

ALASKA LEGISLATURE SPECIAL COMMITTEE / SUBJECTS 86/2

906 SCOMM32: AK GENERAL STOCK OWNERSHIP CORP. 1979-80 906

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

8 Sec. 10.50.400. EXECUTION OF RESTATED ARTICLES OF INCORPORATION.

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

13 Sec. 10.50.405. CONTENTS OF RESTATED ARTICLES OF INCORPORATION.

14 The restated articles of incorporation shall set out

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

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

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

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

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

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

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

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

19 ARTICLE 5. SALE OF ASSETS.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 ARTICLE 6. DISSOLUTION.

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

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

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

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

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

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

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

1 intent to dissolve shall set out

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 (1) the name of the corporation;

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

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

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

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

1 pending suit.

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

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

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

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

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

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

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

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

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

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

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

1 dissolution under a statement of intent to dissolve; or

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

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

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

26 (d) A corporation dissolved by the commissioner under the provi-
27 sions of this section may be reinstated by the commissioner at any time
28 within two years from the date of the certificate of involuntary disso-
29 lution whenever it is established to the satisfaction of the commis-

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

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

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

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

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

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

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

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

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

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

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

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

24 Sec. 10.50.540. JURISDICTION OF COURT TO LIQUIDATE ASSETS AND
25 BUSINESS OF CORPORATION. The superior court may liquidate the assets
26 and business of a corporation in the cases provided in AS 10.50.545 -
27 10.50.560.

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

1 business of a corporation when it is established

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

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

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

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

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

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

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

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

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

1 business and affairs should precede the entry of a decree of dissolu-
2 tion, the superior court may liquidate the assets and business of a
3 corporation.

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

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

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

25 Sec. 10.50.580. DISPOSITION OF ASSETS OR PROCEEDS FROM SALE OF
26 ASSETS. The assets of the corporation or the proceeds from a sale,
27 conveyance or other disposition of assets shall be applied to the ex-
28 penses of liquidation and to the payment of the liabilities and obli-
29 gations of the corporation. Remaining assets or proceeds shall be

1 distributed among shareholders according to their respective rights and
2 interests.

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

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

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

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

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

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

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

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

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

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

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

21 ARTICLE 7. GENERAL PROVISIONS.

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

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

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

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

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

23 Sec. 10.50.645. DEFINITIONS. In this chapter,

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

26 (2) "authorized shares" means the shares which the corpora-
27 tion may issue;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 (b) A copy of all annual reports, ballots, consent authorizations
23 and other materials relating to the shareholder ballots, published or
24 made available by any person to the shareholders of a general stock
25 ownership corporation, shall be filed with the administrator concur-
26 rently with its distribution to the shareholders. The administrator
27 shall have authority to review all documents submitted and make regula-
28 tions regarding content of shareholder materials to insure fairness,
29 completeness, and nondiscrimination.

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

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

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

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

22 (c) There is a special fund of the state known as the "Alaska General
23 Stock Ownership Corporation loan guarantee fund", which may not exceed
24 \$5,000,000, which shall be completely segregated from all other funds of the
25 state, and which shall be used by the commissioner of revenue to guarantee
26 loans made to the Alaska General Stock Ownership Corporation by lenders other
27 than the state solely for initial costs of the corporation and not for the
28 acquisition by the corporation of major investments. In guaranteeing a loan,
29 the commissioner of revenue shall review the loan for the purposes of ascer-

1 taining the general soundness of the proposed loan and guarding against fraud
2 and misrepresentation. The guarantee of a loan may not be for an amount in
3 excess of the unobligated balance of the fund at the time the guarantee is
4 made.

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

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

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

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

15 * Sec. 6. This Act takes effect immediately in accordance with AS 01.10.-
16 070(c).

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COMMITTEE SUBSTITUTE FOR HB 240

The general stock ownership corporation (GSOC) bill provided for the creation of a GSOC in Alaska. The corporation, taking advantage of new federal law, would be exempt from corporate income taxes. Income would be distributed annually to the shareholders and they would pay tax at their personal rate. The shareholders would be all the residents of Alaska as of the effective date of the bill and stock would be distributed to them free of charge. The GSOC would borrow funds to finance investment acquisitions.

House State Affairs Committee made extensive changes in the bill. The Committee Substitute creates an Alaskan GSOC and a new chapter of Alaska law to regulate it. The Committee addressed several policy problems with specific amendments described below.

CORPORATE DEMOCRACY

Alaska corporate law was perceived as inadequate for regulation of GSOCs because it tends to concentrate power in the corporate directors and, with the GSOCs broad stock ownership, provisions which insure director response to shareholders were required. To assure shareholder input to and control over the corporation and the board the Committee provided that:

1) 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 and return it by mail. This prevents proxy battles and allows each shareholder to act on his own behalf.

2) Shareholders may amend the articles of incorporation and bylaws and may place issues on the corporate ballot and nominate board candidates through a petition signed by 1,000 shareholders.

3) Board and shareholder meeting must be held in Alaska and may be teleconferenced.

4) Materials mailed to shareholders must be filed with the Commissioner of Commerce and penalties are provided for false or misleading information.

5) Derivative suits may be filed by the shareholders on behalf of the corporation where the directors fail to act.

6) The chairman and 3/4 of the board must be Alaskans.

7) The entire board may be removed by a majority vote of the shareholders and any director by a vote of one more than elected him.

8) The superior court may remove a director for fraud or dishonesty upon suit by the attorney general or 100 shareholders.

9) It is a crime for directors to make unlawful distributions or false statements regarding share values and stiff penalties are provided for wrongful denial of shareholder access to GSOC books.

POLITICAL INFLUENCE

Concerns were expressed that the GSOC could become a major political influence in Alaska. To reduce potential GSOC political activity the Committee provided that:

- 1) The articles and bylaws of the GSOC must be submitted to the legislature for approval.
- 2) The legislature retains the right to amend laws affecting GSOCs subject only to protections for GSOC creditors.
- 3) Endorsement of candidates or issues and expenditures of money by GSOCs for political activities including lobbying of the legislature is prohibited.
- 4) Incorporators are appointed by the Governor, Speaker and Senate President with the original board, named by the incorporators, standing for election at the first shareholder's meeting.

FINANCING

Concerns were expressed that the state might be committed to supply monies for GSOC financial support. To limit the financial commitment of the state the Committee provided that:

- 1) There is no commitment to finance GSOC investments and no special treatment for GSOC requests for financial aid from the state. Like any private corporation state financial assistance to the GSOC would require a full legislative act.
- 2) The fund to guarantee private credit for GSOC startup expenses is limited to \$5 million with review of commitments by the Commissioner of Revenue.
- 3) The Commissioner of Revenue does not have authority to invest surplus state funds in the GSOC nor may the permanent fund be so invested.

OWNERSHIP OF SHARES

HB 240 allowed an Alaskan to take his shares along upon leaving the state permanently. The only restriction was that when he sold the stock it must be sold to an Alaskan resident. This allowed outside shareholders.

Because of high residency turnover the Committee provided that shares may not be retained when a shareholder leaves Alaska, but must be sold. Federal law prohibits sales during the first five years unless the shareholder leaves Alaska. To discourage shareholders from leaving Alaska just to sell their shares all sales during this period must be made to the GSOC at book value. After five years shares of the GSOC may be freely traded within Alaska.

These amendments assure that only Alaskans will be shareholders of the Alaska General Stock Ownership Corporation.

GENERAL SUMMARY

The proposed Committee substitute creates a new chapter 50, Title X, of Alaska Statutes entitled "General Stock Ownership Corporations." This chapter governs the creation, operation and termination of all general stock ownership corporations organized in Alaska. Many of the provisions have been carried over or adapted from existing Alaska corporate law. The bill is divided into 10 sections.

- Section 1: This section contains the provisions of the new chapter 50 of Alaska Statutes, Title X, and constitutes the core of the Committee bill. It contains six articles which deal with shareholder rights and internal operation of the corporations (Article 1: Substantive Provisions), formation of general stock ownership corporations (Article 2: Formation of Corporations), amendment of articles of incorporation (Article 3: Amendment of Articles), sale of corporation assets outside the ordinary course of business (Article 4: Sale of Assets), voluntary and involuntary termination of the corporate existence (Article 5: Dissolution), and miscellaneous provisions such as filing fees, criminal penalties, and amendment of the legislation (Article 6: General Provisions).
- Section 2: This section prohibits the Commissioner of Revenue from investing surplus state funds in securities of general stock ownership corporations.
- Section 3: This section requires that all shareholder materials be filed with the Commissioner of Commerce at the time of distribution to the shareholders. In addition, the Commissioner is given authority to regulate concerning fairness, completeness and nondiscrimination of shareholder materials. The filing provisions coordinate with other sections of the Alaska securities laws making it a crime to file false or misleading materials with the Commissioner.
- Section 4: These three sections amend the criminal penalties provisions of section 1 of the bill
- Section 5: to conform to the new criminal code which becomes effective January 1, 1980. The provisions of section 1 are applicable upon signature by the governor and must therefor be amended as of January 1, 1980 to parallel the rest of the new criminal code.
- Section 6:

- Section 7: This section authorizes the governor to appoint nine persons to act as incorporators and the initial board of directors of the Alaska General Stock Ownership Corporation. This is the section which actually provides for the creation of a GSOC in Alaska. The section restricts share ownership of this corporation to Alaska residents and requires that shares be sold when a shareholder leaves the state or dies leaving his stock to an outsider. It also creates a special fund, not to exceed five million dollars, in the Dept. of Revenue to be used in guaranteeing private loans for the corporation's startup expenses.
- Section 8: Section 1 of the bill amends Rule 23.1 of the Rules of Civil Procedure, dealing with derivative suits by shareholders of a general stock ownership corporation. Because it is amending a rule of the courts this provision must be approved by a 2/3 vote of each house. To allow separation of the vote section 8 amends the court rule.
- Section 9: This section provides for an immediate effective date for the Committee bill.
- Section 10: This section provides for a January 1, 1980 effective date for sections 4-6 which amend the criminal sanctions in the bill to parallel the treatment provided in the new criminal code which also becomes effective January 1, 1980.

SECTION BY SECTION ANALYSIS

This analysis of House State Affairs Committee action on the Alaska General Stock Ownership Corporation legislation describes the provisions of Section 1 of the Committee draft as of April 19, 1979. Since many of the provisions of the draft are carried over wholly or in part from the Alaska Business Corporations Act (ABCA) there is included at the end of each section description a reference to the corresponding section of the ABCA, if any.

ARTICLE 1. SUBSTANTIVE PROVISIONS.

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

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

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

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

- .070. SERVICE OF PROCESS ON CORPORATION. In addition to designating the registered agent as agent for service of legal papers on the corporation this section allows the Commissioner of Commerce to be served on behalf of the corporation when the registered agent cannot be found. (AS 10.05.057).
- .075. CREATION AND ISSUANCE OF SHARES. This section allows the corporation to create and issue shares of no par value stock. The total number of shares available for issue must be stated in the articles of incorporation. GSOCs are prohibited from issuing "par value" stock since that concept, developed for the protection of shareholders, has no application in a corporation such as the GSOC where shares are to be distributed initially without payment by the shareholders.
- .080. CONSIDERATION FOR SHARES. The federal GSOC legislation requires that a GSOC have a charter providing for the issuance of "at least one share (of stock) to each eligible individual." In order to fulfill this requirement it appears that the first share of GSOC stock must be issued without charge to the shareholders. However, there does not appear to be any restriction in the federal legislation upon subsequent sales of stock by GSOCs except for the general limitations upon share ownership. In keeping with the Committee's desire for a generally applicable GSOC chapter provision is made for the subsequent sale of stock by GSOCs. Thus, this section allows the GSOC to issue shares without consideration or for a payment fixed in advance by a vote of the shareholders.

Sales of corporation stock by the corporation may not be made at a price in excess of book value if the shares sold are treasury shares, that is shares which have been issued and repurchased by the corporation. (AS 10.05.096).
- .085. PAYMENT FOR SHARES. Payment for shares may be made in cash, other property or services, but not in notes or future services. (AS 10.05.099).
- .090. JUDGMENT OF BOARD OR SHAREHOLDER AS TO VALUE OF CONSIDERATION CONCLUSIVE. This section allows the directors or the shareholders to conclusively determine the value of payment for shares in the absence of fraud. (AS 10.05.102).

- .095. EXPENSES OF ORGANIZATION, REORGANIZATION AND FINANCING. In sales of stock by a corporation shares entitled to the full protections of limited liability must be fully paid and nonassessable. This means that the full sales price for the stock has been received by the corporation. However, if the stock is sold through an underwriter the fees will come out of the sales proceeds before they are paid to the corporation. Likewise, the organizational expenses of the corporation may be paid out of stock sales before the proceeds are remitted to the corporation. This section clarifys that in such cases the shares are deemed to be fully paid. (AS 10.05.111).
- .100. CERTIFICATES REPRESENTING SHARES. This provisions sets out the requirements as to form of stock certificates which must be signed by the corporate officers. (AS 10.05.114)
- .105. INFORMATION REQUIRED TO BE STATED ON CERTIFICATE. The stock certificates or other evidences of ownership must include information regarding the person to whom they are issued, that they are no par value shares, and that the corporation is organized in Alaska. (AS 10.05.117).
- .110. FULL PAYMENT REQUIRED FOR CERTIFICATE. If payment is required for shares they may not be issued until full payment is received. (AS 10.05.120).
- .115. ISSUANCE OF FRACTIONAL SHARES. GSOCs may issue fractional shares of stock and these fractional shares hold dividend, voting and distribution rights equal to their fractional interest. It may be necessary for a GSOC to issue fractional shares in the situation where a shareholder leaves his stock to his heirs and there is more than one child beneficiary. (AS 10.05.123).
- .120. LIABILITY OF SUBSCRIBERS AND SHAREHOLDERS. This section, adopted directly from ABCA, limits the liability of shareholders and those who have agreed to purchase share to the amount which they agreed to pay to the corporation for the shares. Subsequent holders of the stock are protected if they received the stock in good faith. (AS 10.05.126).
- .125. BYLAWS. The board of directors adopts the initial bylaws of a GSOC subject to review and rejection by the legislature under section 330 of the draft bill. Subsequent bylaws may adopted, amended or repealed only by a vote of the shareholders.
- .130. MEETINGS OF SHAREHOLDERS. The time and location of the annual shareholders meeting is to be established in the bylaws. The specific place for the meeting may be set by the board. Special meetings of the shareholders may be called by the president of the corporation, the board or the holders of at least 500 shares. Shareholder meetings may be teleconferenced. (AS 10.05.138).

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

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

Shareholders may, by petition of 100 or more, nominate directors and place issues on the corporate ballot. In addition, the directors may place issues and candidates on the ballot by a majority vote. Shareholder information on board candidates and ballot issues is to be provided to the shareholders by the corporation and these materials will be filed with the Commissioner of Commerce and subject to the regulations and criminal penalties applicable thereto.

The directors may not propose to amend any proposal sponsored and approved by the shareholders within one year of the meeting at which the proposal was approved.

- .180. BOARD OF DIRECTORS. The board of directors is charged with management responsibility for the corporation and their compensation is to be fixed in the bylaws. At least 3/4 of the board must be residents of Alaska insuring that outside directors may never constitute a quorum of directors except when meeting to fill vacancies in directors seats until the next annual meeting of shareholders. (AS 10.05.174).

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

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

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

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

- .200. QUORUM OF DIRECTORS. A majority of the total number of directors fixed in the bylaws, articles or enabling legislation constitutes a quorum and action may be taken by a majority vote of a quorum. By allowing only $\frac{1}{4}$ of the board to be outsiders Alaskan control of the board is assured. One-quarter of the board can never constitute a majority of a quorum except in the event of a vacancy in which case the board must act to fill the vacancy. (AS 10.05.192).
- .205. PLACE AND NOTICE OF DIRECTORS' MEETINGS. Directors meetings may be held only in Alaska and regular meetings of the board may be held without notice. Special board meetings require notice specifying the purpose of the meeting. (AS 10.05.198).
- .210. PARTICIPATION BY TELEPHONE. Directors may participate in directors meetings by telephone if all the participants may hear and be heard by each other. (AS 10.05.199).
- .215. DISTRIBUTIONS. Some restrictions on corporate distributions are necessary because the limited liability feature of corporations prohibits creditors from levying against shareholders if the corporation distributes its way to insolvency. The traditional restraints which have been used to protect creditors of corporations are the devices of stated capital, capital surplus, earned surplus and retained earnings. Through these devices corporations are required to keep at least something in the till for creditors.

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

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

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

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

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

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

- 1) The corporation may make a distribution out of retained earnings.
- 2) If there are no retained earnings the corporation may make a distribution only if it meets a two pronged test:
 - a) The assets of the corporation, after the distribution are at least equal to $1\frac{1}{4}$ times its liabilities, AND
 - b) The current assets, after the distribution, are at least equal to the current liabilities (a "liquidity test").

If the average pretax income plus interest expense for the two preceeding fiscal years is not at least equal to the average interest expense for those years the current assets must be at least $1\frac{1}{4}$ times current liabilities.

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

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

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

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

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

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

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

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

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

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

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

- .300. SHAREHOLDERS' DERIVATIVE ACTION. This section allows shareholders to file an action on behalf of the corporation if those responsible inside the corporation fail to do so. Alaska Supreme Court Rule 23.1 provides for such an action, but does not specify the treatment of security for expenses or accounting of settlements. Because this section would amend a rule of court a 2/3 vote is required for passage and the provision is set forth separately in Section 8 of the bill.

This section allows the courts discretion to require security for expenses incurred in the prosecution of the derivative action. It requires court approval of any out of court settlement to insure that those prosecuting the suit may not simply be bought off. The proceeds of any successful action or settlement of a derivative suit must be accounted for to the court and the court is then authorized to award reasonable expenses to the parties.

- .305. FRAUDULENT TRANSFERS OF SHARES. Transferring or obtaining shares of the corporation by fraud is a felony.

ARTICLE 2. FORMATION OF CORPORATIONS.

- .310. INCORPORATORS. Incorporators are those persons who file the articles of incorporation to begin the corporation's existence. This must be done by at least three people over the age of 19. (AS 10.05.252).
- .315. ARTICLES OF INCORPORATION. This section sets out the minimum requirements of the articles of incorporation for general stock ownership corporations. The article provisions required by subchapter "U" of the Internal Revenue Code are included in this section as requirements for GSOCs organized in Alaska. Other provisions are carried over from ABCA. (AS 10.05.255).
- .320. FILING OF ARTICLES OF INCORPORATION. Articles of incorporation are to be filed with the Commissioner of Commerce who shall certify the filing and return one original of the articles to the corporation. (AS 10.05.258).
- .325. EFFECT OF ISSUANCE OF CERTIFICATE OF INCORPORATION. Upon issuance of the certificate the corporate life begins. (AS 10.05.261).
- .330. ARTICLES OF INCORPORATION AND INITIAL BYLAWS. This section provides for legislative review of the articles and initial bylaws. They must be submitted to the next session of the legislature and, if not disapproved within 60 days by concurrent resolution they are approved. Legislative disapproval may be overridden by a vote of the shareholders.

- .335. ORGANIZATION MEETING OF DIRECTORS. The incorporators shall call an organizational meeting of directors in the state for the purpose of adopting bylaws, electing officers and conducting other business necessary to the organization of the corporation. (AS 10.05.267).
- .340. NOTIFICATION OF ELIGIBLE SHAREHOLDERS. Since stock is to be distributed free of charge initially all Alaska residents must be notified of its availability. This section sets out the minimum notice requirements of weekly broadcast and publication for at least three month before stock distribution and monthly broadcast and publication for eleven months after distribution. These are minimum requirements only and the board of directors may determine that the corporation should take other steps to identify and notify potential shareholders.
- .345. CORPORATION NOT LIABLE TO SHAREHOLDERS. Although GSOCs are required to take reasonable steps to notify potential shareholders of their right to stock the burden of applying for stock lies with the resident and the corporation is not liable for failure to notify or issue stock to a potential shareholder. If a resident makes application for stock after the distribution of one or more dividends he loses his right to those dividends and is entitled to receive only those dividends declared and paid after the date upon which his stock was issued to him.
- .350. LATE APPLICATION FOR SHARES. Any individual who is eligible to receive an initial distribution of shares but who fails to apply for an issuance of stock may be issued a share at any time within one year of the original issue of stock upon application and payment of book value therefor. The one year period coincides with the period during which a shareholder may elect not to receive his stock and have his share cancelled. This cut off period protects the corporation and the other shareholders from those eligible residents who are not identified and who fail to identify themselves hoping to see how the corporation fares before applying for their stock.
- .355. PENALTIES FOR MISREPRESENTATION OF ELIGIBILITY AS SHAREHOLDER. The superior court is given jurisdiction to void stock issued to an ineligible individual who obtained his shares by fraud and allows the corporation to recover any distributions paid to such a shareholder.

ARTICLE 3. AMENDMENT.

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

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

ARTICLE 4. SALE OF ASSETS.

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

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

ARTICLE 5. DISSOLUTION.

GSOCs may be dissolved voluntarily by a 2/3 vote of a quorum of shareholders (.470) or by the Commissioner of Commerce (.525).

In a voluntary dissolution the question may be put to the shareholders upon action of the board or a petition of 100 shareholders (.470). Upon affirmative vote of the shareholders a statement of intent to dissolve signed by corporate officers (.475) is filed with the Commissioner of Commerce (.480). When the statement is officially filed by the Commissioner the corporation must cease doing business and wind up its operations (.465). However, the corporate existence continues while the corporation notifies creditors,

collects and liquidates assets and pays off its obligations (.485)(.490). When the business of the corporation has been wound up articles of dissolution (.510) are filed with the Commissioner (.515) and when certified the corporate existence ceases (.520). Voluntary dissolutions may be revoked at any time by a 2/3 vote of the shareholders (.495) in which case the corporation files a statement of revocation (.500) and the dissolution process is terminated (.505).

A GSOC may be dissolved involuntarily by the Commissioner of Commerce with 60 days notice for failure to file reports or pay fees, failure to maintain a registered agent or office or change either without notice, and unfilled board vacancies continuing beyond the allowable time (.525). A corporation can be reinstated within two years upon remedy of the violation.

The superior court may dissolve a GSOC (.53) and has jurisdiction to liquidate the corporation's assets (.535). The Attorney General may bring suit to dissolve the corporation where there was fraudulent incorporation or continual abuse of corporate authority (.525).

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

- 1) A shareholder where the board is deadlocked; the board is action in an illegal, oppressive, or fraudulent manner; the shareholders are deadlocked for two annual meetings; or, the corporation's assets are being misapplied (.540).
- 2) A creditor when the creditor's claim is unsatisfied and the corporation is insolvent (.545).
- 3) The corporation upon request to have a voluntary dissolution continued under court supervision(.550).
- 4) The Attorney General in conjunction with a suit for dissolution (.555).

The shareholders need not be a party to the action for liquidation (.560). The court has authority to appoint a qualified receiver (.600) for the corporation with power defined by the court (.580) to collect and sell its assets (.565)(.570). Proceeds are to be used to pay expenses allowed by the court (.585) and debts of the corporation with the remainder distributed to the shareholders (.575).

The receiver may sue and be sued (.590) and all claims against the corporation must be filed in a timely manner with the court or the receiver (.605). Liquidation may be terminated by the court (.610) but upon completion the court must enter a decree of dissolution (.615).

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

ARTICLE 6. GENERAL PROVISIONS.

- .620. AS 10.05 INCORPORATED BY REFERENCE. In order to reduce duplication this section incorporates by reference Sections .699 through .819 of ABCA (AS 10.05.699 - .819). These sections deal with requirements for annual reports to be filed with the Commissioner of Commerce, filing fees and charges, procedural provisions and forms, and powers of the Commissioner of Commerce.
- .625. FALSE STATEMENTS AFFECTING VALUE OF SHARES. An agent of a corporation who makes fraudulent statements regarding the value of shares is guilty of a misdemeanor.
- .630. DIRECTOR MAKING UNLAWFUL DIVIDEND OR DISTRIBUTION OF ASSETS. A director who concurs in a distribution designed to deceive creditors or shareholders is guilty of a misdemeanor.
- .635. RESERVATION OF POWER. Amendments to this chapter apply to all existing and future corporations organized under it.
- .640. DEFINITIONS. Many of the definitions in this section are carried over from ABCA and may also be found in AS 10.05.825. However, there are two significant new definitions:

Certificate as used in the context of "stock certificate" may mean something other than the actual certificate such as a receipt evidencing ownership. This definition has been broadened in order to allow for the possibility that the stock certificates themselves may never be issued, but that the stock records may be kept by the corporation itself as the evidence of ownership in a particular shareholder which ownership would be represented in the hands of the shareholder by a receipt. Such a receipt would be required to carry all the same information as is required on the certificate itself.

Resident is defined as a person who lives in Alaska and intends to remain here permanently. The definition allows for temporary travel or employment outside without loss of residency. If a dispute arises over residency all of the facts and circumstances indicative of permanent residency must be considered.



SCHOOL OF LAW

DAVIS, CALIFORNIA 95616

April 4, 1979

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

Dear Chairman Miller:

I am enclosing the promised specific, suggested amendments to SSHB 240 which are addressed to the questions of accountability of the Board, the rights of shareholders, and procedures for Board and Board Committee meetings. In each instance I have attempted to describe the content of the proposed amendment and to offer an explanation of why I hold the view that such an amendment would be desirable. I have then attempted to break the amendment down into its component ideas and to give the Committee an opportunity to vote them up or down. My further function in this regard is then to draft statutory language which carries into effect the decisions of your Committee.

A number of critical questions concerning SSHB 240 are not addressed in this transmission. We have yet to discuss the regulation of proxies, their content and the vexing issue of how they will be financed. If the legislature desires to influence these thorny problems, now is the only opportunity. Another unfinished item is the future political activities of the GSOC. We can anticipate substantial first amendment problems if we embark on a project to muzzle the directors in their individual capacities. If the directors can speak to the public, the limitation on the "corporation's political activities" is, at best, theoretical. Working on this problem should present quite a challenge!

Finally, there are the proposals I advanced on the first evening of my testimony regarding criminal liability of directors in certain instances. I will work on these in the course of the next week.

If I may offer a suggestion: As I spend more and more time with SSHB 240 and the Alaska Business Corporations Act the more I become convinced that the better course is not to amend the existing corporations code to make room for the GSOC, but to begin anew and design a fully developed Code to regulate the GSOC, a set of laws designed with the special attributes of a general stock ownership corporation in mind and not as an afterthought. This project sounds bigger than it will turn out to be. I sincerely believe that working with your staff people it could be accomplished in a matter of weeks, although I would prefer to have the summer months to fine-tune the statute but, in the final analysis, having come this far with you, I am the servant of the Committee.

I hope that this material proves of use to the Committee. When you have reached your decisions simply mail them back to me and I will sit down and draft the content of suggested legislation.

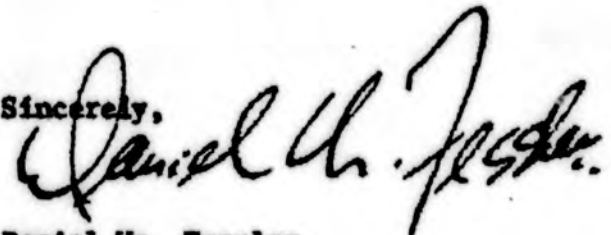
The Honorable Mike Miller
Chairman
State Affairs Committee

April 4, 1979

May I take this opportunity to thank you, the other members of the Committee, the various nonmembers who sat in on our discussions and the staff people for a splendid experience. People here have remarked that they have never seen me so energetic. One student commented that I seem to be following the "North Star." In any event, it has been an experience beyond the imagination of the scriptwriters for the "Paper Chase." I thank you all.

Best personal regards,

Sincerely,

A handwritten signature in dark ink, appearing to read "Daniel Wm. Fessler". The signature is fluid and cursive, with a large initial 'D' and 'F'.

Daniel Wm. Fessler
Professor of Law

DWF:hif

Enclosures

THE FOLLOWING DOCUMENT(S) MAY NOT FILM
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ORIGINAL.

1 TO: THE STATE AFFAIRS COMMITTEE OF THE ALASKA HOUSE OF
2 REPRESENTATIVES

3 FROM: Professor Daniel Wm. Fessler, King Hall, the Law School of the
4 University of California at Davis

5 SUBJECT: Suggested Amendments to Sponsor Substitute for House Bill 240:
6 "An Act Creating the Alaska General Stock Ownership Corporation;
7 and providing for an effective date."

8 DATE: April 4, 1979

9 Preliminary statement: At the conclusion of my appearance before the
10 Committee last week I agreed with the members to prepare a series of written
11 proposals for your consideration. Depending upon the sentiment of this body I
12 will be directed in the drafting of amendments to the Sponsor's Substitute for
13 House Bill No. 240. As will quickly become evident, it is time for the
14 Committee to make some basic choices concerning the nature of the General Stock
15 Ownership Corporation which it may wish to pass to the floor for consideration
16 in the whole House. The suggestions which follow represent nothing beyond the
17 scope of our discussion last week unless specifically indicated as "NEW." In
18 each instance I will set forth the proposal and a brief statement illustrating
19 specifically what it is that I am suggesting be accomplished if you elect to
20 follow my recommendation.

21 I. SUGGESTIONS DESIGNED TO MAKE THE BOARD OF DIRECTORS MORE RESPONSIVE TO THE
22 DESIRES OF SHAREHOLDERS OF THE GENERAL STOCK OWNERSHIP CORPORATION:

23
24 My perception of the need for revision: The pending proposal is that the
25 legislature create the ACSOC as a "private" corporation essentially regulated
26 under the terms of Chapter 05 of the Alaska Statutes (The Alaska Business
27 Corporation Act). As I indicated in my testimony, this general statute is a
28 bare bones version of the "Model Act" which is, in turn, fashioned after the

1 Illinois Business Corporation Act. Its essential feature is to give a corpora-
2 tion a license to create a very strong board of directors, a board which is
3 effectively insulated from shareholder pressure during its tenure in office.

4 This is a crucial assertion. Once this corporation is created and
5 deemed "private" the legislature will part with its major chance to have an
6 effective voice in the behavior of such an instrumentality. If the GSOC is a
7 successful economic venture the power of that unchecked body will rise
8 dramatically and its ability to pursue conduct which subsequent legislatures
9 may deplore is a real danger which ought to concern this present body.

10 Why is the board of directors of a corporation organized under a
11 statutory framework such as the Model Act virtually unchecked in these circum-
12 stances? To begin our assessment we should think in terms of the content of
13 three documents: the statutory framework, the articles of incorporation, and
14 the bylaws. It is no accident that the Kelso Report presents this legislature
15 with a package containing a recommended content for each of these essential
16 documents. Here is a point the Kelso Report does not stress: the legislature
17 has control only over the statutory framework (the enabling legislation now
18 before the Committee). Once the GSOP is formed by this legislation, the
19 incorporators (See, Sec. 10.50.010(a), p. 1 SSHB 240) will adopt the articles
20 of incorporation and it will then be beyond the powers of this or subsequent
21 legislatures to interfere with the content of that fundamental document. Once
22 the incorporators have elected themselves as the initial board of directors
23 (See, Sec. 10.50.030(b), p. 3 SSHB 240), they will act in that capacity to
24 adopt the content of the bylaws. Again, it will be too late for the legisla-
25 ture to exert its will. Thus unless changes are made you will have surrendered
26 to these nine appointed individuals sole determination over the content of the
27 documents which will become the framework in which the corporation will
28 actually be structured and function. Your only chance for effective influence

1 is with respect to the content of the statute. If you adopt the current
2 content of House Bill 240, you will hand these appointed individuals (only a
3 majority of whom need be Alaskans) a blank check to narrow their accountability
4 to all of the citizens of this state in their capacities as shareholders in the
5 GSOC. The express terms of SSAB 240 already give to this Board the strong
6 power position of "classification" meaning that the directors will serve three
7 year terms with the nine members segregated into three classes so that only one
8 third of the membership is up for election by the shareholders at each annual
9 meeting. (See, 10.50.030(a)(b), pp. 2-3 SSAB 240). There is a pragmatic
10 advantage in this proposed classification in that insures to the incumbent
11 board the continuity inherent in the fact that a working majority of the Board
12 will not be facing election. There is also a grave danger. Such a Board
13 could ignore the wishes of a majority of the shareholders and yet maintain
14 effective control and management over the corporation for two years. The
15 people in their role as shareholders would be powerless. This body in its
16 role as representative of the people would be equally powerless. True, it
17 could deny the GSOC cooperation to the extent that it was requesting the
18 legislature to call for an election to authorize a state guarantee of GSOC debt
19 instruments (although see the Memorandum of Attorney General Gross under date
20 of March 20, 1979, raising a question as to whether recourse to the people
21 would actually be required). Yet this is a very indirect way of attempting to
22 discipline the Board or correct the excesses of that body as viewed from the
23 perspective of the legislature. I do not wish to belabor the point: if the
24 members of this House feel that a different distribution of power as between
25 the shareholders and the board, and as between the GSOC and the government of
26 Alaska is desired . . . now is the time to act and the content of the enabling
27 legislation is the proper forum for that action.

28 // // // //

1 PROPOSALS DESIGNED TO INCREASE THE ACCOUNTABILITY OF INDIVIDUAL DIRECTORS AND
2 THE BOARD AS AN ENTITY:

3
4 PROPOSAL NUMBER ONE: THAT DIRECTORS BE SUBJECT TO REMOVAL BY ORDER OF A
5 SUPERIOR COURT UPON SUIT BY 100 OR MORE SHAREHOLDERS OF THE GENERAL STOCK
6 OWNERSHIP CORPORATION.

7 I propose that the enabling legislation be amended to
8 provide that a superior court may, at the suit of 100 share-
9 holders or more or upon petition of the attorney general,
10 remove from office any director in case of fraudulent or
11 dishonest acts or gross abuse of authority or discretion
12 with reference to the corporation and may bar from reelection
13 any director so removed for a period prescribed by the court.
14 In any such proceeding the corporation ~~should be~~ made a
15 party to the action.

16 Explanation: This proposal is based upon Section 304 of the 1977
17 California Act with two important modifications: first, I propose that
18 ~~now~~ alter the "standing requirement" from California's ["... share-
19 holders holding at least 10 percent of the number of outstanding
20 shares. . . ."] to one hundred shareholders. To follow the California
21 percentage would be most unreal given the total diffusion of share-
22 holdings in the GSOC (one share per resident). It would require a
23 petition of 40,000 Alaskans or more! In any other private corporation it
24 is perfectly possible for a single shareholder to own 10% or more of the
25 outstanding shares and thus have standing under the California Act.
26 Requiring one hundred Alaskans to join in this suit should ensure that a
27 single angry shareholder could not inaugurate a vexatious complaint. The
28 second modification is to specially grant to the Attorney General standing

1 to initiate this removal litigation. I do this because while the attorney
2 general may well have personal standing as a resident of Alaska to join in
3 such a suit we must recognize that litigation may be costly and that
4 frequently only the office of the attorney general may have the human and
5 financial resources to prosecute a removal suit upon which may depend the
6 welfare of the corporation (and with that, welfare and interests of
7 Alaskans).

8 Now it must be immediately evident that this type of removal can only
9 be for the most gross violations of the fiduciary responsibilities assumed
10 by a director and that the statute only grants standing to potential
11 litigants and subject matter jurisdiction to the superior courts.
12 Naturally, the plaintiffs would have to prove the allegations of their
13 complaint by a preponderance of the evidence before the superior court
14 would be warranted in exercising the power vested in it by this statute.
15 I should add that it is quite possible that if the legislature does not
16 act to provide for removal of directors in circumstances such as are
17 covered by this proposal, a superior court might entertain such suits on
18 a theory that such a grave matter is within the court's inherent jurisdic-
19 tion. There is precedent. See, California Fruit Growers' Assn. v.
20 Superior Court, 8 Cal.App. 711, 97 Pac. 769 (1908). In my opinion, this
21 is not a desirable alternative because the legislature would be without
22 control over the vital questions of who had standing to initiate the
23 litigation and what would be deemed sufficient grounds for this grave
24 remedy.

25 DIRECTIONS TO YOUR DRAFTING AIDES: Does the Committee favor
26 in principle the concept of having directors subject to
27 removal by order of a superior court? YES ____ NO ____ If
28 "yes," is the Committee in favor of the proposed formula

granting standing only to one hundred or more shareholders?

YES ____ NO ____ . Does the Committee favor granting standing to the Attorney General of Alaska to initiate a removal suit?

YES ____ NO ____ .

PROPOSAL NUMBER TWO: THAT ANY DIRECTOR OR THE ENTIRE BOARD MAY BE REMOVED BY THE SHAREHOLDERS WITHOUT CAUSE.

I propose that at any annual meeting or a special meeting properly noticed for the purpose at which a quorum is present, a majority of the shares voting in person or by proxy may remove the entire board and elect replacement directors. I further propose that the shareholders have power to remove less than the entire board provided there are appropriate safeguards to minimize the chance that an angry faction of shareholders could oust a single director.

Explanation: Both California and Delaware have found it expedient to pass recent legislation enabling shareholders who have lost confidence in the Board of Directors to remove either the entire Board or individual members at a meeting especially called and noticed to entertain such a motion, and that such removal may be for any cause deemed sufficient by a majority of the shares. In both California and Delaware, the statutes grant the right of removal to an absolute majority of the shares (50% plus 1 share). Again, we must recognize that there may be individuals or institutional shareholders who, though a handful in number, would command an absolute majority of the outstanding shares. Such a potential coalition of large shareholders is a strong check upon the Board of Directors. Unfortunately, there will be no such potential shareholder

1 coalition in the CSOC. We must deal with the fundamental characteristic
2 of a corporate entity, the shares of which are held in lots of one . . .
3 and by more than 400,000 individuals.

4 The Kelso Report recognizes the problem of human inertia inherent in
5 such diffuse shareholdings when it proposes to set a quorum for share-
6 holder attendance at annual and special meetings at one-third of the
7 shares voting either in person or by proxy (an absentee ballot). At any
8 meeting at which such a quorum is ascertained to be present, a vote of a
9 majority of that quorum is sufficient to elect directors. Simple arith-
10 metic will reveal that a simple majority of one-third is one-sixth of the
11 shares plus one. Such a scheme is permitted by Sec. 10.05.153 of the
12 Alaska Business Corporation Act if the articles of incorporation are so
13 drafted. I favor this aspect of the proposed articles contained in the
14 Kelso Report because I fear that setting a higher quorum requirement might
15 preclude the shareholders from effectively meeting. How then does this
16 guide us as to the machinery for removal of directors by shareholder vote?
17 I propose that the entire board might be removed for any reason either at
18 an annual or special meeting of shareholders for which notice of such a
19 proposal had been given (as provided in Sec. 10.05.141) upon the vote of a
20 majority of a quorum of the shares present in person or by proxy.

21 If the shareholders desire to remove less than the entire board, we
22 have a different problem. Here is a danger that a special interest group
23 or other faction might attempt to gang up on a single director for his or
24 her policies and seek to accomplish this at a special meeting which may
25 well be attended by fewer shares than were present at the annual meeting
26 which elected the targeted director. We can guard against this possibility
27 by drafting the statute to provide that in the event that there is an
28 attempt to remove less than the entire board, the resolution shall fail

1 unless the number of shares cast for removal exceeds the number of shares
2 which originally elected the director. Thus if he was elected by a
3 majority of 261,000 shares at an annual meeting, a special meeting noticed
4 to entertain a removal resolution would not accomplish that objective
5 unless 261,001 shares voted "yes" (in person or by proxy) on that question.
6 If the director was appointed (as in the case of the initial Board), or
7 elected by the Board to fill a vacancy arising by death, incapacity, or
8 resignation mid-term, I would propose that a simple majority of a quorum
9 would be sufficient to remove that director.

10 DIRECTIONS TO YOUR DRAFTING AIDES: Does the Committee favor
11 in principle the concept of having directors susceptible of
12 removal by vote of the shareholders? YES ____ NO ____ . If
13 so, is the Committee content with the suggested formula for
14 that removal? YES ____ NO ____ .
15

16 PROPOSAL NUMBER THREE: THAT THE ENABLING ACT REGULATE THE STANDING OF
17 SHAREHOLDERS TO INAUGURATE ACTIONS AGAINST DIRECTORS OR OFFICERS BROUGHT
18 FOR THE BENEFIT OF THE CORPORATION (SHAREHOLDER'S DERIVATIVE ACTIONS).

19 I propose that the enabling act be amended to regulate
20 the standing of shareholders to inaugurate actions seeking
21 declaratory relief or money damages as against officers and
22 directors of the GSOC for the benefit of the corporation
23 (shareholder's derivative actions); lodge discretion in the
24 superior court respecting whether and in what amount a security
25 bond for expenses of litigation should be required of such a
26 plaintiff; preclude non-judicially approved out-of-court
27 settlements of such actions; and, provide for an accounting
28 to the corporation of any proceeds received by the litigating

1 shareholder(s) whether by judgment, settlement, or compromise.

2 Explanation: One of the most important developments in the past half
3 century in seeking to hold directors and officers accountable for harm
4 they bring upon the corporation is the concept of the shareholders' action
5 or derivative suit. If you adopt the hypothesis that the Board or certain
6 of its members is guilty of action or inaction which has brought great
7 harm to the GSOC and which violates the duties of care or loyalty to the
8 corporation, it is unrealistic to assume that those very directors will
9 authorize or encourage corporate counsel to bring an action naming them as
10 defendants! For this reason it is necessary to give individual share-
11 holders the right to bring the litigation in the name of the corporation.
12 Any recovery of money damages goes to the corporate treasury, not to the
13 litigating shareholder (save for reimbursing him/her for the costs of the
14 litigation).

15 Nearly every jurisdiction permits such actions and most regulate the
16 conduct of such litigation by statute. Alaska is one of the few juris-
17 dictions which permits but does not regulate by statute. Fortunately, the
18 Supreme Court has acted to fill this void by providing in Rule 23.1 of the
19 Civil Rules certain regulations for derivative actions by shareholders.
20 (Added by Supreme Court Order 258, November 16, 1976.) The Alaska rule is
21 predicated upon and nearly identical to Rule 23.1 of the Federal Rules of
22 Civil Procedure. In my opinion, it does not go far enough in policing
23 derivative actions by shareholders in the context of the General Stock
24 Ownership Corporation.

25 The matters which should be covered by statute include:

26 * Who among the shareholders may bring such an action?

27 I suggest that standing be limited to a shareholder who held his or
28 her share at the time of the transaction of which complaint is made

1 else an unscrupulous shareholder might merely "buy a lawsuit." And
2 standing should be limited to a shareholder or shareholders with
3 sufficient resources to be able to vigorously prosecute the action
4 since a judgment will bind all of the other shareholders by its
5 result.

6 * Should the shareholder be required to exhaust intra-corporate
7 remedies (e.g., make a demand upon the Board that it bring the
8 action) as a precondition to commencing the action?

9 Modern statutes do not require the shareholder to make demands upon
10 the Board if that would be a futile act (e.g., if the directors are
11 named as the defendants it is unlikely that they would respond to the
12 demand by directing suit against themselves). Thus I would propose
13 that the shareholder be required to make demand upon the Board for
14 corrective action or to allege in his complaint before the superior
15 court the reasons why he deems such a demand to be a futile gesture.

16 * Should the shareholder be required to post a bond as a
17 precondition to maintaining any derivative action?

18 Defending a derivative action is time consuming and expensive and
19 there is always a danger that a shareholder will bring an ill-
20 founded or vexatious action simply to harass management or in the
21 hope that he will be "bought off" with an out-of-court settlement.
22 To minimize the instance of such "strike suits," many states in the
23 1940's adopted the practice of requiring a litigating shareholder to
24 post a bond as a precondition to maintaining the action, a bond which
25 would hold the defendants harmless against their costs of litigation
26 (including attorney's fees) in the event the shareholder should fail
27 to prevail. There is no current Alaska law on this point. Rule 23.1
28 is silent. My suggestion is that the Committee borrow the best

1 features of modern California and New York statutes on striking a
2 balance on this vital question. Section 800 of the California Act
3 leaves the trial court with substantial discretion to entertain a
4 timely motion from defendants for the posting of such security. Thus
5 the court could consider the nature of the plaintiff's allegations
6 and project the likelihood of success. It would then exercise sound
7 discretion in requiring that a bond be posted or in denying the
8 request of the defendants. If a bond is required the court has
9 further discretion to determine the amount of the bond. California
10 presently limits the bond to a sum not more than \$50,000. This
11 ceiling is viewed as posing some protection against a judge who would
12 simply price the plaintiff out of court with a bond requirement
13 substantially beyond reasonable means. Again, the California Act
14 provides that the amount of the bond may be raised or lowered (subject
15 to the \$50,000 ceiling) at any time during the course of the litigation
16 upon the motion of either party or upon the court's own
17 initiative as it seems the interests of fairness to require.

18 * Should the shareholder who has commenced a derivative action be
19 allowed to compromise or "settle out of court"?

20 No, not in my opinion. This is very dangerous and tolerates "strike
21 suits"—actions commenced with no solid ground but with the hope that
22 management will tire of the time and expense of defending the litigation
23 and "buy plaintiff off." New York is far ahead of other jurisdictions
24 in warding off this danger. No action in the nature of a
25 derivative suit may be settled or compromised without the approval of
26 the court in which it was commenced and without notice to the other
27 shareholders. This last feature is essential to protect the interests
28 of both the court and the other shareholders. The court is protected

1 for a judicially approved settlement precludes any shareholder from
2 attempting to relitigate the same questions. The notice requirement
3 permits other shareholders to come forward and object either to the
4 terms of the proposed settlement or to offer to take up the suit and
5 carry it forward in the event of an afterarising unwillingness of the
6 original litigant.

7 * Should the litigating shareholder in all circumstances be forced
8 to account to the corporation for any proceeds realized from such
9 an action?

10 Yes. In all jurisdictions this is mandatory if the court returns a
11 judgment against the defendant officers or directors. All proceeds
12 of the judgment are paid into the corporate treasury on the theory
13 that the action has vindicated harm done to the corporation and not
14 the litigating shareholder. The shareholder receives an allowance
15 from these funds sufficient to cover the costs of the litigation.
16 But what if the resolution is by way of an informal settlement? This
17 is the dark side of this type of litigation. Frequently shareholders
18 are offered a tidy sum (e.g., \$20,000) if they will dismiss their
19 suit. They keep the money and none of the other shareholders are the
20 wiser. New York simply prevents this. There can be no informal
21 settlement. Any dismissal predicated upon a compromise must be pre-
22 sented to the court, its terms noticed to the other shareholders, and
23 any proceeds paid into the corporate treasury.

24 If all of these features are incorporated into the enabling act, I am
25 of the view that Alaska will have the best of all possible positions with
26 the virtue of derivative actions and none of the vices inherent in strike
27 litigation.

28 / / / / /

1 DIRECTIONS TO YOUR DRAFTING AIDES: Does the Committee favor in
2 principle the concept of permitting derivative actions by share-
3 holders in the General Stock Ownership Corporation? YES ____ NO ____.

4 If "yes," does the Committee favor regulating the derivative action
5 by special provisions in the enabling act? YES ____ NO ____.

6 If "yes," does the Committee favor:

7 * The suggested standing rules? YES ____ NO ____.

8 * The suggested provision on exhaustion of intra corporate
9 remedies? YES ____ NO ____.

10 * The suggested provision on the posting of a security bond
11 for the defendants' costs of litigation? YES ____ NO ____.

12 * The suggestion that there be no compromise or dismissal of
13 such an action without court approval? YES ____ NO ____.

14 * The suggested provision that the litigating shareholder in
15 all circumstances be forced to account to the corporation
16 for any proceeds realized from such a derivative action?

17 YES ____ NO ____.

18
19 11. PROPOSALS DESIGNED TO INCREASE THE INFORMATION AVAILABLE TO AND THE
20 POTENTIAL ROLE OF SHAREHOLDERS IN THE GENERAL STOCK OWNERSHIP CORPORATION.

21
22 PROPOSAL NUMBER FOUR: THAT THE ENABLING ACT BE AMENDED TO PROVIDE
23 LIABILITY FOR AN OFFICER OR AGENT WHO WRONGFULLY REFUSES TO ALLOW A SHARE-
24 HOLDER, OR A SHAREHOLDER'S AGENT OR ATTORNEY, TO EXAMINE AND MAKE
25 EXTRACTS FROM CORPORATE BOOKS AND RECORDS.

26 I propose that an officer or agent who refuses to allow
27 a shareholder or the agent or attorney of a shareholder to
28 examine and make extracts from corporate books and records

1 of account, minutes, and record of shareholders, for a
2 proper purpose be made liable to the aggrieved shareholder
3 for the penal sum of \$1,000 in addition to other damages or
4 remedy given such shareholder by law.

5 Explanation: Currently Sec. 10.05.240 of the Alaska Business
6 Corporations Act confers upon shareholders a right to examine books and
7 records. Section 10.05.243 provides a penalty for any officer or agent
8 of the corporation who refuses to permit this inspection. Unfortunately,
9 the penalty there provided (10% of the value of the shares owned by the
10 aggrieved shareholder), is not much of a sanction in the context of the
11 GSOC. In other contexts it may be very effective for it is obvious that
12 the larger the number of shares owned by the aggrieved shareholder the
13 more substantial are the consequences of denying the right of inspection.
14 But a shareholder in the GSOC can never own more than 10 shares. Thus I
15 propose to follow the current content of Alaska law in all particulars
16 save for suggesting that a flat penal sum of \$1,000 be established as the
17 sanction.

18 The effective use of any of the shareholder checks upon management
19 which are set forth in Suggestions One, Two and Three depend upon an
20 effective ability to gain information as to the conduct of corporate
21 affairs by the officers and the Board. Thus an effective right of
22 inspection is essential. Indeed, the Committee might desire to see the
23 penal sum imposed for each day there is a wrongful denial of the statutory
24 right of inspection conferred by Sec. 10.05. 240.

25 DIRECTIONS TO YOUR DRAFTING AIDES: Does the Committee favor the
26 concept of a statutory right of shareholders in the General Stock
27 Ownership Corporation to inspect corporate books and records?

28 YES ____ NO ____ . Should this sum be levied: (a) per

1 refusal _____; or, for each day of a refusal _____?

2
3 PROPOSAL NUMBER FIVE: THAT THE SHAREHOLDERS BE GIVEN THE POWER TO
4 INITIATE AMENDMENTS TO THE BYLAWS.

5 The current statutes in Alaska provide that the articles
6 may restrict the power to adopt, amend, and repeal bylaws to
7 the Board of Directors. The Kelso Report recommends articles
8 which do so restrict the power to the Board and it is likely
9 that this is what a Board would do. I propose that the
10 enabling act be amended to reserve a power of adoption,
11 amendment or repeal of the bylaws to the vote or written
12 assent of shareholders entitled to exercise a majority of the
13 voting power of the GSOC. I would also propose that the act
14 permit the Board to enjoy this power save for the fact that
15 the Board could not, on its own motion, repeal or amend a
16 bylaw which had been adopted by vote of the shareholders.

17 Explanation: As was dramatically illustrated by the content of the
18 Kelso Report, the document which is most likely to contain the crucial
19 provisions which govern the structure and operation of the General Stock
20 Ownership Corporation is the bylaws. A significant feature in what is, in
21 my opinion, the excessive grant of power to the Board in SSHB 240 is the
22 potential for vesting this power exclusively in the Board. The balance
23 can be redressed by simply amending the enabling act to provide for a
24 sharing of this power in the case of a General Stock Ownership Corporation.

25 DIRECTIONS TO YOUR DRAFTING AIDES: Does the Committee favor
26 the concept of permitting the shareholders to adopt, amend or
27 repeal bylaws in the General Stock Ownership Corporation?
28 YES _____ NO _____. If "yes," does the Committee favor the

1 suggestion that this power be vested by statute in both the
2 shareholders and the Board? YES ____ NO ____.

3
4 III. PROPOSALS DESIGNED TO IMPROVE THE QUALITY OF BOARD DECISION MAKING.

5
6 PROPOSAL SIX: THAT THE BOARD BE ENABLED TO TRANSACT BUSINESS BY USE OF
7 A CONFERENCE TELEPHONE OR SIMILAR COMMUNICATIONS EQUIPMENT.

8 Given the significant distances as barriers to travel within the
9 State of Alaska plus the strong likelihood that a minority of the
10 directors will be non-Alaskans, I propose that the enabling act be
11 amended to authorize the board to transact business by use of a
12 conference telephone or similar communications equipment so long as
13 all members participating in such a meeting can hear one another.

14 Explanation: One of the difficulties inherent in a body of nine members
15 is to physically gather them in the same place at the same time for the trans-
16 action of Board business. In large corporate entities this is frequently
17 difficult. The result has been a tendency to permit the Board to divide
18 itself into smaller working committees or an "executive committee" to which is
19 delegated most of the Board's function and authority. There is a price paid
20 for such a solution. Decisions are made without the participation of the full
21 membership. Yet a non-classical solution is at hand, and from my personal
22 observation, a very familiar aspect of life in Alaska--the use of modern
23 communications equipment to hold board meetings notwithstanding the fact that
24 the members are not in the same place at the same time. Both California and
25 Delaware now permit this and the reported experience is very satisfactory. I
26 would suggest that such a provision be made a permanent amendment to Sec.
27 10.05.198 for all corporations formed in Alaska. It certainly merits adoption
28 in the special case of the GSOC.

1 DIRECTIONS TO YOUR DRAFTING AIDES: Does the Committee favor the
2 concept of permitting the directors to hold meetings via the use
3 of conference telephones or similar communications equipment with
4 participation in such a meeting constituting presence in person?

5 YES ____ NO ____.

6
7 PROPOSAL NUMBER SEVEN: THAT REGARDLESS OF COMMITTEE ASSIGNMENTS EVERY DIRECTOR
8 HAVE A RIGHT TO ATTEND THE MEETINGS OF ANY COMMITTEE AND BE PRIVY TO ALL BOOKS
9 AND RECORDS.

10 Current Alaska law permits the Board to divide itself into
11 committees including an executive committee and to delegate board
12 functions and authority. I have no quarrel with this concept but
13 do suggest that the enabling act be amended to make it clear that
14 regardless of committee assignments any director shall have the
15 right to attend (but not participate in) any meeting of any
16 committee and to have access to books and records pertaining to
17 the activities or responsibilities of such committees as may,
18 from time to time, be created.

19 Explanation: Again we illustrate what one jurist has termed the
20 "law of laws" . . . that every advantage is purchased at a price. The desire
21 to streamline and specialize the functions of directors is understandable but
22 the price is the exclusion of those directors who are not appointed to key
23 committees. Sometimes this problem assumes serious dimension as those
24 directors who are perceived by the majority as raising vexing questions and
25 airing dissenting views are simply shunted aside by exclusion from committee
26 assignments. The legislature can go some distance toward minimizing this harm
27 by providing by statute a right of each director to attend the meeting of any
28 committee and to have access to books and records.

1 DIRECTIONS TO YOUR DRAFTING AIDES: Does the Committee favor
2 the concept of granting directors a statutory right to attend
3 the meetings of any Board committee and to have access to minutes
4 and records? YES ____ NO ____.

5
6 END OF THIS TRANSMISSION — SEPARATE LETTER BEING TRANSMITTED NEXT.
7

THE PRECEDING DOCUMENT(S) MAY NOT FILM
LEGIBLY BECAUSE OF POOR QUALITY OF THE
ORIGINAL.

MEMORANDUM

TO: Representative Jim Duncan, Chairman
Budget and Audit Committee
Alaska State Legislature

FROM: Arlon R. Tussing

RE: Questions about an Alaska General Stock
Ownership Corporation (GSOC)

I am submitting these preliminary comments at the request of Mr. Milt Barker of the Division of Legislative Finance. They are based upon my review of the following materials:

1. Louis O. Kelso, et al, Design of an Alaskan General Stock Ownership Plan, Volume I. (February 15, 1979);
2. Kelso & Co., (untitled) documents on British Petroleum's interest in TAPS (December 7, 1978);
3. Alaska House of Representatives, Sponsor Substitute for House Bill No. 240 (March 6, 1979);
4. Wilmer, Cutler & Pickering, Federal Constitutional Issues Presented by Alaska's GSOC (December 15, 1978);
5. Senator Mike Gravel, various speeches, Congressional Record citations on GSOCs (1978 & 1979).

MEMORANDUM

Page Two

I regret that I was not able to present these comments in person to the House State Affairs Committee on March 20, 1979, but I hope that they will be of use to you. Please let me know if you have any further questions.

QUESTIONS ABOUT AN ALASKA GENERAL STOCK
OWNERSHIP CORPORATION

1. GSOCs in General. Louis Kelso's concept of the General Stock Ownership Corporation (GSOC) has much in common with socialist and welfare state programs for redistributing wealth.* Instead of directly expropriating or taxing away property for redistribution, however, Kelso's approach would use the government's credit to finance specially created corporations, whose shares would be dealt out to eligible citizens. The individual shareholder in GSOC thus could regard any dividends he received as earnings from his ownership of private capital rather than as a government handout.

Like confiscation or condemnation, GSOCs would create no new wealth for society. The money used to create the GSOC would have to be bid away from private investors who did not have the same access to the government's power to tax (or, in the case of a federally-sponsored GSOC, to print money) in order to make good on their obligations. Because

* Kelso's accusations against present-day capitalism could well have come from a handbook of revolutionary Marxism. His program, it appears, is a remedy for "endemic poverty . . . misuse of technology, resource waste, despoilation of the environment, declining personal freedom, increasing lawlessness and civil disorder, the waning of liberal education, the civil rights impasse, the youth revolt, urban concentration, rising public and private debt, public loss of confidence in leadership and the seemingly irreversible advance toward a totalitarian society." [Kelso, et al, p. 16].

the "losers" would be widely scattered and impossible to identify individually, however, we could expect this kind of property redistribution to be less painful and less socially disruptive than more traditional socialist schemes.

There is nothing novel or radical in this aspect of the GSOC. Private individuals and corporations already benefit from a wide variety of federal and state loan and guarantee programs: each of them reallocates resources and redistributes wealth as surely (if not as visibly) as would taxation or government ownership of industry. GSOCs would no more revolutionize or redeem the capitalist system than do the existing programs of government credit for housing, agriculture, shipbuilding, rural electrification or education. The value of the GSOC concept to Alaska must be judged not by the sweeping claims of its inventors, but rather by whether specific proposals are properly tailored to the state's specific problems.

2. GSOCs in Alaska. The GSOC concept (like that of "Alaska, Inc.") appeals to legislators and other Alaskans because it may be a Constitutional way to use the state's petroleum revenue to increase the wealth of present resident Alaskans without permanently swelling the size of state government or attracting a host of immigrants to share in the windfall. In my opinion, something like a GSOC as contemplated in H.B. 240 may indeed be the best way to give

Alaskans a personal stake in the state's natural resource income. But the GSOC concept is still a very rough one, and there are a number of reservations and cautions even apart from technical legal issues, that I would like to raise here. As the Legislature deliberates further on the GSOC concept, I would expect to raise other problems and perhaps to offer some suggestions for improving the pending legislation.

3. Widely distributed ownership vs. broad-based control. GSOCs may very well be a means of widening ownership in Alaska industry, but widely distributed ownership is not the same thing as broadly-based control. It is a truism that corporations with widely dispersed share ownership are the easiest for small groups of insiders to control. They are practically immune both to stockholder revolts and to hostile takeover attempts (which are often the only way in which an ineffective management can be replaced).

Small shareholders normally do not take an interest in corporate affairs, and it is usually not worth their time to do so. Most shareholders express any dissatisfaction with management by selling their stock, not by becoming active in corporate politics. Otherwise, they routinely give their proxies to management, or simply decline to vote at the annual meeting. This experience in ordinary business corporations is duplicated in "non-profit" economic enterprises

with widely spread ownership, such as cooperatives, credit unions, savings and loan associations, and mutual insurance companies.

By limiting any person's interest to ten shares of GSOC stock, the proposed legislation assures that shareholders generally will not have a large enough stake to warrant their taking an active part in the corporation's affairs on the basis of economic self-interest. This limitation on individual share ownership, the absence of cumulative voting and the staggered terms of office for directors, almost guarantee a self-perpetuating management.

In this setting, the alternative of vigorous controversy among the shareholders is hardly more attractive, however. Any activists, apart from the insider group itself, are likely to be more concerned with personalities and politics than with prudent business management. Alaska can already offer a few prominent examples of broadly-based corporations with such a malady.

4. Motivations of the Directors. Since the officers and directors of a GSOC will not be selected on the basis of a substantial ownership position, and may not obtain such a position, the legislature should consider in advance just what kind of people will constitute this self-perpetuating insider group, and what their motivations are likely to be. Such a group is more likely to be moved by considerations

other than profitability than a board and management representing large shareholders, for example:

Their outside business interests;

Officers' salaries, directors' fees, and other perquisites;

Size and prestige of the organization;

Their social and business philosophies, ideals and ideologies; and

The approval of other businessmen, the media, or the community at large.

These are on the whole the considerations that motivate the boards of many "charitable" enterprises: "non-profit" hospitals, for example, are notorious for bad management, inefficiency, and petty corruption. None of the foregoing motives is necessarily reprehensible, and they are not always at odds with the interest of the shareholders in maximizing profits or capital gains. But as a small shareholder I would prefer to have a few large shareholders on the board looking at the bottom line, and, in their own self-interest looking askance at inefficiency, empire-building or gold-

plating.

5. Vulnerability to speculative promotions. Alaska is a fertile field for promotional schemes, and GSOCs may be just made to order for them. The big private gains in industrial development projects are not made on the operating profits of ownership (Kelso's theories notwithstanding), but from promotional and organizational expenses: land speculation and sales; engineering, consulting, legal and underwriting fees; and the purchase and sale of corporate assets --- all of which can be capitalized into a GSOC's initial "investment."

The Board of Directors of GSOCs will almost inevitably be made up of people who make their living, or at least many of whose friends make their living, by such pursuits. Those who were strangers to that way of life when they were appointed or elected as Directors would not remain so for long. It is likely that an Alaska GSOC of the kind presently contemplated would be tempted to invest in projects that sophisticated profit-motivated capitalists would shun, and for which the legislature would not have been willing to appropriate public funds.

6. State Loan Guarantees. One seeming advantage of the GSOC concept is that the state money backing GSOC credit would bring a double return to Alaska --- once from the investment earnings the government earns on money in the

guarantee fund, and once again from the citizens' GSOC dividends. But state funds needed to back GSOC debt would be considerable (in the case of the proposed BP Pipeline purchase, over \$1 billion), they would be immobilized for any other purpose, and they would truly be at risk --- particularly if GSOCs were capitalized with 100 percent debt, as seems to be necessary if the corporations are to be created without an appropriation of equity capital from the general fund.

The proposed legislation is not clear who is to propose and approve state loan guarantees for the purchase of GSOC assets. There seems to be a Constitutional question whether such a guarantee could be authorized by the Legislature, or even by a popular referendum, but that is an issue outside my area of competence.

7. Investment in TAPS. A share in TAPS is one of the worst investments an Alaska GSOC could possibly make. If something went wrong at the Prudhoe Bay field, with the pipeline or terminal, or in the world petroleum market --- the state could simultaneously be faced with (1) a drastic decline in the oil revenues that support state government and underpin the Alaska economy, (2) an obligation to make good on defaulted pipeline bonds (either out of a guarantee fund or out of reduced general fund revenues), and (3) loss of the value of GSOC stock in the hands of individual Alaskans.

The fact that such a scenario is even imaginable makes it very unlikely that the present holders of pipeline bonds would agree to their assumption by an Alaska GSOC, or that they take any state loan guarantee seriously. As some big lenders have stated about state backing for gas pipeline debt, they would justifiably expect Alaska to try to recover any loss by means of higher taxes on oil and gas production, thereby further undermining the soundness of the lenders' other loans to the owners of TAPS. The same considerations apply, with only slightly less force, to GSOC investments in other facilities for transporting North Slope hydrocarbons.

If the Legislature were to authorize creation of a GSOC, however, there will surely be a clamor (which may well become irresistible) for it to finance or buy into the Alaska Highway gas pipeline, a North Slope gas conditioning plant, the Alpetco refinery, a Fairbanks petrochemical plant, or a natural gas liquids pipeline on terms that no rational private investor would accept. This is my own main concern about GSOCs today. But, for some Alaskans, it may well be a point in their favor.

ALASKA
GENERAL STOCK OWNERSHIP
CORPORATION

Sponsor Substitute for House Bill No. 240
Sponsor Substitute for Senate Bill No. 170

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TWO POINTS:	AGSOC is not a "Giveaway" AGSOC is not State Ownership
BILL SUMMARY:	State Legislation
SPONSOR SUBSTITUTE:	AGSOC Legislation

HOW IT WORKS

THE ALASKA GENERAL STOCK OWNERSHIP CORPORATION

- * A corporation is formed and each resident of Alaska is issued one share of stock.
- * The corporation borrows money to invest in profitable projects, having assured itself of the investment's soundness.
- * Private lenders will be willing to provide loans because they can be secured by the assets of AGSOC and, if necessary subject to legislative approval, by a state guarantee.
- * The loan proceeds will be invested in the project or projects, making AGSOC an owner and thus making each Alaskan (as a shareholder of AGSOC) an owner.
- * Earnings from the project will be used to pay off the loan.
- * Dividend payments can be made to AGSOC shareholders as soon as profits are made. Once the loan is paid off, all profits from the corporation's investments will be paid out to the shareholders.

EXPLANATION: FEDERAL GSOC PROVISIONS

Federal law provides income tax advantages to certain broadly owned corporations. These companies, known as General Stock Ownership Corporations (GSOCs), are exempt from corporate income tax. GSOCs are privately owned corporations designed to leverage the typical citizen into capital ownership. As such the stock is to be distributed free of charge and investments purchase entirely through borrowed funds. As the loans are paid down from investment earnings equity is built into the shareholders.

Charter Provisions

To qualify as a GSOC a corporation must be specially chartered by a state and have a single class of stock distributed to each qualified state resident. Transfers of stock must be limited to the earliest of five years from issue or the shareholder's death or emigration from the state. No shareholder may own or acquire more than 10 shares.

GSOC Taxation

The GSOC is exempt from corporate income taxes, but its shareholders must report their share of GSOC income personally. GSOC income is computed like that of other corporations with special treatment for tax credits. Audit adjustments are included in income of the corporation for the year during which they are finally determined. Net losses are subject to a 10 year carryover and investment credit and recapture is prorated to the shareholders.

Shareholder Taxation

GSOC shareholders are taxed on their share of GSOC income. If a shareholder disposes of his stock GSOC income will be prorated on a daily basis. The shareholder's stock basis will be increased by GSOC income attributed to him and reduced by cash distributions. Since GSOC shareholders are attributed GSOC income distributions from the GSOC are generally tax free. Distributions greater than attributed income are nontaxable to the extent of the shareholder's basis and the excess taxed as capital gains. To assure shareholders have cash for taxes on their share of GSOC income GSOCs must distribute 90% of taxable income by January 31. Noncompliance will subject the GSOC to a 20% tax on the distribution deficiency. To assure payment of taxes the GSOC must withhold 25% of each distribution. The amount withheld is a credit against shareholder income taxes. Individuals not required to pay taxes (because of insufficient income) may avoid withholding on GSOC distributions.

STATE
GUARANTY

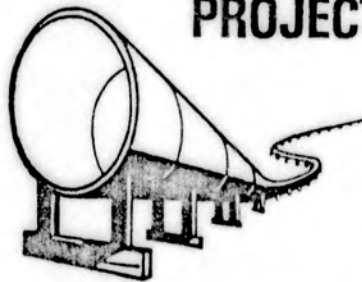


CORPORATION



BENEFICIARIES

ENERGY
PROJECT



TAX TREATMENT OF GENERAL STOCK OWNERSHIP CORPORATIONS

THERE HAS BEEN CONFUSION OVER THE EXTENT TO WHICH GENERAL STOCK OWNERSHIP CORPORATIONS RECEIVE SPECIAL TAX TREATMENT. IN A GSOC THE CORPORATE INCOME TAX IS ELIMINATED AND THE INCOME OF THE CORPORATION IS TAXED DIRECTLY TO THE SHAREHOLDERS AT THEIR OWN PERSONAL RATES.

SIMILAR TAX TREATMENT HAS APPLIED TO SMALL CORPORATIONS FOR MANY YEARS. A CORPORATION WITH 10 OR FEWER SHAREHOLDERS MAY ELECT TO BE TREATED AS A "SUBCHAPTER S" CORPORATION. IT IS THEN EXEMPT FROM THE CORPORATE INCOME TAX AND THE CORPORATION'S INCOME IS TAXED TO THE SHAREHOLDERS IN MUCH THE SAME MANNER AS IN A GSOC. IN FACT, THE PROVISIONS OF INTERNAL REVENUE CODE "SUBCHAPTER S" WERE USED AS A MODEL IN DRAFTING THE GSOC TAX LAW.

THUS, THE GSOC TAX BENEFITS ARE NEW AS APPLIED TO CORPORATIONS WITH A LARGE NUMBER OF SHAREHOLDERS, BUT SIMILAR PROVISIONS HAVE BEEN IN EFFECT WITH RESPECT TO SMALL CORPORATIONS FOR SOME TIME.

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.

2

ALASKA
GENERAL STOCK OWNERSHIP CORPORATION

BILL SUMMARY

Federal law requires state authorization of general stock ownership corporations receiving special tax treatment under Subchapter "U" of the Internal Revenue Code. The bill creates the Alaska General Stock Ownership Corporation (AGSOC). This corporation is a completely private for profit corporation which will operate under the Alaska Business Corporations Act to the extent consistent with the AGSOC act. The shares of the AGSOC will be owned and voted by the citizens of Alaska with each resident holding a share of stock.

The bill directs the Governor to appoint incorporators to form the AGSOC and sets forth the following:

- 1) Board membership limitations assuring Alaskan control;
- 2) Federal requirements for corporate articles;
- 3) Stock distribution to all Alaska residents;
- 4) Penalties for fraudulent acquisition of AGSOC stock;
- 5) One year statute of limitations on AGSOC challenges;
- 6) Financing for AGSOC startup costs; and,
- 7) Technical amendments required to Alaska statutes.

The corporation is designed to have as its shareholders existing Alaskan residents. Stock will be distributed to eligible individuals without cost. Investments by the AGSOC will be made through the use of borrowed funds and the earnings from those investments used to retire the loan and distribute dividends to the shareholders. Except for minor exemptions the AGSOC will be subject to the same rules as all other Alaska corporations.