as provided in this chapter.

25 Sec. 10.50.490. PROCEDURE AFTER FILING OF STATEMENT OF INTENT TO
26 DISSOLVE. After the commissioner has filed the statement of intent to
27 dissolve, the corporation

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

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

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

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

15 Sec. 10.50.495. MANNER OF REVOKING A VOLUNTARY DISSOLUTION PRO-
16 CEEDING BY ACT OF THE CORPORATION. (a) The board of directors shall
17 adopt a resolution recommending that the voluntary dissolution pro-
18 ceedings be revoked, and directing that the question of revocation be
19 submitted to a vote at a special meeting of shareholders.

20 (b) A proposed revocation of a voluntary dissolution of the cor-
21 poration shall be submitted to a vote at the next meeting of share-
22 holders if the secretary of the corporation receives a petition pro-
23 posing revocation signed by at least 100 shareholders.

24 (c) Written or printed notice, stating that the purpose of the
25 meeting is to consider the advisability of revoking the voluntary dis-
26 solution proceedings, shall be given to each shareholder of record
27 entitled to vote at the meeting within the time and in the manner pro-
28 vided in this chapter for the giving of notice of special meetings of
29 shareholders.

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(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 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 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. 10.50.500. 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.

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1 Sec. 10.50.505. EFFECT OF STATEMENT OF REVOCATION OF A VOLUNTARY
2 DISSOLUTION PROCEEDING. Upon the filing by the commissioner of a state-
3 ment of revocation of a voluntary dissolution proceeding, the revocation
4 of the proceeding becomes effective and the corporation may again carry
5 on its business.

6 Sec. 10.50.510. EXECUTION OF ARTICLES OF DISSOLUTION. If a volun-
7 tary dissolution proceeding has not been revoked, then when all debts,
8 liabilities, and obligations of the corporation have been paid and
9 discharged, or adequate provision has been made for payment, and all of
10 the remaining property and assets of the corporation have been distri-
11 buted to its shareholders, articles of dissolution shall be executed in
12 duplicate by the corporation by its president or vice-president and by
13 its secretary or an assistant secretary, and verified by one of the
14 officers signing the articles. The articles of dissolution shall set
15 out

16 (1) the name of the corporation;

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

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

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

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

29 Sec. 10.50.515. FILING OF ARTICLES OF DISSOLUTION. (a) Duplicate

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1 originals of the articles of dissolution shall be delivered to the
2 commissioner. If the commissioner finds that the articles of dissolu-
3 tion conform to law, he shall, when all fees and franchise taxes pre-
4 scribed in this chapter have been paid,

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

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

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

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

13 Sec. 10.50.520. EFFECT OF CERTIFICATE OF DISSOLUTION. Upon the
14 issuance of the certificate of dissolution the existence of the corpora-
15 tion ceases, except for the purpose of suits, other proceedings and
16 appropriate corporate action by shareholders, directors and officers as
17 provided in this chapter.

18 Sec. 10.50.525. INVOLUNTARY DISSOLUTION. (a) A corporation may
19 be dissolved involuntarily by the commissioner when

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

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

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

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

29 (5) a vacancy in the board of directors of a corporation is

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1 not filled within six months or the time of the next annual meeting,
2 whichever occurs first.

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

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

24 (d) A corporation dissolved by the commissioner under the provi-
25 sions of this section may be reinstated by the commissioner at any time
26 within two years from the date of the certificate of involuntary disso-
27 lution whenever it is established to the satisfaction of the commissioner
28 that in fact there was no cause for the dissolution, or whenever the
29 neglect or delinquency resulting in dissolution has been corrected and

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1 payment made of double the amount delinquent along with the amount the
2 corporation would have paid had it not been dissolved during the two-
3 year period. Reinstatement may not be authorized if the same or a
4 deceptively similar corporate, limited partnership, reserved or regis-
5 tered name is currently on file with the commissioner, unless the cor-
6 poration being reinstated contemporaneously amends its articles of incor-
7 poration to change its name to conform with the provisions of this
8 charter.

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

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

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

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

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

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

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1 Sec. 10.50.530. VENUE AND PROCESS. (a) An action for the invol-
2 untary dissolution of a corporation shall be commenced by the attorney
3 general in the superior court.

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

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

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

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

22 Sec. 10.50.535. JURISDICTION OF COURT TO LIQUIDATE ASSETS AND
23 BUSINESS OF CORPORATION. The superior court may liquidate the assets
24 and business of a corporation in the cases provided in AS 10.50.540 -
25 10.50.555.

26 Sec. 10.50.540. ACTION BY SHAREHOLDER FOR LIQUIDATION. In an
27 action by a shareholder, the superior court may liquidate the assets and
28 business of a corporation when it is established

29 (1) that the directors are deadlocked in the management of

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1 the corporate affairs and the shareholders are unable to break the
2 deadlock, and that irreparable injury to the corporation is being
3 suffered or is threatened by reason of the deadlock;

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

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

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

11 Sec. 10.50.545. ACTION BY CREDITOR FOR LIQUIDATION. In an action
12 by a creditor, the superior court may liquidate the assets and business
13 of a corporation when

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

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

20 Sec. 10.50.550. LIQUIDATION ON APPLICATION BY CORPORATION. Upon
21 application by a corporation which has filed a statement of intent to
22 dissolve, as provided in this chapter, to have its liquidation continued
23 under the supervision of the court, the superior court may liquidate the
24 assets and business of the corporation.

25 Sec. 10.50.555. LIQUIDATION IN ACTION BY ATTORNEY GENERAL FOR
26 DISSOLUTION. When an action has been filed by the attorney general to
27 dissolve a corporation and it is established that liquidation of its
28 business and affairs should precede the entry of a decree of dissolu-
29 tion, the superior court may liquidate the assets and business of a

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1 corporation.

2 Sec. 10.50.560. JOINDER OF SHAREHOLDERS NOT MANDATORY. It is not
3 necessary to make shareholders parties to an action or proceeding for
4 liquidation of the assets and business of a corporation unless relief is
5 sought against them personally.

6 Sec. 10.50.565. PROCEDURE IN LIQUIDATION OF CORPORATION BY COURT.
7 In a proceeding to liquidate the assets and business of a corporation,
8 the superior court may issue injunctions, appoint a receiver pendente
9 lite with powers and duties as the court may direct, and take other
10 proceedings necessary to preserve the corporate assets wherever situated
11 and carry on the business of the corporation until a full hearing is
12 had.

13 Sec. 10.50.570. APPOINTMENT OF RECEIVER. After a hearing held
14 upon such notice as the court may direct to be given to all parties to
15 the proceedings and to any other parties in interest designated by the
16 court, the court may appoint a liquidating receiver with authority to
17 collect the assets of the corporation, including amounts owing to the
18 corporation by shareholders on an unpaid portion of the consideration
19 for the issuance of shares. The liquidating receiver may, subject to
20 the order of the court, sell, convey and dispose of all or a part of the
21 assets of the corporation wherever situated, either at public or private
22 sale.

23 Sec. 10.50.575. DISPOSITION OF ASSETS OR PROCEEDS FROM SALE OF
24 ASSETS. The assets of the corporation or the proceeds from a sale,
25 conveyance or other disposition of assets shall be applied to the ex-
26 penses of liquidation and to the payment of the liabilities and obli-
27 gations of the corporation. Remaining assets or proceeds shall be
28 distributed among shareholders according to their respective rights and
29 interests.

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1 Sec. 10.50.580. STATED POWERS AND DUTIES OF RECEIVER. The order
2 appointing the liquidating receiver shall state his powers and duties.
3 The powers and duties may be increased or diminished at any time during
4 the liquidation proceedings.

5 Sec. 10.50.585. COMPENSATION OF RECEIVER AND ATTORNEYS. The court
6 may allow from time to time as expenses of the liquidation compensation
7 to the receiver and to attorneys in the proceeding, and direct the
8 payment of compensation out of the assets of the corporation or the
9 proceeds of a sale or disposition of assets.

10 Sec. 10.50.590. POWER OF RECEIVER TO SUE AND BE SUED. A receiver
11 of a corporation appointed under AS 10.50.565 - 10.50.595 may sue and
12 defend in all courts in his own name as receiver of the corporation.

13 Sec. 10.50.595. APPOINTING COURT HAS EXCLUSIVE JURISDICTION. The
14 court appointing the receiver has exclusive jurisdiction of the corpora-
15 tion and its property, wherever situated.

16 Sec. 10.50.600. QUALIFICATIONS OF RECEIVERS. A receiver shall be
17 a citizen of the United States or a corporation authorized to act as
18 receiver, which corporation may be a domestic corporation or a foreign
19 corporation authorized to transact business in the state. A receiver
20 shall give the bond the court directs with sureties the court requires.

21 Sec. 10.50.605. FILING OF CLAIMS IN LIQUIDATION PROCEEDINGS. (a)
22 In a proceeding to liquidate the assets and business of a corporation,
23 the court may require creditors of the corporation to file with the
24 clerk of the court or with the receiver, in the form the court pre-
25 scribes, proof under oath of their respective claims.

26 (b) If the court requires the filing of claims, it shall fix a
27 date, not less than four months from the date of the order, as the last
28 day for the filing of claims, and shall prescribe the notice to be given
29 to creditors and claimants of the date fixed. Before the date fixed,

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1 the court may extend the time for the filing of claims.

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

5 Sec. 10.50.610. DISCONTINUANCE OF LIQUIDATION PROCEEDINGS. The
6 liquidation of the assets and business of a corporation may be discon-
7 tinued at any time during the liquidation proceeding when it is estab-
8 lished that cause for liquidation no longer exists. In this event, the
9 court shall dismiss the proceeding and direct the receiver to redeliver
10 to the corporation its remaining property and assets.

11 Sec. 10.50.615. DECREE OF INVOLUNTARY DISSOLUTION. In a pro-
12 ceeding to liquidate the assets and business of a corporation, when the
13 costs and expenses of the proceeding and the debts, obligations and
14 liabilities of the corporation have been paid and discharged and the
15 remaining property and assets are not sufficient to satisfy and dis-
16 charge the costs, expenses, debts and obligations, and all the property
17 and assets have been applied to their payment, the court shall enter a
18 decree dissolving the corporation.

19 ARTICLE 6. GENERAL PROVISIONS.

20 Sec. 10.50.620. AS 10.05 INCORPORATED BY REFERENCE. The provi-
21 sions of AS 10.05.699 - 10.05.819 are incorporated by reference as a
22 part of this chapter, except when inconsistent with this chapter.

23 Sec. 10.50.625. FALSE STATEMENTS AFFECTING VALUE OF SHARES. A
24 director, officer or agent of a corporation who knowingly concurs in
25 making, publishing or posting either generally or privately to the
26 shareholders or other persons (1) a written report, exhibit, statement
27 of its affairs or pecuniary condition or notice containing any material
28 statement which is false, or (2) an untrue or wilfully or fraudulently
29 exaggerated report, prospectus, account, statement of operations, values,

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1 business, profits, expenditures or prospects, or (3) any other paper or
2 document intended to produce or give, or having a tendency to produce or
3 give, the shares of stock in the corporation a greater value or a less
4 apparent or market value than they really possess, or who refuses to
5 make any book entry or post any notice required by law in the manner
6 required by law, upon conviction, is guilty of a felony.

7 Sec. 10.50.630. DIRECTOR MAKING UNLAWFUL DIVIDEND OR DISTRIBUTION
8 OF ASSETS. A director of a corporation who concurs in any vote or act
9 of the directors of the corporation to knowingly and with dishonest or
10 fraudulent purpose make a dividend or distribution of assets either with
11 the design of defrauding creditors or shareholders or of giving a false
12 appearance to the value of the stock and thereby defrauding subscribers
13 or purchasers, upon conviction is guilty of a misdemeanor, and is
14 punishable by a fine of not more than \$1,000, or by imprisonment for not
15 more than one year, or by both.

16 Sec. 10.50.635. RESERVATION OF POWER. Any amendment to this
17 chapter shall apply to all existing and future corporations organized
18 under this chapter.

19 Sec. 10.50.640. DEFINITIONS. In this chapter,

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

22 (2) "authorized shares" means the shares which the corpora-
23 tion may issue;

24 (3) "commissioner" means the commissioner of commerce and
25 economic development;

26 (4) "corporation" means a general stock ownership corpora-
27 tion;

28 (5) "department" means the Department of Commerce and
29 Economic Development;

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1 (6) "franchise tax" means the annual corporation tax imposed
2 under Alaska law on corporations;

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

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

8 (9) "resident" means an individual who maintains a permanent
9 place of abode in the state with the intention of making the state his
10 permanent place of residence and who resides in the state continuously
11 except for temporary purposes only and with the intent of returning; a
12 person may not be considered to have gained a residence solely by reason
13 of his presence and he may not lose it solely by reason of his absence
14 while in the civil or military service of this state or of the United
15 States or of his absence because of marriage to a person engaged in the
16 civil or military service of this state or the United States; while a
17 student at an institution of learning; while in an institution or asylum
18 at public expense; while confined in public prison; while engaged in the
19 navigation of waters of this state, of the United States, or of the high
20 seas; or while residing upon an Indian or military reservation; a minor
21 takes the residence of his parent or of his legal guardian; a married
22 woman may establish her own residence and does not presumptively take
23 the residence of her husband;

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

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

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

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(13) "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. 10.50.645. 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 of corporations other than general stock ownership corporations;

* 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. AS 10.50.305 is amended to read:

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 class C felony.

* Sec. 5. AS 10.50.625 is amended to read:

Sec. 10.50.625. 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

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

11 * Sec. 6. AS 10.50.630 is amended to read:

12 Sec. 10.50.630. DIRECTOR MAKING UNLAWFUL DIVIDEND OR DISTRIBUTION
13 OF ASSETS. A director of a corporation who concurs in any vote or act
14 of the directors of the corporation to knowingly and with dishonest or
15 fraudulent purpose make a dividend or distribution of assets either with
16 the design of defrauding creditors or shareholders or of giving a false
17 appearance to the value of the stock and thereby defrauding subscribers
18 or purchasers, upon conviction is guilty of a class A misdemeanor [. AND
19 IS PUNISHABLE BY A FINE OF NOT MORE THAN \$1,000, OR BY IMPRISONMENT FOR
20 NOT MORE THAN ONE YEAR, OR BY BOTH].

21 * Sec. 7. (a) The governor shall appoint, subject to confirmation by a
22 majority of the legislature in joint session, nine persons to act as incor-
23 porators and the first board of directors of the Alaska General Stock Owner-
24 ship Corporation which shall be a corporation formed in accordance with
25 subchapter U, chapter 1, of the Internal Revenue Code of 1954, as amended (26
26 U.S.C. secs. 1391 - 1397) and AS 10.50. The corporation is not an agency,
27 instrumentality, or political subdivision of the state for any purpose.

28 (b) The articles of incorporation of the Alaska General Stock Ownership
29 Corporation shall provide that all shareholders of the corporation shall be

R O U G H D R A F T

1 residents of the state as defined in AS 10.50, and if a shareholder ceases to
2 be a resident of the state or his shares pass by operation of law to a non-
3 resident,

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

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

9 (c) There is a special fund of the state known as the "Alaska General
10 Stock Owners' Corporation loan guarantee fund", which may not exceed
11 \$5,000,000, which shall be completely segregated from all other funds of the
12 state, and which shall be used by the commissioner of revenue to guarantee
13 loans solely for startup costs and not for acquisition of major investments
14 made to the corporation by lenders other than the state. In guaranteeing
15 loans, the commissioner of revenue shall review the loans for the purposes of
16 ascertaining the general soundness of the proposed loan and guarding against
17 fraud and misrepresentation. The guarantee of a loan may not be for an
18 amount in excess of the unobligated balance of the fund at the time the
19 guarantee is made.

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

24 (1) require that the suit be brought by at least 100 shareholders;

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

27 (3) require that the plaintiffs account to the corporation for
28 proceeds received by them if the suit is successful; and

29 (4) provide that the court may require the plaintiffs to furnish

R O U G H D R A F T

1 security for the suit.

2 * Sec. 9. Sections 1 - 3, 7, and 8 of this Act take effect immediately in
3 accordance with AS 01.10.070(c).

4 * Sec. 10. Sections 4 - 6 of this Act take effect January 1, 1980.
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SCOMM

MIKE GRAVEL
ALASKA

United States Senate

WASHINGTON, D.C. 20510

May 24, 1979

The Honorable Mike Colletta
Box 3188
Anchorage, Alaska 99501

Dear Mike:

I certainly enjoyed the opportunity to work with you during this past legislative session on the Alaska General Stock Ownership Corporation bill. Peggy and your staff made me feel very much at home in Juneau and I hope that my contribution to the legislation was worthwhile.

I look forward to working with you again in the future and wish both you and Peggy an enjoyable summer.

With best regards,

Sincerely,


Jerry Gauche
Legislative Aide

JG/ra

LA11 3363 17.00 JA01 0060 19.56 04/19/79

APR 20 1979

TO REP. SAM COTTEN, CHAIRMAN, HOUSE RULES COMMITTEE
REP. RUSS MEEKINS, CHAIRMAN, HOUSE FINANCE COMMITTEE
REP. MIKE MILLER, CHAIRMAN, HOUSE STATE AFFAIRS COMMITTEE
REP. TERRY GARDINER, SPEAKER OF THE HOUSE
REP. JIM DUNCAN, CHAIRMAN, BUDGET AND AUDIT COMMITTEE

SENATOR MIKE COLLETTA, CHAIRMAN, SENATE RULES COMMITTEE
SENATOR BOB MULCAHY, CHAIRMAN, SENATE STATE AFFAIRS COMMITTEE
SENATOR JOHN SACKETT, CHAIRMAN, SENATE FINANCE COMMITTEE
SENATOR BILL SUMNER, CHAIRMAN, SENATE RESOURCES COMMITTEE
SENATOR CLEM TILLION, PRESIDENT OF THE SENATE

THE BARTLETT CLUB IS IN UNANIMOUS SUPPORT OF SENATOR MIKE GRAVEL'S
PLAN CREATING THE ALASKA GENERAL STOCK OWNERSHIP CORPORATION.

/S/ HOWARD BAKER, PRESIDENT, BARTLETT CLUB

EOM/

United States Senate

April 26, 1979

IAP

Dear Friends:

APR 26 1979

Governor Hammond in his "Working Paper on Dividend Dispersal Programs" criticises the House State Affairs Committee AGSOC bill. He assures me that his comments were not intended to give the impression that he would veto the AGSOC bill, but were offered as an aid in moving the bill forward. However, the Governor has made some assertions which are wrong and need to be corrected.

The Governor implies that AGSOC, like Alaska Inc., is merely a means of distributing "dividends" to Alaskans. AGSOC is not a scheme for distributing state assets to Alaskans, but a vehicle through which Alaskans can acquire new wealth independently of government. AGSOC is a vehicle for new capital ownership by the citizens of Alaska, not a scheme to distribute something they already own.

The Governor maintains that AGSOC would place the interests of the shareholders at odds with the interests of the state. The interests of the state are not independent of the interests of its people. The shareholders of AGSOC will be the people of Alaska. It is my conviction that people will be better citizens if they have a real economic interest in private enterprise and that they will act in their own best interests as economic shareholders and political citizens.

The Governor criticises AGSOC because it will create two types of citizens, shareholders and non-shareholders, and proposes as a remedy a scheme which creates many classes of citizens shareholders based on length of residency in Alaska. The Governor misses the point of AGSOC. The rationale for AGSOC is not to "compensate" anyone for living in Alaska, but to provide a means other than the taxing power of the state for Alaskans to participate in the economic development of their state.

The House State Affairs Committee AGSOC bill prohibits ownership of AGSOC shares by outsiders. When a shareholder leaves the state he is required to sell his stock either to the corporation or another Alaskan.

The House Committee carefully considered the question of state financial assistance to AGSOC and made it clear that AGSOC was to be treated no differently than any other private seeking state financial

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WORKING PAPER ON
DIVIDEND DISPERSAL PROGRAMS

By Governor Jay S. Hammond

There is increasing interest in providing Alaskans with a "piece of the action" through some method of distributing "dividends."

I am encouraged by this for I believe it appropriate that all Alaskans receive some direct benefits from their resource wealth rather than simply receiving whatever more government we politicians think they should have.

-- ALASKA INC.

Some few years ago, I proposed a means by which a portion of income earned from investments of the public's resource wealth would be distributed in direct dividends to all "shareholders". This proposal became known as Alaska, Inc. I introduced a modified form of Alaska, Inc. again this year, as has Senator Sumner.

-- AGSOC

Another means of granting Alaskans a "piece of the action" has been proposed by Senator Gravel. This is known as "Alaskan General Stock Ownership Corporation" or AGSOC. Unlike Alaska, Inc. which disperses a portion of earnings from investments of citizen-owned resource wealth, an AGSOC would permit citizens to own shares of development programs which might relate - but not necessarily exclusively - to the manner in which that resource wealth was transported, refined or manufactured. The necessary capital to acquire ownership in such endeavor could come either from the sale of tax free revenue bonds, private financing or State guaranteed funds.

-- MUTUALLY EXCLUSIVE OR COMPATIBLE?

While the intent of both programs is similar, there are important distinctions. Moreover, while they are by no means mutually exclusive, I am increasingly convinced that insofar as the State's long term best interest is concerned, an AGSOC can best work only if an Alaska, Inc. program is first put into place and, as well, certain amendments are made to both bills now before us.

In order to discuss my reasons for so concluding, it is necessary first to explain how, ideally, I believe an Alaska, Inc. program should work.

-- MECHANICS OF ALASKA, INC

Each Alaskan would receive, annually, one share of 1/2 the earnings of Permanent Fund investments for every year they have resided in "an area where cost of living was recognized by the Federal government as warranting a 25 percent cost of living pay differential for its employees." While nothing is said about residency versus nonresidency, all Alaskans, of course, would qualify. Those with longer tenure would accrue more shares. Shares would not be transferable. However, new Alaskans, upon qualification, would as well receive shares.

Application for annual dividends could be made upon filing an income tax form attesting to ones having resided during most of the previous year in such a high C.O.L. area. Thus, persons who leave the state would no longer qualify after one year.

In a bill I presented to the Legislature this year, House Bill 99, such "dividends" would come only in the form of tax credits. Moreover, no one would qualify for more than one share for each year during which the applicant had paid State income taxes up to a total of five shares. This five-year limitation was proposed since Department of Revenue tax records are held for only five or six years.

While this approach was taken to curry support from those who wanted tax relief as well as for administrative convenience in checking an applicant's eligibility, it raises serious questions.

For example, all citizens, whether they're taxpayers or not, are impacted by Alaska's high cost of living. Moreover, if you truly believe, as I do, that Alaskans collectively own such resource wealth as their royalty oil, how can we justify dispersing income investments of collectively owned Alaskan wealth selectively to only those who make enough money to have to pay taxes? Accordingly, I would prefer that dividends go to all otherwise qualified citizens either in the form of tax credits or as a negative income tax return.

Additionally, since the rationale for dispersing dividends is based on the belief that with all their energy wealth Alaskans should receive at least some direct relief from the exceptionally high price they've had to pay for energy, then there is little rationale to compensate them for but 5 years of such impact. Compensation should be for each year so impacted.

Though determining the number of years for which each applicant is qualified may seem difficult, it is less difficult than obtaining similar data required for proof of eligibility for receipt of the longevity bonus, guide licenses, limited entry permits, or entry into a pioneer home.

To minimize administrative costs and the likelihood of perjury, we could require an affidavit from the applicant with two other "shareholders" as witnesses. If all parties were to lose eligibility should they perjure themselves, it is unlikely many would falsify claims. In those cases where no witnesses will come forward, shares could be confined to the number of years the applicant can provide documentation to prove his case, i.e., tax records, etc.

The conclusion that an Alaska, Inc. type program should be established before an AGSOC proposal was reached primarily because of the potentials of an AGSOC to place the shareholders' interests precisely at odds with State interests. For example, one AGSOC proposal involves partial purchase of the trans-Alaska oil pipeline. Should all shareholders then get dividends based on the profitability of that purchase, it is to the shareholders' benefit to get the highest possible price - i.e. tariff - for transporting oil. However, the State treasury, including the Permanent Fund, gets more money the lower the tariff. Thus, the AGSOC's interest would be precisely opposite those of the State in regard to the level of tariff. On the other hand, in the case of an Alaska, Inc. type distribution of Permanent Fund earnings, the interests of the State and the shareholders would be precisely the same.

Similarly, if an AGSOC were to invest in a petrochemical plant, its shareholders would benefit if we sold that plant our royalty oil at a cut rate. This too would be a loss to the State's Permanent Fund and to those who did not hold shares of that AGSOC.

Only by passing an Alaska, Inc. type program first could we likely establish conditions where the State and all Alaskans' interests were compatible insofar as maximizing the return from the citizens' resource wealth. Once in place, such programs reduce the likelihood of conflicting AGSOC proposals being undertaken.

In its present form, proposed AGSOC legislation has other problems:

1. Since only one share of stock goes to each person here in Alaska at the time each AGSOC is formed, ultimately there would be two types of Alaskans: those who were shareholders, and those who were not.

Remedy:

One way to remedy this is to amend the bill to provide one share of stock for each year the shareholder has resided in a locale where the government recognizes cost of living impact sufficient to warrant their payment of a 25 percent cost of living differential to government workers. Then all Alaskans would be shareholders.

2. AGSOC shares would be transferable, permittting money to leave Alaska. This should be amended since the prime objective and rationale is to insure that Alaskans get a "piece of the action" to compensate them, in part, for the exceptionally high cost of living impact here in Alaska. Accordingly, persons who have moved to Hawaii or California have no justification for receiving such cost of living offset.

Remedy:

A remedy would be to require that persons make application for their annual dividends on an Alaskan income tax filing form attesting to their having resided during most of the previous year in an area of qualifying high cost of living differential.

3. Another problem is, what if the AGSOC loses money? Who then pays off the bonds or other debt obligations? I am opposed to State guarantees. Would the AGSOC shareholders then become liable?

Remedy:

To offset this concern, were the Alaska, Inc. concept in place first, guarantees or collateral could be an AGSOC shareholder's prospective Alaska, Inc. dividends. Far better to use the AGSOC shareholder's prospective Alaska, Inc. dividends as such than use, as guarantees, Permanent Fund principle or general fund monies which belong to all Alaskans, not just AGSOC shareholders.

4. Under an AGSOC proposal some shareholders may be unwilling participants in programs to which they are philosophically or otherwise ill disposed.

Remedy:

If one is already a shareholder in an Alaska, Inc. program, they should be able to elect whether or not they wish to become an AGSOC shareholder. By so doing, they would not be compelled to participate in some development program they may not favor in order to get any "piece of the action" whatsoever.

Another reason why the Alaska, Inc. program should go in place first is because it would motivate placement of more oil wealth behind the Permanent Fund "rope" where it could not be used for more government or as guarantees for some shakey AGSOC proposal. Since Alaska, Inc. shareholder "dividends" are directly dependent upon the amounts of money placed in the Permanent Fund, there would be a countering pressure to those political pressures which create bigger government.

Because the Alaska, Inc. approach would provide "dividends" from an "enterprise" already returning revenues which belong to all Alaskans, the charge of "improper involvement of government into private sector affairs" is absent. Of course, since AGSOC's are not truly government functions the traditional "undue involvement" charge does not really wash. However, because of the potential impact on government funds to bail out ailing AGSOCs, a reverse concern may be valid: "undue involvement by the private sector in the affairs of government."

Other advantages recommending prior implementation of Alaska, Inc. are its comparative simplicity and the fact that unlike the speculative nature of any AGSOC, we would be betting on a "sure thing." For example, we know that we have a fully capitalized, debt free enterprise in the Permanent Fund which can immediately start paying "dividends". No loans must be made; bonds sold; speculation engaged in. We are already functioning "in the black." Surely if we're going to condition the public to feel comfortable with any "dividend distribution" system at all, we should start with a simplistic "sure" winner.

A major benefit of increasing contributions to the Permanent Fund is that the other half of the resultant increased recurring income from Permanent Fund investments would flow into the General Fund where it could supplant these non-recurring oil wealth dollars now improperly funding our day to day government operations. Such reduction of our dangerous dependence upon principle dollars for funding operations - which should be funded with income dollars - is imperative.

If the AGSOC program goes on the line first, the chances of finding surplus State dollars to place into the Permanent Fund would likely diminish.

Thus, while I favor both the Alaska, Inc. and AGSOC concepts for insuring all citizens a "piece of the action," I believe it imperative that the Alaska, Inc. program be placed on line before an AGSOC be established. Meanwhile, I would like the enabling AGSOC legislation amended to deal with those problems I've previously outlined.

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

Colletta

KELSO & CO.
INCORPORATED
INVESTMENT BANKERS

GREENSBORO, N.C.

SAN FRANCISCO

LOS ANGELES

April 10, 1979

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

Dear Representative Miller:

We are writing you to comment upon the principal items covered by the memorandum from The Honorable Avrum M. Gross, Attorney General (by Mr. Joseph K. Donohue, Assistant Attorney General), to The Honorable Frances Ulmer, Director of the Division of Policy Development & Planning, under date of March 19, 1979. We understand this memorandum has been considered by both State Senate and State Assembly Committees, but is presently before the State Affairs Committee. The subject of the memorandum is "Policy & Legal Issues Surrounding AGSOC Legislation (SSSB 170 and SSHB 240)". The memorandum states that it is in response to a request from The Honorable Frances Ulmer for a brief outline of the various issues which the Administration should review in the context of the analysis of the AGSOC legislation presently pending before the legislature.

The memorandum itself, the care and astuteness used in its preparation, and the wisdom of Miss Ulmer in requesting it, all attest the high degree of responsibility and thoroughness with which the legislature is studying the AGSOC legislation. We hope that our comments on certain of the provisions of the memorandum will prove of use to your Committee, and to others to whom you may wish to distribute copies.

For simplicity of reference, we will initiate each of our comments with a reference to the paragraph or paragraphs and to the page number in the memorandum of March 19th or 20th (March 20th being the date used on its separate pages). We will also number our paragraphs for easy reference in case you wish to ask questions or comment on this letter.

1. THE FIRST FULL PARAGRAPH ON PAGE 3

The question of whether the State should follow the policy of the federal legislation and exempt AGSOC from State corporate income tax and from certain other State level taxes which might otherwise be imposed on the corporation are, of course, precisely the kinds of questions that only the legislature can answer. There is one erroneous statement at the end of the paragraph, however, and that is that

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our firm, as investment bankers, is presently recommending "the new AGSOC purchase BP's share of TAPS." We, in our instructions from the legislature, were expressly requested to avoid recommendations as to AGSOC's investments, although, basically to illustrate feasibility, we believe, we were asked to do a feasibility study of that particular purchase.

In general, it will be obvious to your Committee that the taxes imposed on AGSOC at the corporate level would simply slowdown the rate at which AGSOC could amortize its debt incurred in acquiring productive investments from time to time, and thus slowdown the rate at which AGSOC is effective in building capital ownership into each Alaskan resident.

2. THE LAST FULL PARAGRAPH ON PAGE 3

In the last paragraph at the bottom of Page 3 (erroneously reproduced in our copy at the top of Page 4), it is postulated that by purporting to give each resident of the State a direct interest in the development of the State's natural resources, AGSOC would become an independent voice for more rapid exploitation of those resources, and that because the AGSOC is required to pay out substantially all of its net income to residents of the State, it "would likely" become a lobbying force for lower State taxes. We do not believe that these conclusions are by any means obvious or sound. It apparently has been overlooked that while AGSOC, as a corporation in which every resident owns an interest, is intended to build capital ownership in each such resident each resident also has other and independent interests. He has an interest in the overall tax impact on him. Thus if reducing the taxes on AGSOC raised his personal income tax, or his property tax, he would certainly take both into consideration and either of these events would undoubtedly have a far greater individual effect than lowering State taxes of the corporation of which he is a shareholder. It is inconceivable that AGSOC would become a lobbying force contrary to other basic interests of the residents of Alaska, simply because its stockholders would have ultimate control over AGSOC.

To be sure, as independent and privately owned capital is built into Alaskan residents, there will be less need for welfare and redistribution of income within the State of Alaska. The very theory upon which AGSOC is structured asserts that by enabling each resident to become, to whatever degree possible, economically autonomous and independent, such resident will be freed from the indignity of seeking welfare and other taxpayers will be freed from the unpleasant task of being forced to support strangers through taxation used for welfare purposes. These are "trade-offs" of a political and economic nature, but the underlying theory of AGSOC is that economic self-sufficiency through the ownership of income producing capital is preferable to welfare for some and redistributive taxes for others. We believe that this point should be clearly and thoroughly debated by the legislature and the question of whether the legislature prefers the prin-

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ciple of capitalism or the principle of socialism should be determined.

3. THE SEVERAL PARAGRAPHS BEGINNING AT THE BOTTOM OF PAGE 4
UNDER SECTION II. FINANCING

It is represented in the memorandum that Louis Kelso testified before the Joint Committee and has stated to various Administration officials that AGSOC will be able to obtain financing on the private market without recourse to State guarantees or State credit. This is not, we believe, an accurate summary of my personal testimony and statements to various Committees and to various individuals in the legislature.

I have pointed out that in addition to start-up funding in order to make AGSOC an operating reality, it should then seek the best sources of funding available. Some investments, it is possible, can be acquired through collateral financing, or other conventional types of corporate finance. On the other hand, some investments may require support by the State or by some appropriate or appropriately created State agency. The important point to be focused upon in this area is that conventional corporate and business finance tends specifically to make the rich richer and to fail to make the poor richer. We do not see how it can be considered objectionable for the people of the State to use their collective power to assist the individual residents -- all residents at the outset and new residents as these grow in significant numbers -- by amendments to the State and federal legislation, or by the Alaskan State Legislature's specifically incorporating future AGSOCs -- AGSOC-I, AGSOC-II, etc.

The points made in the remainder of Section II should, of course, be considered by the legislature in the light of the existing Constitutional provisions and the existing State machinery for backing up an enterprise -- AGSOC -- that is a private corporation but whose activities will address themselves to the solution of a public problem. AGSOC is a device to carry into practice preventative economic measures to avoid future poverty and to improve future affluence for Alaskan residents as a whole. We submit that these are noble public purposes and that in considering the use of the power of the State to support investments made by AGSOC, all of the income of which is commanded to be distributed to the stockholders of AGSOC, the legislature should not impose administrative barriers that would prevent AGSOC from competing effectively with giant corporations for investments. Investments of AGSOC will benefit all the residents of Alaska whereas investments of the traditional giant corporations primarily benefit the pinnacle wealth owners, a few of whom may be Alaskan residents, but most of whom will be non-residents and perhaps even non-U.S. citizens.

For our part, it would seem that the wisdom of the legislature in appropriating particular funds that can be used as guaranty funds is adequate assurance of careful review by the legislature on behalf of the people as a whole.

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4. SECTION III. DEPOLITICIZING THE AGSOC BEGINNING ON PAGE 7

In general, it appears to us that the discussion here is made-up not of legal analysis primarily, but rather of political concerns.

In the first paragraph under this item is the statement that "it should be noted that there is nothing in the federal legislation which would preclude the AGSOC's establishment as a state agency or public corporation." We believe this is a misinterpretation of the federal law, which requires that a General Stock Ownership Plan be a private corporation even though its shareholders must include, at the outset, all residents of the State as of a date selected by the legislature and as of the date of the issuance of its stock.

We disagree with the unwarranted conclusion drawn in the paragraphs at the bottom of Page 7 and on Page 8, et seq. that, if successful, AGSOC would quickly become highly politicized and an extremely powerful force -- in fact a Fourth Branch of Government. If AGSOC were permitted to accumulate its net income and thus develop a vast reservoir of funds which it could spend as its Board of Directors saw fit, then these comments might be justified. But that is precisely what AGSOC is designed to avoid. Its income is promptly translated into the income of its broad base of stockholders. It is not designed to be a powerful entity for anyone except the people of the State as a whole. As the shareholders gain power, their power to control AGSOC, through election of directors and through the power, under general law, to initiate a suit to have questioned in court a misuse of funds by AGSOC, is, it would seem to us, an ironclad guaranty that AGSOC would never become a branch of government in any form.

Because of its very size, and its potential economic importance to the enormously broad base of Alaska residents, we do not believe the speculation that ultimately one-tenth of the residents could wind-up owning all of AGSOC. One very simple reason for this belief is that if the residents do not tenaciously hold on to their AGSOC stock, the legislature is free to incorporate successive new AGSOCs and to add assurances that they do keep their individual economic power and independence.

Thus we regard it as simply improbable and unfounded speculation that any "power blocks" of residents could be established or that, if established, they could not be controlled quite easily by stockholders' derivative litigation.

With the absolute necessity that for many if not most of its investments AGSOC will look to the economic power of the State, as determined by the legislature, to give it access to federal or private credit, we think that there is no basis for imagining that AGSOC could develop a constituency over which it has no control whatsoever. We also believe that since AGSOC must pay its income to its stockholders, and has no duty except to develop and produce wealth and to distribute

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it to those citizens, that the Board of Directors or the management of AGSOC could not become a political center or political leader of any kind whatsoever.

The last paragraph on Page 8 speculates that "Although one could argue that AGSOC violates the fundamental political theory of the State Constitution which established only three branches of government***". As noted above, AGSOC is not, and could never be under the proposed legislation, a branch of government of any kind whatsoever. It is an instrumentality created by the State, just as the State creates the laws under which business corporations in general can be established, but upon which the governments, State and Federal, have imposed limitations to assure that it will work for all residents -- all stockholders -- rather than for one, or a few, as present corporate giants do. Having made a false assumption that AGSOC could be a "Fourth Branch of Government", it is natural to speculate on all the dangers that would flow from this impossible situation. The recommendation for bureaucratic regulation appears to us to be totally unwarranted and would impede the potential efficiency of AGSOC to improve the economic status -- legitimately -- of all residents of Alaska. There is no virtue in bureaucratic regulation as such. The stockholders would annually vote on directors and upon all issues put to them by the Board or by stockholder initiative. A broader and more diversified base for AGSOC could hardly be conceived. The power of AGSOC is in its stockholders, not in its Board of Directors or its management.

Sight seems to have been lost of the fact that AGSOC is meticulously designed as the new method of financing economic growth and development for the purposes of attacking the cause rather than merely the effects of poverty. This is precisely what it is designed to do and precisely what it must do under its structural regulations. That is its purpose. Since AGSOC must pay out substantially all of its earnings to its shareholders, its sole function is to connect each resident with capital ownership and income. Could a more desirable goal be conceived?

5. BEGINNING AT THE BOTTOM OF PAGE 8 AND CONTINUING ONTO PAGE 9 OF THE MEMORANDUM

The problem is raised that members of the Board of Directors of AGSOC could use their position as a forum for criticizing the Administration's economic policies and ultimately as a launching pad for State elective office.

This is not a very real concern because the only official obligation of the members of the Board of Directors of AGSOC is to develop and produce Alaskan wealth for ownership by every Alaskan resident. When members of the Board of Directors periodically run for election as such, if they are incumbents, they do so on their performance record, as does any elected official, public or private.

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The freedom of particular directors and/or officers of AGSOC to criticize the State's economic policies is nothing but the Constitutional right of all U.S. citizens to free speech. Precisely the reverse exists as well. The Governor, or any Committee of the legislature, is free to criticize the investments of AGSOC. It would appear to us that the absolute dependence from time to time of AGSOC upon specific legislative provision of economic support for its investments assures that any free speech that passes between the Board of Directors of AGSOC and any branch of the State Government will be tempered with these realities in mind.

Any activity within or without the State of Alaska could theoretically be a "launching pad" for public office. But AGSOC as an entity that makes every resident more affluent will increase the possible opportunities of every resident to run for State office, and to participate in local State and community affairs. This is a more democratic basis for the State than where only a few people can afford to run for office. Does Alaska want more or less democracy?

In the first full paragraph on Page 9 of the memorandum, it is suggested that AGSOC be prohibited from lobbying and from making political contributions to candidates for State offices. We would think it entirely proper that AGSOC be prevented from making political contributions out of its funds to candidates for State office. Indeed, since it must periodically come under the scrutiny of the entire legislature and the Governor, we find it difficult to imagine that such prohibition would not be voluntarily imposed upon itself. But nothing would be lost by including such limitations in the legislation.

However, we have grave reservations about "strict proxy review mechanisms" that would cause the directors to act in "a politically neutral fashion". AGSOC is not designed to act in a politically biased fashion, nor does its design so permit. It has one function: to make each resident wealthier and to deliver that wealth to him periodically and dependably. Nothing more. What the residents of Alaska do with their wealth would seem to us to be their business.

On general legal principles, it would appear to us that any stockholder of AGSOC could institute legal action to restrain AGSOC's Board from using the potential income belonging to the residents as stockholders for the benefit -- any benefit -- of the Board of Directors.

Only totalitarian states adopt edicts to shield bureaucrats from speaking freely, but AGSOC's single purpose assures the ease of its stockholders in holding it to the performance of its sole purpose.

6. CAN AGSOC BECOME A CENTER OF CONCENTRATED ECONOMIC POWER?

This question is raised at the bottom of Page 9 and on Page 10 of the memorandum. We believe that this is random and unrealistic

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Page Seven

speculation.

It is quite true that because of the vastness of its stockholder constituency, AGSOC should seek to invest in massive and highly productive economic developments and activities. But it is not true that this can lead to its becoming a "major force for concentration of economic power in the State***". The design of AGSOC specifically makes this impossible for the very simple reason that it is required to pay out all of its income to its shareholders. That its shareholders will become more affluent, less dependent on redistribution of wealth, less dependent on welfare, and more powerful, is elementary. But this is the same as saying that its shareholders are the ones who have the power to scrutinize, correct, and contain any potential concentration of economic power in AGSOC.

The same is true of the risk that AGSOC may violate the Federal anti-trust laws. We have seen no lack of ability on the part of the Federal Anti-Trust Division to watch over this area of business activity. The periodic supervision by the legislature at the time it grants added support for any further investment by AGSOC assures that the State legislature itself can consider the question of whether any anti-trust monopoly action is involved. Certainly the absolute inability of AGSOC to accumulate internal funds defeats its power of ever exercising the main means by which business corporations violate anti-trust laws, namely by withholding the "wages of capital" from the owners of capital (the stockholders) and accumulating those funds to buy monopolistic power. Again, AGSOC is designed to make this impossible. We cannot conceive of the slightest need for any added limitations in this area.

We submit that the last sentence in the last paragraph on Page 10 of the memorandum, in itself, recognizes the improbability of the speculation involved in the preceding paragraphs. The fact that the stockholders of AGSOC and the people of the State are, and at all times will be identical, merely shows that AGSOC is, by its design constrained through its broad ownership, and through the right of the legislature to launch any number of additional AGSOCs and to dry up its source of funding, designed to avoid any of the conflicts thus imagined.

Since the type of conflicts imagined in Pages 9 and 10 of the memorandum are unrealistic and cannot occur, the remedies proposed on Page 11 for this non-existent danger would seem to be entirely unnecessary. AGSOC's designed trust obligation -- to develop and produce wealth for all Alaskans -- assures that any wasteful or improper use of its resources could be enjoined by any of its stockholders under general principles of corporate law. The imagined problems simply do not and cannot exist, and if they did, they could be quickly restrained under these generally applicable legal principles.

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7. PAGE 11, SECTION IV. CORPORATE DEMOCRACY

That the existence of classification of directors would limit the ability of minorities within the State to obtain representation on the Board of Directors of AGSOC is, in my opinion, without foundation in fact. Board classification is desirable to promote stable policies in corporate matters. The possibility of an entirely new Board being elected each year would be highly undesirable. Board membership will be in a corporation charged with a trust to represent all the people of the State of Alaska.

On the question of cumulative voting, we do not see, in a corporation with a stockholder base as vast as that proposed for AGSOC, that there would be any advantage in insuring cumulative voting. On the other hand, we see no disadvantage in assuring that cumulative voting must exist.

On the question of limiting the duration of any voting trusts, made in the paragraph at the bottom of Page 12, it would appear to us that this suggestion is a good one.

Similarly, providing for shareholders to initiate amendments to the Articles of Incorporation would be desirable where a substantial shareholder initiative, say 10%, or even 5%, of the registered shareholders' signatures would be required. It would not be desirable to permit a tiny handful of stockholders to upset the efficiency of the corporation in making its day-to-day decisions.

8. DESIRABILITY OF A HIGH FORUM REQUIREMENT

This would seem to us to simply impose clumsy procedures on the State's prime weapon in building preventative economic power into its citizens, i.e., measures to prevent future poverty from arising. AGSOC will be under a constant obligation to educate its stockholder constituency about the economics of capitalism and will, of necessity, become a source of economic education because it will enable, for the first time in history, every Alaskan to become a capital owner. To go further than this would seem to be probably wasteful in terms of paperwork and a pointless waste of time.

9. LEGISLATION ASSURING ADEQUATE NOTICE OF MEETINGS

In the second paragraph on Page 14 of the memorandum, suggestions with respect to this are made. We would think this entirely proper if the restriction does not obstruct reasonably efficient governance of the corporation.

10. THE CORPORATE BY-LAWS

The memorandum suggests that the power to amend the By-Laws should be reserved to the shareholders "in order to ensure adequate public review." We believe that such a provision would be too expen-

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sive and too restrictive in terms of efficient governance of the corporation, and excessively wasteful of time.

11. AGSOC'S FINANCING OF PROXY FIGHTS, ACCESS TO VOTING LISTS
AND VOTING MACHINERY

We believe that the suggestion made in Paragraph 8 on Page 14 would be salutary if the signatures of 10% or more of shareholders were required. Otherwise, the corporation could waste time dealing with mere adventurers.

12. SECTION V. PRIVATE CORPORATION: CLOSED CLASS OF SHAREHOLDERS

In this matter, covered on Pages 15 and 16 of the memorandum, we believe that the first paragraph on Page 15 is in error in stating that federal legislation mandates that the shareholder group in AGSOC be made up of a "closed class" in any realistic sense, for the simple reason that it imposes no limitation upon the number of AGSOCs which the Alaskan Legislature could authorize. Thus a longtime resident might well wind-up holding shares in ten or fifteen different AGSOCs, while those who depart the State would only own shares in those AGSOCs whose stock ownership qualifications they had previously met.

The "scenario" imagined by the author of the memorandum in the second paragraph on Page 15 is simply unrealistic. The preventative economic measures involved in establishing AGSOC that strike at the cause of poverty rather than merely at the effects of poverty hold more promise for eliminating poverty than all past measures, State and Federal, dealing with this subject, for those measures merely apply band-aids to the effects of poverty.

The problems imagined here are under year-to-year control by the legislature since AGSOC must be created by a separate act of the legislature. Other AGSOCs can be created at will by the legislature. Changes in the law concerning transferability of its stock can be made by the legislature if experience proves that such changes are warranted. It is contemplated that the full thrust of AGSOC's educational stockholder relations program will induce most stockholders to hold onto their shares as their dearest economic possessions.

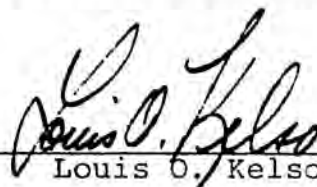
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We hope that the foregoing comments will be of use to your Committee in its deliberations. We would be pleased to respond to any requests for elaboration or to any questions.

Sincerely,

KELSO & CO., INCORPORATED

By


Louis O. Kelso

By


John A. Miskimen

LOK/JAM:ch

cc: The Honorable John G. Fuller,
Vice Chairman, State Affairs Committee
The Honorable Terry Gardiner,
State Affairs Committee
The Honorable Bill Parker
State Affairs Committee
The Honorable Terry Martin,
State Affairs Committee
The Honorable Ray H. Metcalfe,
State Affairs Committee
The Honorable Richard Eliason,
State Affairs Committee
Frances Ulmer, Director, Division
of Policy Development & Planning

MEMORANDUM

To: GOV. JAY HAMMOND
From: JERRY GAUCHE
Re: AGSOC ISSUES
Date: APRIL 12, 1979

IT MAY BE HELPFUL TO COMMENT ON FOUR ISSUES WHICH APPEAR TO HAVE RECEIVED CONSIDERABLE DISCUSSION WITHIN THE ADMINISTRATION REGARDING AGSOC. THESE COMMENTS ARE BASED ON THE MOST RECENT AMENDMENTS BY THE HOUSE STATE AFFAIRS COMMITTEE. THE FOUR ISSUES ARE: (1) THE DISTINCTIONS BETWEEN AGSOC AND THE PERMANENT FUND; (2) FINANCING FOR AGSOC; (3) SHAREHOLDER CONTROL; AND, (4) POLITICAL IMPACT.

DISTINCTIONS BETWEEN AGSOC AND PERMANENT FUNDRESOURCE OWNERSHIP VS. CAPITAL OWNERSHIP

THE PERMANENT FUND RELYS FOR ITS REVENUES ON THE RESOURCES OWNED JOINTLY BY ALASKANS THROUGH THEIR GOVERNMENT. DEVELOPMENT OF THOSE RESOURCES IS CONTROLLED BY PRIVATE ENTERPRISE OWNED MOSTLY BY OUTSIDERS. AGSOC DOES NOT SEEK TO DISTRIBUTE EITHER THE RESOURCES OWNED BY ALASKANS THROUGH THEIR GOVERNMENT OR INCOME FROM THOSE

ASSETS. WHAT IT DOES SEEK TO DO IS TO GIVE ALASKANS A VEHICLE THROUGH WHICH THEY CAN PARTICIPATE IN THE DEVELOPMENT OF THEIR RESOURCES.

WHO PROFITS?

WHEN ALASKA RESOURCES ARE DEVELOPED BY OUTSIDERS THE OUTSIDERS PROFIT. ALASKA CAN SHARE IN ONLY A PART OF THE PROFITS FROM THAT DEVELOPMENT, THE PART WHICH CAN BE TAXED AWAY. HOWEVER THE STATE CANNOT TAX AWAY 100% OF THE PROFITS AND EXPECT FUTURE DEVELOPMENT BY OUTSIDERS. THE ENTIRE PROFITS FROM AGSOC PARTICIPATION IN DEVELOPMENT WILL REMAIN IN THE STATE BECAUSE THE SHAREHOLDERS OF AGSOC WILL BE ALASKANS.

TRUSTS VS. BUSINESS PARTICIPATION

THE PERMANENT FUND AND GOVERNMENT OWNED RESOURCES ARE VIEWED BY MANY AS A TRUST FUND FOR THE FUTURE, THE CORPUS OF WHICH SHOULD BE HELD INTACT AND INVESTED IN A CONSERVATIVE MANNER EITHER BY A BOARD OR INDIVIDUAL ALASKANS. AGSOC IS DESIGNED TO USE CREDIT IN ORDER TO GIVE ALASKANS ACCESS TO OWNERSHIP OF DEVELOPMENT CAPITAL IN THE STATE. THE PERMANENT FUND REPRESENTS ASSETS WHICH ALASKANS ALREADY OWN, AGSOC WILL BRING THEM OWNERSHIP OF NEW ASSETS. THE CONCEPT OF THE PERMANENT FUND AND AGSOC ARE NOT INHERENTLY COMPETITIVE, BUT COMPLIMENTARY. THE PERMANENT FUND QUESTION MAY BE SOLVED INDEPENDENTLY OF AGSOC AND AGSOC CAN FUNCTION INDEPENDENTLY OF THE PERMANENT FUND.

STATE VS. PRIVATE OWNERSHIP

THE PERMANENT FUND IS A VEHICLE OF THE STATE AND CONTROLLED BY THE ELECTED OFFICIALS OF THE STATE. IT IS A DEPOSITORY OF STATE ASSETS. THE AGSOC IS A PRIVATE CORPORATION CONTROLLED BY ITS SHAREHOLDERS. DESPITE ASSERTIONS OTHERWISE, THE FACT THAT ITS SHAREHOLDERS ARE THE RESIDENTS OF THE STATE DOES NOT MAKE IT A POLITICAL ORGANIZATION NOR AN ARM OF THE STATE.

FINANCING OF AGSOC

LEGISLATIVE REVIEW

NO SPECIAL LEGISLATION HAS BEEN DEVISED REGARDING STATE FINANCIAL ASSISTANCE FOR THE AGSOC OTHER THAN START-UP COSTS. AGSOC IS TO BE DEALT WITH IN THE SAME MANNER AS OTHER PRIVATE CORPORATIONS SEEKING STATE SUPPORT. THERE IS NO MECHANISM WHEREBY THE STATE COULD BE BOUND TO FINANCIAL SUPPORT FOR AGSOC WITHOUT LEGISLATIVE ACTION. IF STATE FINANCIAL SUPPORT IS REQUIRED FOR AN INVESTMENT AGSOC WILL BE REQUIRED TO COME BEFORE THE LEGISLATURE AND THE ADMINISTRATION WITH A PROPOSAL WHICH MAY OR MAY NOT BE APPROVED BY THE LEGISLATURE AND SIGNED BY THE GOVERNOR.

STATE FINANCING FOR PRIVATE CORPORATIONS

STATE INVOLVEMENT IN FINANCING PRIVATE CORPORATIONS IS NOT NEW, BUT, PRESENT STATE SUPPORT FOR PRIVATE

CORPORATIONS BENEFITS ONLY THOSE PEOPLE IN ALASKA WHO HAVE ALREADY ACCUMULATED CAPITAL. THE STATE CURRENTLY HAS SOME \$150 MILLION OF LOW INTEREST BUSINESS LOANS OUTSTANDING, BUT BECAUSE OF THE 75% LOAN LIMITS ONLY THOSE WITH EXISTING CAPITAL CAN QUALIFY. AGSOC BRINGS IN THE REST OF ALASKA IF THE LEGISLATURE AND THE GOVERNOR, AT THE REQUEST OF THE CORPORATION, SHOULD DETERMINE THAT STATE SUPPORT OF A PARTICULAR INVESTMENT BY THE AGSOC IS APPROPRIATE.

SHAREHOLDER CONTROL

THE HOUSE STATE AFFAIRS COMMITTEE IN DRAFTING A COMMITTEE SUBSTITUTE FOR THE AGSOC BILL HAS INCLUDED A NUMBER OF AMENDMENTS WHICH WILL MAKE THE BOARD OF DIRECTORS OF AGSOC MORE RESPONSIVE TO THE SHAREHOLDERS AND SHOULD ALLAY FEARS THAT THE BOARD WILL BECOME AN INSULATED GROUP MORE POWERFUL THAN ANY OTHER IN THE STATE. THESE CHANGES INSURE THAT THE SHAREHOLDERS MAY PUT ISSUES AND BOARD CANDIDATES ON THE CORPORATION BALLOT, THAT THE INCUMBENT BOARD MAY NOT USE THE FUNDS OF THE CORPORATION TO MAINTAIN THEIR INCUMBANCY, AND THAT THE SHAREHOLDERS MAY, AT ANY TIME, REMOVE THE ENTIRE BOARD OR ANY MEMBER. IN ADDITION, THE COURTS ARE GIVEN JURISDICTION TO REMOVE A BOARD MEMBER JUDICIALLY AT SUIT OF THE SHAREHOLDERS OR THE ATTORNEY GENERAL.

POLITICAL IMPACT

MANY INFLAMMATORY STATEMENTS HAVE BEEN MADE ABOUT THE POTENTIAL POLITICAL POWER OF THIS CORPORATION AND ITS BOARD MEMBERS. FUNDAMENTAL TO THE ARGUMENTS OVER THE QUESTION OF AGSOC POLITICAL INFLUENCE IS THE QUESTION OF WHETHER OR NOT THE PEOPLE OF ALASKA CAN BE TRUSTED TO MAKE PROPER DECISIONS REGARDING THEIR OWN FUTURE AND THE FUTURE OF THEIR STATE OR WHETHER, IN ORDER TO PROTECT THEM FROM MAKING THE WRONG DECISIONS, THE GOVERNMENT MUST BE INTERPOSED BETWEEN THE PEOPLE AND THE DECISIONS.

AGSOC ALLOWS THE PEOPLE, THROUGH THEIR CORPORATION, TO MAKE DECISIONS ON ECONOMIC DEVELOPMENT INDEPENDENTLY OF THE GOVERNMENT AND TO RECEIVE THE PROCEEDS OF SUCH DEVELOPMENT WITHOUT THEIR FIRST BEING FILTERED THROUGH THE GOVERNMENT. THIS DOES NOT, HOWEVER, MEAN THAT GOVERNMENT WILL BE EXPECTED TO ABROGATE ITS RESPONSIBILITIES WITH RESPECT TO PROPER REGULATION OF BUSINESS ENTERPRISES. FEAR OF POSSIBLE MISCONDUCT BY AGSOC IS REALLY FEAR THAT THE PEOPLE OF ALASKA WILL ACT IRRESPONSIBLY IF GIVEN THE CHANGE TO CONTROL THEIR OWN DESTINY. I THINK THAT THEY HAVE PROVEN OTHERWISE THROUGH THEIR POLITICAL DECISIONS IN THE PAST.

Colletta

MEMORANDUM

TO: Rep. Jim Duncan
FROM: Jerry Gauche
RE: Policy & Legal Issues Surrounding AGSOC
DATE: April 4, 1979

Following is a discussion of some political and legal issues raised by a memorandum dated March 19, 1979 from Avrum Gross, Attorney General, to Frances Ulmer, Director, Division of Policy Development & Planning, regarding the Alaska General Stock Ownership Corporation legislation, SSHB 240.

I. TAXATION

The current sponsor substitute for HB 240 fulfills the requirements of Subchapter U of the Internal Revenue Code for tax qualification as a general stock ownership corporation and a corporation organized under its terms would be entitled to special tax treatment. The tax advantages available to GSOCs are presently available to all corporation with 15 or fewer shareholders. The Internal Revenue Code permits small business corporations to avoid corporate income taxes in much the same manner as a general stock ownership corporation. But, for the first time this concept of "integration" of the corporate and personal income tax has been extended to a large corporation through the GSOC.

A. State Income Tax.

Alaska law incorporates federal income tax changes unless the legislature acts. Tax benefits provided GSOCs could be denied to AGSOC by the Alaska legislature. However, for Alaska to take special steps to tax AGSOC as a typical corporation would reduce its ability to benefit its shareholders. In addition, the tax treatment provided GSOCs might well generate more income to the state per dollar of corporate earnings than the corporate income tax. In any event, no one has suggested that Alaska deny the tax benefits provided by federal law.

B. Other State Taxes.

AGSOC is subject to all state taxes including severance, property and, if certain investments are undertaken, the oil and gas corporate income tax. There has been no discussion of exempting AGSOC from these taxes and the Department of Revenue understandably opposes any exemption of AGSOC from the oil and gas corporate income tax. Such exemption could harm the state's case in litigation over that tax.

If AGSOC investments subject it to the oil and gas corporate income tax no special problems appear to be presented. The tax reaches income sheltered by multistate and multinational corporations through accelerated deductions, expenses, and shifting of income. AGSOC has no capacity to shift income out of Alaska nor the incentive to shelter income. The flow through of tax liability and high distribution requirements enable the AGSOC to function comfortably under the oil and gas corporate income tax if the tax should apply.

C. Potential Investments.

Several investments have been mentioned as possibilities for AGSOC. However, the concept of a general stock ownership corporation is to make investment decisions at the corporate level based on the good business judgement of professional managers following careful investigation of the alternatives. Selection of investments is designed to be made outside the political process. It is therefore impossible to suggest at this time which project or projects the AGSOC might find appropriate for investment. Because of this freedom of investment selection it would also be unwise to attempt to tailor the taxation of AGSOC through exemption from special taxes such as the oil and gas corporate income tax.

D. Policy Questions.

1. Pressure for Development.

Oil and gas development is one of many possible investments which may be explored by AGSOC. According to the Attorney General such an investment would encourage rapid exploitation of these resources because Alaskans would benefit directly. This suggests that if the people of Alaska benefit directly from development they will act irresponsibly with respect to Alaska's

resources. The status quo avoids any push for exploitation because Alaskans benefit only from taxes on the development earnings of outside corporations.

AGSOC provides an alternative to this status quo if one is willing to believe that Alaskans are capable of making proper decisions regarding their own economic destiny. For the first time, through AGSOC, development earnings will flow to Alaskans instead of the non-Alaskans who have, until now, controlled development in our state. Alaskans will continue to benefit from state ownership and control of the resources. In addition, they will have the opportunity to benefit from extraction and delivery as well.

There is no reason to believe that AGSOC will ravage Alaska in the name of ever higher profits. It is likely that the corporation will become a voice for more responsible development in Alaska. For the first time the people of the state will control a major corporation doing business in Alaska. AGSOC will be an exemplary corporate citizen because its activities will directly affect the quality of its shareholders' lives. Alaskans can be expected to demand responsible actions by the corporation. Unlike many developers here, if AGSOC dumps its garbage in Alaska it will be dumping it in the back yards of its shareholders.

2. State Revenues vs. AGSOC Income.

Will AGSOC become a lobbying force for lower state taxes? Every taxpayer in Alaska has some interest in lowering taxes. The real issue is whether AGSOC will change the balance between Alaskans' desire for more government services and lower taxes. Is there reason to believe that AGSOC shareholders will act differently with respect to taxes on AGSOC income than they do with respect to taxes on their other income?

The political and economic issues of state revenues versus disposable personal income are not new to Alaska or the nation. AGSOC does not significantly alter the trade off. The issue cannot be reduced to the simplistic choice between AGSOC dividends or social welfare programs. AGSOC will become only one relatively small component in the complex mix of taxes, government programs, and taxpayer perceptions. Increases in AGSOC dividends from lower taxes will not take food out of the mouths of the poor. AGSOC dividends may well benefit the poor as much, if not more than, the same amount of money doled out by the government as transfer payments.

In any event, there is no reason to presume that the AGSOC will lobby strongly for tax reduction. Alaskans already pay a significant share of their income in state taxes, but there has been no irresponsible drive to eliminate the personal income tax. Those same Alaskans will control the AGSOC. There is no reason to believe that the possibility of some additional dividend income will cause them to raid the state's treasury. The entire discussion of the trade off between state revenues and AGSOC income is mute if we assume that the people of Alaska and their elected representatives will continue to act responsibly in defining the relationship between state revenues and Alaskans' personal income.

II. "DEPOLITICIZING" AGSOC

"Depoliticize" is a polite word for the elimination of political rights. Proposals to limit the political and legal rights of AGSOC imply that Alaskans cannot be trusted to distinguish between their roles as citizens and shareholders. Therefore, the citizens must be protected from making unfortunate economic decisions by denying the political and legal rights of their corporation. Underlying is the implication that Alaskans should not have the power, independently of the state government, to determine their own economic future.

To suggest that AGSOC will become a "fourth branch of government" is an insult to the integrity of the governor, the legislature and the voters of the state. The proposed abrogation of political rights seems designed to protect the legislature from the influence of a corporation owned by its own people. It seems the legislature needs protection from AGSOC, a corporation owned by Alaskans, more than from other powerful corporate influences in the state.

Attempts to "depoliticize" AGSOC require limitations on the political rights of the corporation. This limits the ability of the corporation to protect the interests of its shareholders. Such limitations suggest that AGSOC shareholders are either less deserving of full political rights than the shareholders of other corporations or so powerful that they do not need the political protections afforded the shareholders of other corporations.

Government is one of the most significant forces affecting the conduct of modern corporate business. Taxes, licencing, and regulation of environmental pollution, securities transactions, transportation, health and safety and many other governmental activities affect the profitability and continued existence of the corporation. In order to protect itself and its shareholders from arbitrary or ill considered actions by the government the corporation must be able to exercise its political rights.

A. Specific Limitations.

Several specific limitations on the political and legal rights of the AGSOC are suggested. It is appropriate to question whether any of these limitations would be constitutional as applied only to AGSOC? These proposals may well be the start of an attempt to limit the political and legal rights of all corporations chartered or doing business in Alaska. If they are appropriate for AGSOC why not for other Alaska corporations as well?

The right to make political contributions is already limited to \$1,000 per year per candidate. AS 15.13.070. The right to lobby is restricted by the existing disclosure provisions of Alaska law. The Attorney General suggests that AGSOC be denied the right to lobby, make political contributions, endorse candidates and reserve comment on state activities affecting the interests of its shareholders. In other words, if the state acts irresponsibly with respect to AGSOC the corporation cannot tell anyone or do anything to change the state's position. It must stand passively by while its shareholders suffer.

The justification for denying AGSOC political rights appears to be that it might have too much influence. Regarding the right to endorse candidates the Attorney General says, "[W]e have absolutely no guarantees that management . . . will not take full advantage of its position as representative of the residents of Alaska and try to see its political and economic preferences implemented by vigorous participation in the political arena." We do not deny the political rights of other groups and corporations simply because they seek to implement their political and economic preferences, that is the essence of our system, why should we limit the AGSOC?

There are three points raised by the Attorney General which warrant consideration:

1. Block Voting.

Block voting of AGSOC stock by influential Alaska groups such as natives or labor unions is a possibility. To the extent that the corporation is made more responsive to its shareholders block voting is facilitated. However, we should ask why it is inappropriate for these important Alaskan groups to have an influence on AGSOC? Why is their influence within AGSOC more to be feared than their existing influence within the economic or political arena?

2. Political Popularity.

The Attorney General points out that the governor could be in the "anomalous position of dealing with a more popular, albeit apolitical, leader representing" the AGSOC. This issue may present a political problem for the governor, but certainly is not grounds for denying the people of Alaska the benefits of a general stock ownership corporation.

3. The Springboard.

The suggestion is made that the AGSOC board members might use their positions as springboards to political office. It is not uncommon for individuals who have served in important posts within the state, both in government and the private sector, to subsequently run for political office. To protect against such an eventuality only in the case of the AGSOC would be to discriminate unfairly against that corporation. To deny the people an AGSOC because the directors might "utilize their position as a forum for criticism of the Administration's economic policies and ultimately as a launching pad for State elective office" seems narrow minded indeed.

B. Litigation with the State.

The Attorney General finds an "underlying irony" in the state litigating against the people of the state. This observation reflects again the confusion between the citizens of Alaska and the shareholders of AGSOC,