

ALASKA LEGISLATURE SPECIAL COMMITTEE / SUBJECT FILES 86/2

905 SCOMM32: AK GENERAL STOCK OWNERSHIP CORP. 1979-80 905

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Court of the State of Alaska to enforce such recovery, together with payment of all legal fees and court costs incurred by AGSOC in effecting such recovery.

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

QUESTIONS RE ALASKA AGSOC-I PROJECT

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

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

Enabling legislation must:

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

Determine under Alaska law: who is a resident?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

In Hicklin, the Court specifically rejected the argument

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

IV. GSOC SHAREHOLDERS WHO ARE MINORS

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

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

*/ But see Isakson irrebutable presumption approach.

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

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

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

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

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

CRITICAL PATH

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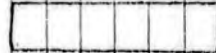
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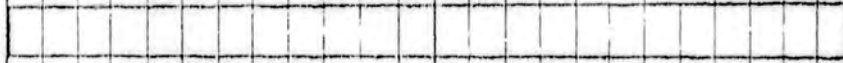
ALASKA LEGISLATIVE APPROVAL



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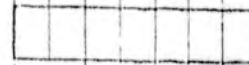
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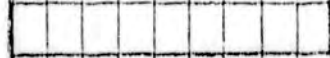
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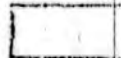
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LEGAL ERROR
Alaska & U.S.



PROVE
IT WORKS



Questions on AGSOC

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

TWO IMPORTANT POINTS ABOUT THE ALASKA GENERAL STOCK OWNERSHIP CORPORATION

1. THE AGSOC IS NOT A "GIVEAWAY".

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

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

2. AGSOC IS NOT STATE OWNERSHIP.

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

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

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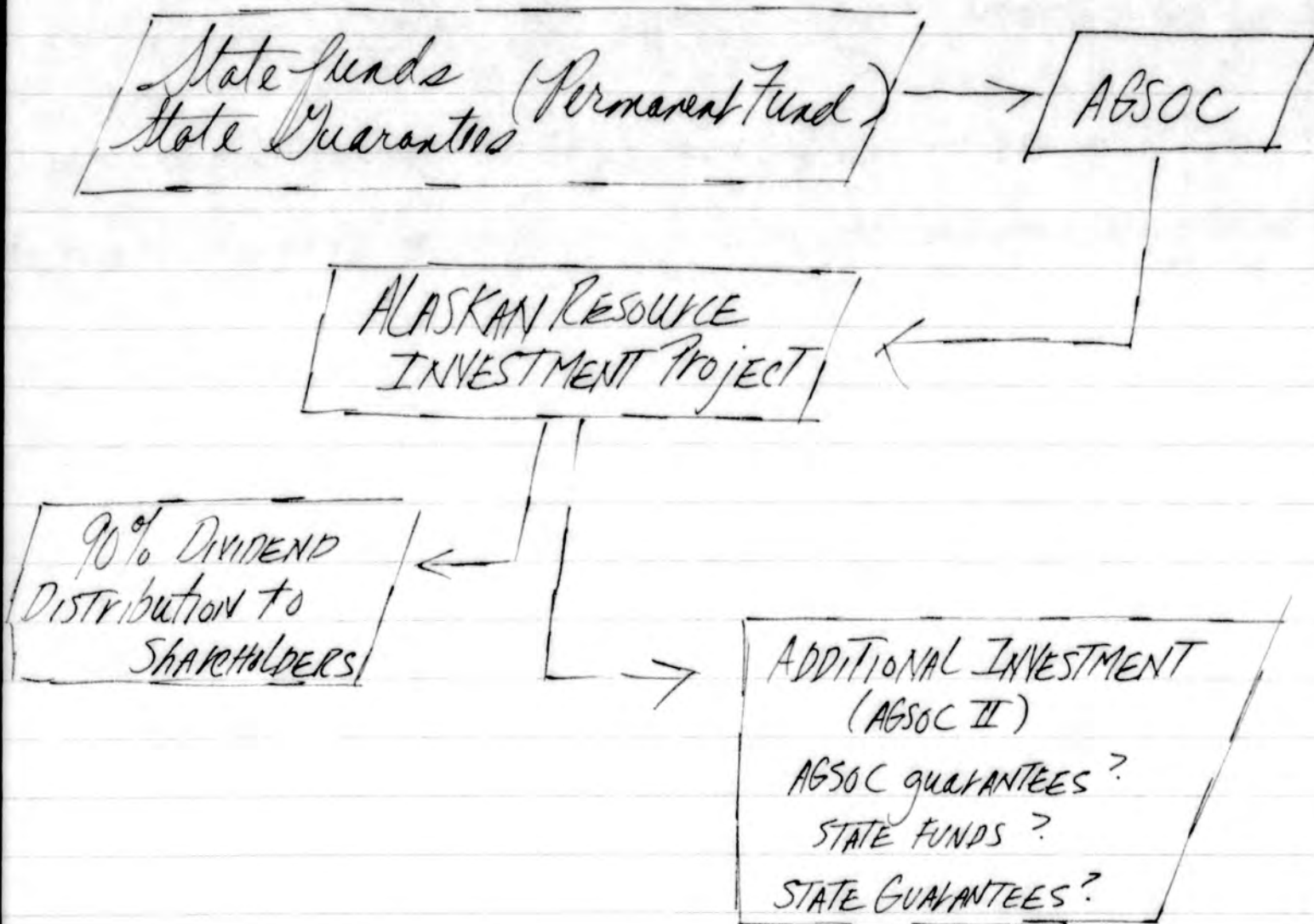
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Dear Senator Colletta;

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

Sincerely,
Randall

AGSOC : ALASKA GENERAL STOCK OWNERSHIP CORPORATION



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

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

2.

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

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

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

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

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

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

2. Assignment of Dividend Problem :

After 5 yrs. from the date of original issuance, ONE MAY TRANSFER (ASSIGN) to ANOTHER DIVIDEND RIGHTS. SUCH AN ASSIGNMENT IS BINDING UPON AGSOC IF GIVEN FOR CONSIDERATION WITH ADEQUATE NOTICE. OVER TIME, A SELECT FEW MAY RECEIVE AGSOC CAPITAL WEALTH WITHOUT CONTROLLING OR OWNING more than 10 shares EACH!

SOLUTION : PROHIBIT ASSIGNMENT OF DIVIDEND RIGHTS! THIS CAN BE ACCOMPLISHED THROUGH BY LAW LIMITATIONS, STATE CORPORATE LAW AMENDMENT AND/OR STOCK CERTIFICATE RESTRICTIONS ISSUED ON ITS FACE.

3. Proxy Solicitation Problem :

UNDER present proposals ONE MAY TRANSFER ONE'S RIGHT TO VOTE VIA PROXY WHICH CAN BE MADE EFFECTIVE UP TO 11 MONTHS. ANY EXPENSES INCURRED BY THE BD. OF DIRECTORS FOR PROXY SOLICITATIONS (re-election) ARE REIMBURSED BY AGSOC. STATEWIDE PROXY SOLICITATIONS CAN BE EXPENSIVE ESPECIALLY IF COMPETITIVE CHALLENGES ARISE.

THE USE OF AGSOC FUNDS TO MAINTAIN THE BD. OF DIRECTORS CONTROL TENDS TO ENCOURAGE CONCENTRATION OF POWER IN THE HANDS OF A FEW... A VIOLATION OF THE KELSO PRINCIPLE.

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

TWO IMPORTANT POINTS ABOUT THE ALASKA GENERAL STOCK OWNERSHIP CORPORATION

1. THE AGSOC IS NOT A "GIVEAWAY".

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

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

2. AGSOC IS NOT STATE OWNERSHIP.

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

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

Jsp

Joint Interim Gas Pipeline Committee

SEN. MIKE COLLETTA REP. BILL MILES
CO-CHAIRMAN CO-CHAIRMAN
SEN. FRANK FERGUSON REP. C. V. CHATTERTON
SEN. BILL SUMNER REP. TERRY GARDINER
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MR. FRED BONESS MR. JACK BACHMAN



1016 WEST 6TH AVENUE, SUITE 435
ANCHORAGE, ALASKA 99501
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TO: COMMITTEE CO-CHAIRMEN
FROM: RANDALL J. MOEN
DATE: 2/19/79
RE: Alaska General Stock Ownership Corporation (AGSOC)

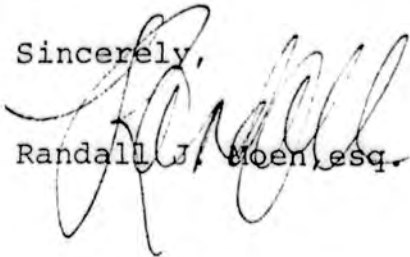
The idea behind AGSOC is that it will give the people a chance at capital ownership and participation rather than a select few. My concern is that through the AGSOC device it may be possible over time for a select few to control AGSOC policies and wealth despite stock ownership limitations.

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

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

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

Sincerely,


Randall J. Moen, esq.



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agsoc

ALASKA
GENERAL STOCK OWNERSHIP
CORPORATION

SUMMARY AND ANALYSIS

Finance Committee Substitute for
Senate Bill No. 170

April 27, 1979

BILL SUMMARY

ALASKA GENERAL STOCK OWNERSHIP CORPORATION

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

FORMATION OF THE AGSOC

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

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

AGSOC SHARES

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

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

SHAREHOLDER POWERS

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

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

DIRECTORS AND OFFICERS

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

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

OTHER PROVISIONS

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

SECTION BY SECTION ANALYSIS

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

ARTICLE 1. SUBSTANTIVE PROVISIONS.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 2. FORMATION OF CORPORATIONS.

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

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

ARTICLE 3. APPLICATION FOR SHARES.

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

ARTICLE 4. AMENDMENT.

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

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

ARTICLE 5. SALE OF ASSETS.

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

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

ARTICLE 6. DISSOLUTION.

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

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

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

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

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

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

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

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

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

ARTICLE 7. GENERAL PROVISIONS.

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



MEMORANDUM

TO: All Legislators

FROM: Mike Miller, Chairman, House State Affairs Committee

DATE: April 26, 1979

APR 27 1979

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

REP. MIKE MILLER
ALASKA STATE LEGISLATURE

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CHAIRMAN, HOUSE STATE AFFAIRS COMMITTEE
MEMBER, RULES COMMITTEE
MEMBER, LABOR & MANAGEMENT COMMITTEE
MEMBER, ALASKA LEGISLATIVE COUNCIL

APR 27 1979

WORK DRAFT PAPER

WORK DRAFT PAPER

WORK DRAFT PAPER

Original sponsors: Duncan, Cotten
Hurlbert, et al

1 IN THE HOUSE

BY THE STATE AFFAIRS COMMITTEE

2

CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 240

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

ELEVENTH LEGISLATURE - FIRST SESSION

5

A BILL

6

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

10

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

11

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

12

CHAPTER 50. GENERAL STOCK OWNERSHIP CORPORATIONS.

13

ARTICLE 1. SUBSTANTIVE PROVISIONS.

14

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

17

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

23

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

25

Sec. 10.50.015. GENERAL POWERS. A corporation may

26

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

28

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

29

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

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

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

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

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

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

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

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

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

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

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

1 and regulation of the affairs of the corporation;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 (3) by the stockholders.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 of corporate name may be renewed for one year.

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

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

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

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

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

28 (1) the name of the corporation;

29 (2) the address of its registered office;

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

3 (4) the name of its registered agent;

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

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

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

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

17 (1) the name of the agent;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 value.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 ARTICLE 2. FORMATION OF CORPORATIONS.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 ARTICLE 3. APPLICATION FOR SHARES.

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

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

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

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

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

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

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

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

5 ARTICLE 4. AMENDMENT.

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

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

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

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

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

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

1 least 1,000 shareholders.

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

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

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

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

18 (1) the name of the corporation;

19 (2) the amendment adopted;

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

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

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

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

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

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

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

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

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

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

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

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