

ALASKA LEGISLATURE SPECIAL COMMITTEE / SUBJECT FILES 8672

907 SCOMM32: AK GENERAL STOCK OWNERSHIP CORP. 1979-80 897

DETAILED EXPLANATION

The bill creates a new Chapter 50, entitled "Alaska General Stock Ownership Corporation", within Title 10, the Corporations and Associations title, of Alaska Statutes. The act contains nine sections which may be summarized as follows:

Section 1 sets forth those areas where the AGSOC differs from a typical Alaska business corporation organized under Chapter 5 of Title 10. To the extent that these provisions do not conflict with the provisions of Chapter 5, the Alaska Business Corporations Act, Chapter 5 will apply;

Section 2 includes the corporation among those organizations eligible to receive secured loans from the Permanent Fund;

Section 3 allows the investment of surplus state funds in bonds of the AGSOC;

Section 4 exempts the AGSOC from registration under the Alaska securities laws while providing protection from fraud;

Section 5 creates a one year statute of limitations on suits brought to challenge legality of the AGSOC;

Section 6 makes the provisions regarding eligibility for stock ownership "nonseverable" in order to assure that if this fundamental section is found unconstitutional the entire law will be voided;

Section 7 makes fraud or misrepresentation in obtaining or selling shares of the AGSOC a Class C felony; and,

Sections 8 and 9 provide effective dates immediately following the Governor's signature for most of the legislation.

ANALYSIS: SECTION 1

Section 1 of the bill constitutes the primary legislative section. It creates a new chapter, Chapter 50, of the Alaska Statutes, Title 10, setting forth technical requirements for the Alaska General Stock Ownership Corporation. The Chapter is divided into nine sections dealing with creation of the AGSOC, federally required charter limitations, board of directors, notification of shareholders' eligibility, limitations on corporate liability, restrictions on application for shares, fraud penalties, corporate dividends and definitions. A section by section analysis of Chapter 50 follows.

50.010. ALASKA GENERAL STOCK OWNERSHIP CORPORATION CREATED.

This section directs the Governor to appoint nine people as the incorporators and initial board members of the Alaska General Stock Ownership Corporation. These nine people, a majority of whom must be Alaskans, will adopt corporate articles and by-laws and file with the state to create the corporation as required under the Alaska Business Corporations Act. The bill allows the appointment of some non-Alaskan directors to provide flexibility in obtaining special expertise.

The status of the general stock ownership corporation is made clear by this section. AGSOC is not and may not be considered to be an agency, instrumentality or political subdivision of the State of Alaska. This parallels the federal statute which provides that a GSOC shall be treated as a private corporation and not as a governmental unit. The section also clarifies AGSOC status in relation to other statutes by requiring that it comply with the provisions of Subchapter U of the Internal Revenue Code and the Alaska Business Corporations Act. To the extent that the AGSOC authorizing legislation is not inconsistent with Chapter 5 of Alaska Statutes Title 10, AGSOC will be subject to all the rules applicable to any other Alaska business corporation.

50.020. ARTICLES OF INCORPORATION.

Federal law requires certain charter provisions for general stock ownership corporations and these are set out as requirements for the articles of incorporation of the Alaska General Stock Ownership Corporation. Each of the subsections in .020 set forth a different requirement which must be included in the AGSOC articles.

Subsection 1 provides that the AGSOC may issue only one class of stock which impliedly must be voting common stock.

Subsection 2 provides that stock may be issued only to a certain class of individuals. The group to whom stock may be issued, a closed class of original issue shareholders, are those people who fulfill two tests:

- a) They were residents of Alaska, as defined by the definition Section .900, as of the effective date of the legislation which, under Section 8 of the bill, will be the day following the Governor's signing; and,
- b) They remain residents of Alaska until the shares are issued.

50.900 defines resident 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.

Subsection 3 provides that at least one share of stock must be issued to each eligible resident unless that person elects within one year not to receive the stock. The legislation contemplates issuance of shares to eligible individuals free of charge with corporate investments financed entirely with borrowed funds. The one year period allows shareholders who do not wish to receive stock for whatever reason to reject their share, but this election not to receive stock is irrevocable and once made may not be changed.

Subsection 4 provides for limitations on the transferrability of the stock so that shares may not be sold or used as security for a loan during the first five years unless the shareholder dies or moves out of the state. Shares may only be transferred to another Alaska resident and then only if that person would not own more than ten shares of AGSOC stock after the transfer. Corporations and other artificial persons may not be shareholders. Finally, in order to protect minors, shares may not be transferred until the shareholder reaches 18.

Subsection 5 provides that the corporation shall qualify as a general stock ownership corporation subject to the special tax provisions of Subchapter U of the Internal Revenue Code.

Subsection 6 provides for a limitation on investments which the corporation may purchase. The corporation may not invest in assets acquired by it or for its benefit through the power of eminent domain. This is not to imply that the AGSOC has the power of condemnation since that power may be exercised only by the government. The limitation is designed to prevent the AGSOC from acting in collusion with an agency or local government to acquire a going business from an unwilling seller. It is not intended to prevent the purchase at arm's length of a business where a portion of the seller's assets may have been acquired by condemnation. The AGSOC would not be prevented from investing in a project where some minor portion of the assets must be acquired through eminent domain if the State or local government determines that the exercise of its condemnation power is appropriate. Such a situation might occur should the AGSOC become involved in the construction of a major pipeline.

Subsection 7 provides the AGSOC with a right of first option to purchase, at a price not less than book value, any stock offered for sale during the first five years of the corporation. The terms and conditions for exercise of this right will be set forth in detail in the corporate bylaws and a notice of the restriction will appear on the stock certificates or receipts.

The five year period for the right of first option parallels the time during which shareholders are prohibited from selling their stock. Only a limited number of shares will become available for sale during this period of time and it is unlikely that an organized market for AGSOC stock will develop during this period. Discretion is left with the corporation to pay prices higher than book value for the stock, but it is likely that the directors will determine that book value is the appropriate price.

Since shareholders who become non-residents during the five year period of transfer restrictions may be able to sell their stock at a high price in an uncontrolled market emigration might be encouraged. The option by the corporation provides a controlled market during the transfer restriction period and allows time to structure the full public market which will develop after the transfer restrictions lapse.

50.030. BOARD OF DIRECTORS.

This section sets out the provisions for AGSOC directors which differ from those applicable under Alaska Statutes Title 10, Chapter 5. The nine incorporators serve as the original board of directors and are divided into three groups in accordance with AS 10.05.186, except that only one-third of the directors will stand for election at the first annual meeting, one-third at the second annual meeting and one-third at the third annual meeting. Thereafter each director will serve for a term of three years as provided in AS 10.05.186. None of the other provisions of the Alaska Business Corporations Act regarding directors are changed and the normal rules of Chapter 5 apply to the AGSOC.

50.040. NOTIFICATION OF ELIGIBLE SHAREHOLDERS.

Since stock is to be distributed free of charge 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 months 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. The AGSOC might want to compile mailing lists from various sources to develop a list of potential shareholders while in the bush it might be appropriate for it to hire census personnel to locate and identify eligible Alaskans.

50.050. CORPORATION NOT LIABLE TO SHAREHOLDERS.

This section makes it clear that although the AGSOC is 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.

50.060. LATE APPLICATION FOR SHARES.

The legislation provides that stock is to be issued to all qualifying residents and the corporation directed to use reasonable efforts to identify potential shareholders. The burden of application is upon the resident. Those residents who are identified or who identify themselves will have one year in which to elect not to receive stock. To protect against those eligible residents who are not identified and fail to identify themselves hoping to see how the corporation fares before applying for their stock, a final cutoff date is provided after which distributions of stock will be made only upon payment to the corporation of book value.

50.070. PENALTIES FOR MISREPRESENTATION OF ELIGIBILITY AS SHAREHOLDER.

This section provides a civil right of action against individuals who obtain stock through fraud or misrepresentation and who sell stock on the same basis. It allows the stock to be voided, dividends to be recovered with interest and costs of the suit to be paid by the defendant.

50.080. DIVIDENDS OF THE CORPORATION.

Under the rules of the Alaska Business Corporations Act a corporation may pay dividends only out of earned surplus, the retained earnings of the corporation. Since the AGSOC is required by federal law to distribute 90% of its taxable income to its shareholders on an annual basis it may be necessary to distribute a dividend in excess of earned surplus. Such a situation can arise because accounting for tax purposes and for purposes of the corporation's books may not and are not required to be the same. For this reason an exception to the general rule of Chapter 5, Title 10, is required allowing the AGSOC to distribute dividends as required to meet the terms of Internal Revenue Code Subchapter U except where such distribution would cause the corporation to become bankrupt or when the corporation is already bankrupt. Bankruptcy in this situation means when the corporation is unable to meet its current obligations.

50.090. EXEMPTION FROM AS 10.05

This section exempts the AGSOC from the provisions of the Alaska Business Corporations Act which requires \$1,000 of paid in capital before operation of the corporation commences.

50.100. LOAN GUARANTEE FUND.

This section establishes a fund within the Department of Revenue which is to be used to guarantee loans to the AGSOC by private lenders. This fund is intended to provide security for private credit to be used by the AGSOC for its startup expenses such as the costs of stock issue and the investigation of potential investments.

50.900. DEFINITIONS.

This section defines the terms used in Chapter 50. Especially important is the definition of resident since that definition will determine who is eligible to receive AGSOC stock without charge.

Introduced: 3/6/79
Referred: Commerce

1 IN THE SENATE

BY COLLETTA, STIMSON AND FAHRENKAMP

2 SPONSOR SUBSTITUTE FOR SENATE BILL NO. 170

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 ELEVENTH LEGISLATURE - FIRST SESSION

5 A BILL

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

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

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

10 CHAPTER 50. ALASKA GENERAL STOCK OWNERSHIP CORPORATION.

11 Sec. 10.50.010. ALASKA GENERAL STOCK OWNERSHIP CORPORATION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 Sec. 10.50.03 BOARD OF DIRECTORS. (a) The corporation shall be
28 governed by a board of directors. A majority of the members of the
29 board of directors shall be residents of the state at all times during

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 Sec. 10.50.900. DEFINITIONS. In this chapter,

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

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

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

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

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

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

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

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

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

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

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

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

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

1 is void in its entirety.

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

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

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

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

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1 IN THE HOUSE

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

2 SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 240

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 ELEVENTH LEGISLATURE - FIRST SESSION

5 A BILL

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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28 governed by a board of directors. A majority of the members of the
29 board of directors shall be residents of the state at all times during

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

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

20 Sec. 10.50.050. CORPORATION NOT LIABLE TO SHAREHOLDERS. Registra-
21 tion as a shareholder of the corporation is a responsibility solely of
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23 corporation. The corporation may not be held liable for

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5 the payment of the book value of the shares.

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

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

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

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5 of the state known as the "Alaska General Stock Ownership Corporation
6 loan guarantee fund" which shall be completely segregated from all other
7 funds of the state, and which is a trust fund for the uses and purposes
8 of this section.

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

15 Sec. 10.50.900. DEFINITIONS. In this chapter,

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17 General Stock Ownership Corporation;

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

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

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

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

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

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

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

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

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

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

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

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

1 is void in its entirety.

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

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

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

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

ALASKA GENERAL STOCK OWNERSHIP CORPORATION

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

FORMATION OF THE AGSOC

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

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

AGSOC SHARES

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

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

SHAREHOLDER POWERS

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

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

DIRECTORS AND OFFICERS

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

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

OTHER PROVISIONS

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

SECTION BY SECTION ANALYSIS

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

ARTICLE 1. SUBSTANTIVE PROVISIONS.

- .005. PURPOSES. This section makes it clear that, unless the enabling legislation for a GSOC provides otherwise, the corporation may engage in any legal business. (ABCA 10.05.003).
 - .010. GENERAL STOCK OWNERSHIP CORPORATIONS. This section makes it clear that corporation organized under chapter 50, Title 10, are general stock ownership corporations subject to Internal Revenue Code Subchapter "U" and are not agencies of the state for any purpose.
 - .015. GENERAL POWER. This section grants to GSOCs the powers of normal corporations to conduct business. Two changes have been made in adapting the ABCA provisions to GSOCs.
 - 1) There is a limitations in (4) preventing a GSOC from investing in property "acquired by it, or for its benefit, through the right of eminent domain" This limitation prevents GSOCs from acting in collusion with an agency or local government to acquire a going business from an unwilling seller. GSOCs are not prevented from investing in projects where some minor portion of the project is acquired through condemnation if the local government determines that the exercise of its condemnation power is appropriate.
 - 2) The power to establish stock bonus plans is deleted from subsection (15) because of the special nature of GSOCs and the limitations on share ownership would make it difficult for a GSOC to adopt a qualified stock bonus plan for its employees. If the GSOC desires to have its employees benefit from growth in the value of GSOC stock the corporation could adopt a funded "phantom stock" program. (ABCA 10.05.009).
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- .020. INDEMNIFICATION OF OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS; INSURANCE. This section is carried over unchanged from the ABCA and allows the corporation to indemnify its directors or employees for expenses and fines incurred as a result of their actions on behalf of the corporation if they acted in good faith. Indemnification is disallowed in derivative suits where the defendant is guilty of negligence or misconduct in his duties unless the court determines the indemnification is proper. The corporation may purchase insurance on behalf of its directors and employees for claims against them arising out of their corporate positions. (ABCA 10.05.010).
- .030. DEFENSE OF ULTRA VIRES. Meaning "beyond the power" an ultra vires act is one which the corporation did not have authority to perform. This section, carried over from the ABCA, provides that this lack of corporate power can be asserted by a shareholder, the corporation, or the attorney general. It may not, however, be asserted by another party to a transaction with the corporation as grounds for failing to perform. (ABCA 10.05.018).
- .035. CORPORATE NAME. This section requires that a GSOC include in its corporate name the words "general stock ownership corporation" or an abbreviation thereof. In addition, the name may not be misleading or deceptively similar to the name of another corporation doing business in Alaska. (ABCA 10.05.021).
- .040. RESERVATION OF CORPORATE NAME. This section allows a person or corporation to reserve a specific name for a general stock ownership corporation for a period of two years with a renewal period of one year. Reservation of a name might be used where an individual seeks to establish a GSOCs by initiative petition or where an existing GSOC seeks to change its name upon the approval of its shareholders. The name may be reserved by this section during the period in which the necessary activities are undertaken to make the name effective. (ABCA 10.05.024, .027, and .033).
- .045. FOREIGN GENERAL STOCK OWNERSHIP CORPORATIONS. General stock ownership corporations chartered in another state and doing business in Alaska are subject to the rules of the Alaska Business Corporations Act (AS 10.05).
- .050. REGISTERED OFFICE AND REGISTERED AGENT. The registered agent is the agent for the corporation upon whom legal papers may be served. This provision requires that the corporation maintain a registered office and agent within the state. (AS 10.05.045)

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

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

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

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

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

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

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

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

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

- .175. CORPORATION BALLOT. Voting at meetings of shareholders will be by ballot rather than through the normal corporate vehicle of proxies. The ballot will be prepared by the corporation subject to review for fairness by the Commissioner of Commerce. It will be mailed to each shareholder with the notice of the shareholders' meeting and voted by mailing it back to the corporation before the date of the meeting.
- Shareholders may, by petition of 1,000 or more, nominate directors and place issues on the corporate ballot. In addition, the directors may place issues and candidates on the ballot by a majority vote. Information on board candidates and ballot issues is to be provided to the shareholders by the corporation and these materials will be filed with the Commissioner of Commerce and subject to the regulations and criminal penalties applicable thereto.
- .180. BOARD OF DIRECTORS. The board of directors is charged with management responsibility for the corporation and their compensation is to be fixed in the bylaws. The chairman and at least 3/4 of the board must be residents of Alaska insuring that outside directors may never constitute a quorum of directors except when meeting to fill vacancies in directors seats until the next shareholder meeting. Officers or employees of the corporation may not serve on the board of directors. (AS 10.05.174).
- .185. NUMBER OF DIRECTORS. The minimum number of directors is three and the number is to be fixed in the bylaws except that the original number is fixed by the enabling legislation. If the bylaws are silent the number fixed in the enabling legislation is the proper number. The number of directors can be changed through a bylaw amendment.
- The board members serve for two year terms and they are to be divided into classes with only half the board standing for election at any one annual meeting. This staggering of the board members' terms provides for some continuity of management on the board of directors. (AS 10.05.177).
- .190. ELECTION OF DIRECTORS. Directors are to be elected at the annual meetings and each director hold office until his successor is elected and qualified. This prevents gaps in board membership except upon death or incompetance of a board member. (AS 10.05.183).
- .195. VACANCIES. Vacancies in the board caused by death, resignation or incompetance may be filled by a majority vote of the remaining directors. Directors elected by the board to fill a vacancy must stand for election by the shareholders at the next shareholders' meeting and are elected to fill the remaining portion of the directors position originally filled by vote of the board. No vacancy may continue for more than 6 months or until the next shareholders' meeting. (AS 10.05.189).

- .200. QUORUM OF DIRECTORS. A majority of the total number of directors fixed in the bylaws, articles or enabling legislation constitutes a quorum and action may be taken by a majority vote of a quorum. By allowing only $\frac{1}{4}$ 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 $1\frac{1}{2}$ times its liabilities, AND
 - b) The current assets, after the distribution, are at least equal to the current liabilities (a "liquidity test").

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

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

.220. DISTRIBUTIONS IN PARTIAL LIQUIDATION. Distributions in partial liquidation are special distributions which reduce the capital value of the corporation. They are distributions out of capital rather than earnings. These distributions may be made only upon a $2/3$ vote of the shareholders and must be identified as distributions in partial liquidation. (AS 10.05.207).

.225. CERTAIN LOANS PROHIBITED. Loans by the corporation to its officers or directors are prohibited. (AS 10.05.213).

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

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

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

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

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

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

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

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

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

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

ARTICLE 2. FORMATION OF CORPORATIONS.

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

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

ARTICLE 3. APPLICATION FOR SHARES.

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

ARTICLE 4. AMENDMENT.

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

- .370. PURPOSES FOR WHICH ARTICLES MAY BE AMENDED. This section lists some, but not all, of the legal purposes for which the articles may be amended. (AS 10.05.273).
- .375. PROCEDURE TO AMEND ARTICLES OF INCORPORATION. The board of directors or the shareholders can propose amendments to the articles of incorporation, but the articles may only be amended upon a 2/3 majority vote of a quorum of shareholders.
- .380. ARTICLES OF AMENDMENT.
- .385. FILING OF ARTICLES OF AMENDMENT.
- .390. EFFECT OF CERTIFICATE OF AMENDMENT.
- These three sections provide that an amendment approved by the shareholders to the articles of incorporation must be filed with the Commissioner of Commerce in the same manner as the original articles of incorporation and once certified by the Commissioner the amendment becomes effective. These sections are adopted directly from AS 10.05.285, .288, and .291 respectively.
- .395. RESTATED ARTICLES OF INCORPORATION.
- .400. EXECUTION OF RESTATED ARTICLES OF INCORPORATION.
- .405. CONTENTS OF RESTATED ARTICLES OF INCORPORATION.
- .410. FILING OF RESTATED ARTICLES OF INCORPORATION.
- .415. EFFECT OF ISSUANCE OF RESTATED CERTIFICATE OF INCORPORATION.
- These five 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 5. SALE OF ASSETS.

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

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

ARTICLE 6. DISSOLUTION.

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

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

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

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

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

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

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

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

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

ARTICLE 7. GENERAL PROVISIONS.

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

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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.

DETAILED EXPLANATION

The bill creates a new Chapter 50, entitled "Alaska General Stock Ownership Corporation", within Title 10, the Corporations and Associations title, of Alaska Statutes. The act contains nine sections which may be summarized as follows:

Section 1 sets forth those areas where the AGSOC differs from a typical Alaska business corporation organized under Chapter 5 of Title 10. To the extent that these provisions do not conflict with the provisions of Chapter 5, the Alaska Business Corporations Act, Chapter 5 will apply;

Section 2 includes the corporation among those organizations eligible to receive secured loans from the Permanent Fund;

Section 3 allows the investment of surplus state funds in bonds of the AGSOC;

Section 4 exempts the AGSOC from registration under the Alaska securities laws while providing protection from fraud;

Section 5 creates a one year statute of limitations on suits brought to challenge legality of the AGSOC;

Section 6 makes the provisions regarding eligibility for stock ownership "nonseverable" in order to assure that if this fundamental section is found unconstitutional the entire law will be voided;

Section 7 makes fraud or misrepresentation in obtaining or selling shares of the AGSOC a Class C felony; and,

Sections 8 and 9 provide effective dates immediately following the Governor's signature for most of the legislation.

ANALYSIS: SECTION 1

Section 1 of the bill constitutes the primary legislative section. It creates a new chapter, Chapter 50, of the Alaska Statutes, Title 10, setting forth technical requirements for the Alaska General Stock Ownership Corporation. The Chapter is divided into nine sections dealing with creation of the AGSOC, federally required charter limitations, board of directors, notification of shareholders' eligibility, limitations on corporate liability, restrictions on application for shares, fraud penalties, corporate dividends and definitions. A section by section analysis of Chapter 50 follows.

50.010. ALASKA GENERAL STOCK OWNERSHIP CORPORATION CREATED.

This section directs the Governor to appoint nine people as the incorporators and initial board members of the Alaska General Stock Ownership Corporation. These nine people, a majority of whom must be Alaskans, will adopt corporate articles and by-laws and file with the state to create the corporation as required under the Alaska Business Corporations Act. The bill allows the appointment of some non-Alaskan directors to provide flexibility in obtaining special expertise.

The status of the general stock ownership corporation is made clear by this section. AGSOC is not and may not be considered to be an agency, instrumentality or political subdivision of the State of Alaska. This parallels the federal statute which provides that a GSOC shall be treated as a private corporation and not as a governmental unit. The section also clarifies AGSOC status in relation to other statutes by requiring that it comply with the provisions of Subchapter U of the Internal Revenue Code and the Alaska Business Corporations Act. To the extent that the AGSOC authorizing legislation is not inconsistent with Chapter 5 of Alaska Statutes Title 10, AGSOC will be subject to all the rules applicable to any other Alaska business corporation.

50.020. ARTICLES OF INCORPORATION.

Federal law requires certain charter provisions for general stock ownership corporations and these are set out as requirements for the articles of incorporation of the Alaska General Stock Ownership Corporation. Each of the subsections in .020 set forth a different requirement which must be included in the AGSOC articles.

Subsection 1 provides that the AGSOC may issue only one class of stock which impliedly must be voting common stock.

Subsection 2 provides that stock may be issued only to a certain class of individuals. The group to whom stock may be issued, a closed class of original issue shareholders, are those people who fulfill two tests:

- a) They were residents of Alaska, as defined by the definition Section .900, as of the effective date of the legislation which, under Section 8 of the bill, will be the day following the Governor's signing; and,
- b) They remain residents of Alaska until the shares are issued.

50.900 defines resident 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.

Subsection 3 provides that at least one share of stock must be issued to each eligible resident unless that person elects within one year not to receive the stock. The legislation contemplates issuance of shares to eligible individuals free of charge with corporate investments financed entirely with borrowed funds. The one year period allows shareholders who do not wish to receive stock for whatever reason to reject their share, but this election not to receive stock is irrevocable and once made may not be changed.

Subsection 4 provides for limitations on the transferrability of the stock so that shares may not be sold or used as security for a loan during the first five years unless the shareholder dies or moves out of the state. Shares may only be transferred to another Alaska resident and then only if that person would not own more than ten shares of AGSOC stock after the transfer. Corporations and other artificial persons may not be shareholders. Finally, in order to protect minors, shares may not be transferred until the shareholder reaches 18.

Subsection 5 provides that the corporation shall qualify as a general stock ownership corporation subject to the special tax provisions of Subchapter U of the Internal Revenue Code.

Subsection 6 provides for a limitation on investments which the corporation may purchase. The corporation may not invest in assets acquired by it or for its benefit through the power of eminent domain. This is not to imply that the AGSOC has the power of condemnation since that power may be exercised only by the government. The limitation is designed to prevent the AGSOC from acting in collusion with an agency or local government to acquire a going business from an unwilling seller. It is not intended to prevent the purchase at arm's length of a business where a portion of the seller's assets may have been acquired by condemnation. The AGSOC would not be prevented from investing in a project where some minor portion of the assets must be acquired through eminent domain if the State or local government determines that the exercise of its condemnation power is appropriate. Such a situation might occur should the AGSOC become involved in the construction of a major pipeline.

Subsection 7 provides the AGSOC with a right of first option to purchase, at a price not less than book value, any stock offered for sale during the first five years of the corporation. The terms and conditions for exercise of this right will be set forth in detail in the corporate bylaws and a notice of the restriction will appear on the stock certificates or receipts.

The five year period for the right of first option parallels the time during which shareholders are prohibited from selling their stock. Only a limited number of shares will become available for sale during this period of time and it is unlikely that an organized market for AGSOC stock will develop during this period. Discretion is left with the corporation to pay prices higher than book value for the stock, but it is likely that the directors will determine that book value is the appropriate price.

Since shareholders who become non-residents during the five year period of transfer restrictions may be able to sell their stock at a high price in an uncontrolled market emigration might be encouraged. The option by the corporation provides a controlled market during the transfer restriction period and allows time to structure the full public market which will develop after the transfer restrictions lapse.

50.030. BOARD OF DIRECTORS.

This section sets out the provisions for AGSOC directors which differ from those applicable under Alaska Statutes Title 10, Chapter 5. The nine incorporators serve as the original board of directors and are divided into three groups in accordance with AS 10.05.186, except that only one-third of the directors will stand for election at the first annual meeting, one-third at the second annual meeting and one-third at the third annual meeting. Thereafter each director will serve for a term of three years as provided in AS 10.05.186. None of the other provisions of the Alaska Business Corporations Act regarding directors are changed and the normal rules of Chapter 5 apply to the AGSOC.

50.040. NOTIFICATION OF ELIGIBLE SHAREHOLDERS.

Since stock is to be distributed free of charge 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 months 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. The AGSOC might want to compile mailing lists from various sources to develop a list of potential shareholders while in the bush it might be appropriate for it to hire census personnel to locate and identify eligible Alaskans.

50.050. CORPORATION NOT LIABLE TO SHAREHOLDERS.

This section makes it clear that although the AGSOC is 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.

50.060. LATE APPLICATION FOR SHARES.

The legislation provides that stock is to be issued to all qualifying residents and the corporation directed to use reasonable efforts to identify potential shareholders. The burden of application is upon the resident. Those residents who are identified or who identify themselves will have one year in which to elect not to receive stock. To protect against those eligible residents who are not identified and fail to identify themselves hoping to see how the corporation fares before applying for their stock, a final cutoff date is provided after which distributions of stock will be made only upon payment to the corporation of book value.

50.070. PENALTIES FOR MISREPRESENTATION OF ELIGIBILITY AS SHAREHOLDER.

This section provides a civil right of action against individuals who obtain stock through fraud or misrepresentation and who sell stock on the same basis. It allows the stock to be voided, dividends to be recovered with interest and costs of the suit to be paid by the defendant.

50.080. DIVIDENDS OF THE CORPORATION.

Under the rules of the Alaska Business Corporations Act a corporation may pay dividends only out of earned surplus, the retained earnings of the corporation. Since the AGSOC is required by federal law to distribute 90% of its taxable income to its shareholders on an annual basis it may be necessary to distribute a dividend in excess of earned surplus. Such a situation can arise because accounting for tax purposes and for purposes of the corporation's books may not and are not required to be the same. For this reason an exception to the general rule of Chapter 5, Title 10, is required allowing the AGSOC to distribute dividends as required to meet the terms of Internal Revenue Code Subchapter U except where such distribution would cause the corporation to become bankrupt or when the corporation is already bankrupt. Bankruptcy in this situation means when the corporation is unable to meet its current obligations.

50.090. EXEMPTION FROM AS 10.05

This section exempts the AGSOC from the provisions of the Alaska Business Corporations Act which requires \$1,000 of paid in capital before operation of the corporation commences.

50.100. LOAN GUARANTEE FUND.

This section establishes a fund within the Department of Revenue which is to be used to guarantee loans to the AGSOC by private lenders. This fund is intended to provide security for private credit to be used by the AGSOC for its startup expenses such as the costs of stock issue and the investigation of potential investments.

50.200. DEFINITIONS.

This section defines the terms used in Chapter 50. Especially important is the definition of resident since that definition will determine who is eligible to receive AGSOC stock without charge.

Rule 23.1 Derivative Actions by Shareholders.

In a derivative action brought by one or more shareholders or members to enforce a right of a corporation or of an unincorporated association, the corporation or association having failed to enforce a right which may properly be asserted by it, the complaint shall be verified and shall allege that the plaintiff was a shareholder or member at the time of the transaction of which he complains or that his share or membership thereafter devolved on him by operation of law. The complaint shall also allege with particularity the efforts, if any, made by the plaintiff to obtain the action he desires from the directors or comparable authority and, if necessary, from the shareholders or members, and the reasons for his failure to obtain the action or for not making the effort. The derivative action may not be maintained if it appears that the plaintiff does not fairly and adequately represent the interests of the shareholders or members similarly situated in enforcing the right of the corporation or association. The action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to shareholders or members in such manner as the court directs. (Added by Supreme Court Order 258 effective November 15, 1976)

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

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

1 IN THE HOUSE

2 SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 240

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 ELEVENTH LEGISLATURE - FIRST SESSION

5 A BILL

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

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

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

10 CHAPTER 50. ALASKA GENERAL STOCK OWNERSHIP CORPORATION.

11 Sec. 10.50.010. ALASKA GENERAL STOCK OWNERSHIP CORPORATION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 Sec. 10.50.900. DEFINITIONS. In this chapter,

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

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

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

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

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

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

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

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

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

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

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

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

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

1 is void in its entirety.

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

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

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

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

#32:9

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LOS ANGELES

June 5, 1978

The Hon. Mike Gravel
United States Senator
4107 Dirksen Senate Office Building
Washington, D.C. 20510

Attention: Mr. Jerry Gauche

Dear Jerry:

With your note of May 24, 1978, you enclose "the latest GSOP draft" and comment that "we are getting closer." I have strained every brain cell I have and reflected on every relevant bit of experience that I have, and yet I cannot avoid my response springing up from your comment — "Perhaps, but to what?"

My deep regard for you and for Senator Gravel, for your courageous and forthright concerns to work out solutions to the major world problem of the day — workable methods of wealth generation and income distribution that are consistent with political democracy and a free-market, private property economy, and my own life-long dedication to these goals, compel me to say that I do not think the concept of a GSOP that you are working with is sound, that therefore it will be successfully attacked from many quarters, and that if it were enacted into legislation, I think it would create confusion from a source where a reputation for sound thinking is being built. If my analysis is in error, please show me where the error lies. My following comments spring only from a sense of duty, and not at all from a desire to second guess.

Here is the problem as I see it.

Assuming that the theoretically distinct legal and business institutions (I will call them "tools") for financing business on the one hand, and for making the poor rich (to the maximum extent practical in each instance) that have been developed to date are:

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- 1) The ESOP,
- 2) The CSOP,
- 3) The GSOP,

let us examine the similarities and distinguishing characteristics of each:

Similarities and Differences:

a) Each is a financing device. Each would function to serve the general goals of accelerating economic growth and broadening legitimate acquisition of capital ownership without any added advantages arising out of changes in the income tax laws. Indeed, each would function best if there were no corporate income tax laws at all. (See Exhibit A attached.) But time of transition in the establishing and implementing of a new economic policy built on Two-Factor Economics is critical. The signs of impending economic collapse are alarming. And there are corporate and personal income tax laws. To the extent that changes in the tax laws can accelerate the goals of a Two-Factor policy, for the benefit of people, business and government, then it makes sense to speed the process with tax reforms. But it is basic to recognize that each of the three methods is a financing method, not a method of taxation or a method of paying compensation.

b) Each of these three methods applies primarily to a category of circumstances. The ESOP, while financing a wide variety of transactions for corporate businesses, is particularly suited to enabling employees to acquire economic independence over a reasonable working lifetime. If given further legislative encouragement by measures such as H.R. 462 which was introduced but not acted upon in the 94th Congress, the adoptions of ESOPs would be speeded up enormously, the welfare burdens of the future and thus the costs of government and the burdens of taxpayers, would be shrunk rapidly, and the personal tax base would be immeasurably enlarged.

c) The CSOP selects consumers as those to have capital ownership built into them, while being capable of meeting all financing needs of the future of certain kinds of businesses. It is suitable only to relatively large, capital intensive businesses where experience has shown long-sustained patronage or seller-customer relations to be the norm. It is particularly applicable to regulated public utilities; to banks, to savings banks; to savings and loan associations, and to various other enterprises. Investment is required in proportion to patronage, and thus the resulting capital ownership created by CSOPs is proportioned to patronage. Corporate customers of a CSOP might easily be required to pass through their shares to their stockholders to prevent the use of the method to concentrate wealth ownership. The only

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CSOP established to date (1958-65) but an enormously successful one, is Valley Nitrogen Producers, one of the largest agricultural chemical producers in California, and a tremendous success.

d) CSOPs, used in conjunction with ESOPs, are ideal for financing the conversion of mutual companies of all sorts -- savings and loan associations, savings banks, insurance companies, commercial banks, etc. All these face gaping financing deficiencies in the near and distant future. All of these, except perhaps converted mutual insurance companies, should be owned by individual stockholders within the communities in which they operate. All should have broad constituencies. ESOP conversion, with, say, an arbitrary allocation of 25% to 35% of the stock to the employees through their ESOP and the remainder of their stock becoming owned by their customers, with eligibility of the loan financing paper to Federal Reserve discounting at the pure administrative cost to the Federal Reserve System, would put us into a 10-15% economic growth pattern, while building matching consumer power in the public utility field and in the savings and loan and banking fields. The present need for this low-cost financing in these two fields is recognized by experts in these industries today.

e) The unique characteristic of the GSOP (which Mortimer Adler and I at first called the Financed Capital Ownership Plan in THE NEW CAPITALISTS (1961) and in my testimony before the Heineman Commission in May, 1969) is that its stockholder constituency is selected politically because no other method seems appropriate. For that reason we have urged their use (in Puerto Rico and in Alaska) only when no other method seems to solve the problem.

f) The economies of Puerto Rico and Alaska are unique, and each has economic challenges and circumstances not found in the other 49 states in general. In the case of Puerto Rico, it has its own separate tax system. It had (and still has) a higher percentage of unemployment, and government employment than any state. In the case of Alaska, it has a high level of wealth in relation to its population size and only a GSOP would do the job. Absent these unusual circumstances, the GSOP is by its nature a nationwide plan. Its appropriate constituencies would be the elderly poor, the social security recipients as a way of phasing out their social security, enlarging their income and making them economically independent, government employees, the welfare-dependent, the chronically unemployed; in every case a nationwide constituency, selected by Congress.

g) The GSOP is a method almost useless without its contemplated direct link to the monetary system. It is, at heart, a method of changing from the monetization of welfare, as we are doing today, with the inevitable vaporization of the value of our monetary unit, to

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monetizing self-liquidating productive capital. It is a method of converting inflation into deflation, with uniformly beneficial side effects. It has with the rarest of exceptions no application to a political entity smaller than a sovereign nation having its own monetary system. It is basically national in character, not suited for states, counties, cities, in each of which it could begin to function as a governmental encroachment on private enterprise.

h) There have been good reasons for not "pushing" the GSOP in the U.S. economy as a whole, until a high growth level has been achieved through ESOPs and CSOPs and until a substantial part of the goal of general affluence has been achieved, apart from the unique characteristics of the economies of Alaska and Puerto Rico. The building of a national capital structure large enough to produce a high general standard of living will require maximum motivation of all potential members of the labor force to enter it and get the job done. My estimate is an economy with a capital structure in excess of seven times the capacity of the present one, on a per-capita basis.

i) One could easily differ with this reasoning and argue that the GSOP is imperative now in order to build capital ownership into government workers, the elderly, the unemployable, etc. If so, then it must be approached as a national program, not one that can be adopted by states, counties, cities or towns. It must broadly meet the financing requirements of business, and the legislative measures that accompany it must powerfully encourage equity financing and discourage debt financing, the availability of GSOP financing must be so clearly reliable that, again by legislative or tax measures, the high-payout of the yield on equity (restoration of private property in capital, the ownership of which is represented by corporate stock) can be required or motivated. The entire relationship of the process for qualification of the stocks of business corporations for ESOP financing and the registration of securities for SEC purposes must be integrated and simplified. The trusts (escrows) established to receive loan financing from banks, with CDIC insurance, must be of such nature as to promote long-term investment, not short-term (5 year) speculation, and finally a financing transaction that simply puts the average man in a position to buy capital with credit and to pay for it out of what it produces, must not be misinterpreted as an income or compensation transaction in the one-factor sense of the word and taxed as income. It is not income, and to so treat it would be to take two centuries to do what can be accomplished in 25 years.

Politically, Jerry, I think the CSOP is the thing to offer all 50 states in return for their support to Federal Reserve discount rights for the Alaskan GSOP within four or five years when it will be needed. The steps could be initiated now if desired; the sooner, the better. I do not think the Senate and House Banking Committees are

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going to be the obstacles you visualize because they know they are facing otherwise unsolveable problems.

But if you and the Senator think otherwise, I am ready to help. We are talking about either a new administrative agency or a new division in the Department of Commerce, and a whole new set of laws and amendments to existing securities laws, tax laws, welfare laws, social security laws, etc.

I sincerely believe the present approach would produce nothing but confusion.

Please tell me what you think.

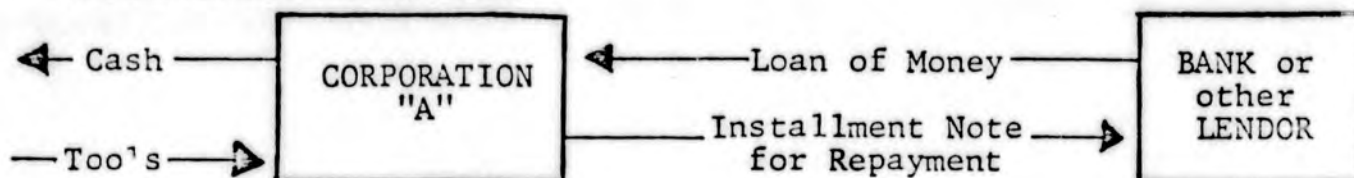
Warm regards to you and the Senator,

Louis O. Kelso

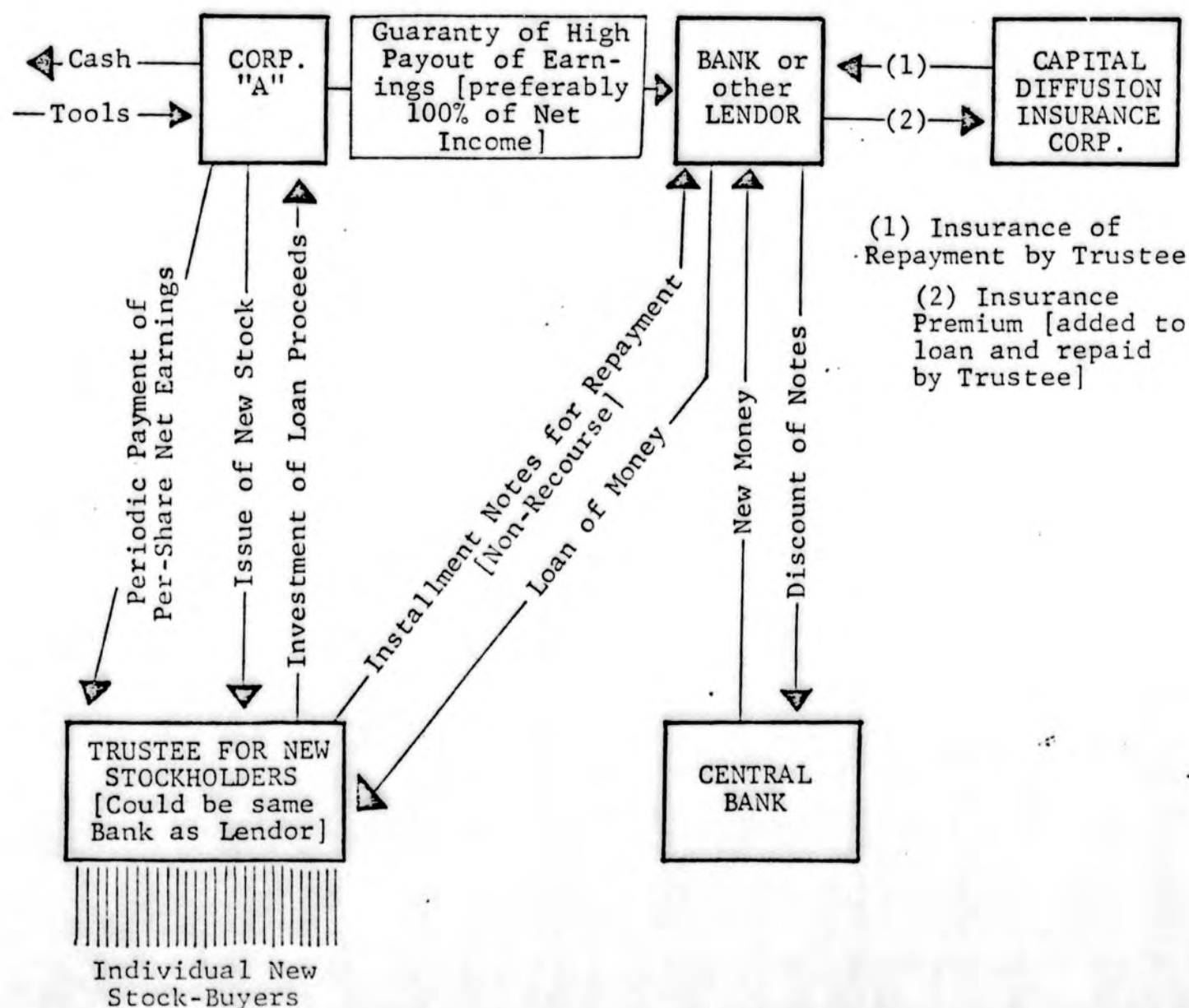
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COMPARISON OF THE CONCENTRATING EFFECT OF CONVENTIONAL CORPORATE FINANCE
WITH
THE EMPLOYEE STOCK OWNERSHIP PLAN (ESOP) TECHNIQUE OF
SIMULTANEOUSLY FINANCING NEW CAPITAL FORMATION
AND CREATING NEW CAPITAL OWNERS
WITHOUT IMPAIRING THEIR SAVINGS OR INCOMES FROM OTHER SOURCES*

I. THE CONVENTIONAL METHOD:



II. THE FINANCED CAPITALIST or THE ESOP ALTERNATIVE:



EXPLANATION of CHART 10:

1. Method I above illustrates the economic effect of financing new corporate capital formation either through retained earnings or through borrowings repaid from retained earnings. In either case, when the loan is repaid, the productive power of a stationary body of stockholders is increased by the newly formed capital. No new shareholders are created.

2. Method II illustrates how, if corporate income taxes are eliminated, and corporate net earnings are fully paid out currently, so that the full income-producing power of real (i.e., physical) capital is made available to new stock purchasers, they can pay for their stock from the income produced by the underlying tools and assets, without diminishing their savings or reducing their consumption. The managements of large and stable corporations know that newly formed capital is self-financing, since a new expansion normally will not be undertaken unless it will quickly pay for itself -- usually in 3 to 5 years. But the conventional method of finance [Method I] makes this self-financeability available only to existing stockholders. Method II enables new stockholders to utilize it as well. By making the self-financeability of newly formed capital in well-managed businesses available to the propertyless majority, as well as to the capital-owning minority, Method II enables the many to raise their power to engage in production through capital ownership and thus to raise their consumer income. Thus, Method II is a method of building consumer power (i.e., markets) along with new productive power. To eliminate doubts of the bank or other lender, a loan insurance plan is proposed, similar to the Federal Housing Insurance Corporation home mortgage plan in the U.S. and other similar national housing mortgage insurance plans.

3. Finally, since a new valid corporate strategy that increases production and sales, and also raises the power of financially under-powered workers and the unemployed to consume by making them owners of productive capital, should increase national growth rates in most industrial economies by 3 or 4 times previous rates [even more for developing economies], it must be assumed that all available accumulations of financial savings would be exhausted at an early date. The financed-capitalist paper must then be made discountable at a nominal rate with the central bank. This, in effect, finances new capital formation out of pure credit and monetizes newly formed capital in central bank-approved, well-managed corporations, where newly formed capital only comes into existence if it will, in the judgment of corporate management, pay for itself quickly; and then continue to produce goods or services indefinitely thereafter, its productiveness constantly restored through depreciation policies which set aside sufficient funds for that purpose before net income is computed. Because newly formed capital will continue to throw off goods and services indefinitely after the credit (loan and interest) has been repaid, this technique has the virtue, if properly used, of making continuously and simultaneously possible:

(a) Expansion of production of goods and services with rising worker incomes and without increases in

unit costs, free of any limitations imposed by unavailability of accumulated financial savings. Thus, this technique can free an economy without savings accumulations from dependence on foreign investors.

(b) Progressive deflation with expanding opportunities of the non-capital-owning majority to acquire rising incomes through capital ownership. This proposal is the exact reverse of the inflationary process of one-factor economic systems under which labor demands progressively more pay for less work, packing the wage bill with welfare and using the price system to tax the public. As labor discovers it is the public, it must again and again repeat the inflationary process.

4. For further discussion, see:

SUGGESTED READING ON TWO-FACTOR ECONOMICS

Books

THE CAPITALIST MANIFESTO by Louis O. Kelso and Mortimer J. Adler (Random House, New York, 1958; Greenwood Press, Westport, Connecticut, 1975)

THE NEW CAPITALISTS by Louis O. Kelso and Mortimer J. Adler (Random House, New York, 1961; Greenwood Press, Westport, Connecticut, 1975)

TWO-FACTOR THEORY: THE ECONOMICS OF REALITY by Louis O. Kelso and Patricia Hetter (Random House, New York, 1967; Paperback Edition, Vintage Press, 1968; available at all B. Dalton Bookstores)

Testimony

Testimony by Louis O. Kelso before the Joint Economic Committee, U.S. Congress, December 11-12, 1975, on "Employee Stock Ownership Plan Financing and Other Financing Concepts Based on Two-Factor Economics"

Testimony by Louis O. Kelso, Norman G. Kurland and Patricia Hetter before the Senate Finance Committee, U.S. Congress, March 31, 1976, on "Major Tax Revisions and Extension of Expiring Tax Cut Provisions"

Reports and Publications

"ESOPS: An Analytical Report" prepared for the Profit Sharing Council of America, Chicago, Illinois, by Hewitt Associates, Deerfield, Illinois

"Employee Stock Ownership Plans" prepared by The Committee of Publicly Owned Companies, New York, New York

"Uprooting World Poverty: A Job for Business" from the Fall 1964 issue of BUSINESS HORIZONS, Indiana University, Graduate School of Business.

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By

Louis O. Kelso, President
and Chief Executive Officer

KELSO & CO.

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INVESTMENT BANKERS

GREENSBORO, N.C.

SAN FRANCISCO

LOS ANGELES

October 3, 1978

Mr. Jerry Gauche
Legislative Aide
Office of United States
Senator Mike Gravel
3121 Dirksen Senate Office
Building
Washington, D.C. 20510

SUBJECT: GSOP Legislation

Dear Jerry:

While I gather from our telephone conversation of Tuesday afternoon that substantial restructuring of the proposed GSOP bill has been done by the drafting team on the Joint Committee since your outline of September 25, 1978, a copy of which you sent to me, nevertheless I will give you the benefit of the comments of our tax counsel, George Byron Gordon, on your draft of September 25, 1978. The information may be of some use in your attempting to obtain modification of the bill so that amortization of corporate debt incurred for the purchase of capital assets will be treated by each Alaskan AGSOC stockholder taxpayer as a deductible expense.

The following references are to the sections, subsections and paragraphs as enumerated in your memorandum of September 25, 1978, to Messrs. Ted Sims, et al.

Section I, Paragraph 3

Should not the word "ownership" be changed to "initial ownership" or "issuance"? While all of the design thinking must be hammered out yet, is it not possible that there will be something similar to a vesting schedule, under which, after a certain period of years, or the reaching of a certain age, vested shares may be removed from the state? For example, an Alaskan resident may wish to retire to Hawaii. His ability to do so may be dependent upon his ownership of AGSOC stock. This would not result in permanent removal of the stock from the state if the stock can only be sold back to AGSOC. In other words, if AGSOC becomes the sole market for the stock.

Section II-B

In line 2, after the figure "531", insert a semi-colon and the following words: "shall be deemed not to be a regulated investment company nor a personal holding company for any purposes of the Internal Revenue Code or for any purposes of regulation by the Securities and

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October 3, 1978
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Exchange Commission."

Section II-B, Paragraph 2

Strike present language and insert in lieu: "Corporation would be subject to all other provisions of Subchapter C, except that payments for amortization for and interest upon debt incurred to purchase capital assets shall be deemed deductible expenses and shall be included in the incidence of income, deductions and deductible amortization of debt principal flowing through to stockholders."

Section C, Paragraph 1

Change the period after "C" to a comma and add the same language as that inserted in the preceding paragraph beginning with the words "except that payments for amortization" etc.

Section II-C, Paragraph 4

Add at the end a new Subparagraph (d) reading: "Deductible share of debt amortization payments by the Corporation."

Section III-A, Paragraph 1

After the last word in the third line, "income", add "as computed under Section II-B, Paragraph 2 above."

Section III-B, Paragraph 1

In line 2, strike the words "but only", and after the next word, "to", add "the".

At the end of line 3, following the word "return", add the words "or is reported as deductible debt service in the information return filed by the Corporation under Section II-C, Paragraph 4, above."

Section III-B, Paragraph 2

Add the last four words "(but not below zero)" following the word "reduced" in the first line.

In the second line, following the word "holders", add the words "other than dividend amounts in excess of debt amortization deduction."

Among the arguments that you can use and I am sure have already thought of to persuade the Treasury to go along with the deductibility of each citizen-stockholder's share of the debt service are the following:

1. The working man and the average citizen have never been able, barring some negligible accidents, to acquire any significant capital

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ownership in after-tax dollars. ESOPs, on the other hand, are presently building capital ownership into millions of working people, and this will make them better taxpayers. To attempt to substitute the use of depreciation for non-Federal-taxation of corporate income used to pay for the citizen-stockholder's stock ultimately amounts to denying depreciation to the corporation, and thus assuring that it will be a slowly dying enterprise. This deprives the Treasury of better individual stockholder taxpayers with incomes derived from a healthy enterprise. Furthermore, since many people will not understand that the failure of the GSOP as a business is directly the result of a tax legislation error, further disenchantment with broad ownership of capital will result. This flaunts the policy already set forth by Congress in the Tax Reform Act of 1976, as well as the policy recommendation of the staff of the Joint Economic Committee in its Annual Report for 1976.

2. If the GSOP legislation, which can first be used in Alaska, is properly designed and is successful, it may be used to set up a national financed capital ownership plan that could be used on the one hand to finance corporate growth in general with low-cost capital, and to provide capital incomes to take the place of Social Security, and perhaps eventually welfare in general at the national level. In other words, an error at this level can defeat the solution of some of the most solution-resistant problems that the nation's economy faces today.

3. Even the recent publication by the State Department, "Making New Capitalists -- A Creative Response to Income Inequities", in its title, as well as in its text, acknowledges the wholesomeness of the two-factor financing technique behind the ESOP. All that our proposals would do is extend this principle to some major assets at the state level.

I wish you great success.

With best regards,

Sincerely,



Louis O. Kelso

LOK:ch

DATE: August 8, 1978

TO: Jerry Gauche, Legislative Aide to The Honorable Mike
Gravel, United States Senator

FROM: Louis O. Kelso

SUGGESTIONS FOR REVISION OF S. 3223 AS
INTRODUCED INTO THE SENATE OF THE 95TH
CONGRESS, 2ND SESSION, ON JUNE 27, 1978
(CONGRESSIONAL RECORD, VOL. 124, NO. 96)

Purpose of Suggested Changes

It is suggested that the proposed changes will facilitate the use of GSOPs to finance economic growth and broaden direct and individual ownership of industry by the politically-selected constituency. These changes should also reduce the possibility of the abuse of the GSOP device to concentrate the control of industry as well as to prevent the potential politicizing of a GSOP. In other words, if a GSOP becomes simply another financial intermediary, even though it may pay out all of its earnings, it could become a threatening instrument for the control of industries and thus the election of its Board of Directors would inevitably become a political phenomenon. This is consistent with the comment made in Senator Gravel's floor statement at the time of introducing S. 3223 when he noted:

"Therefore, I think the people of the State should hold direct ownership of any equity interest the State chooses to make in private business."

* * *

"Without providing for direct ownership of the stock a plan such as the one I propose would be unduly paternalistic."

Suggested Changes in the Initial Draft of S. 3223

(References are to the draft bill taken from the Congressional Record and not to the Committee Print with numbered lines.)

(1) Since under these proposed amendments a GSOP, such as the one proposed tentatively in Alaska, may establish its own trust division, whereas it is probable in every other state, any banking firm or business authorized to engage in the trust business (a regulated business in all states), after having met the qualifications laid down by the GSOP by regulation, will undoubtedly be used as the escrow holder for individual accounts, the acronym "GSOP" should be substituted for the word "trust" wherever it occurs. This would have the added effect of inviting assistance, and avoiding opposition, of the banking community.

(2) Section 1, line 6, change the word "trust" to "plan (GSOP)".

(3) Section 1, line 8, strike the words "or a" and in line 9, following, the words "political subdivision of a State".

(4) In line 10, add an "s" to the word "purpose".

(5) In line 10, after the word "of", insert "financing the acceleration of economic growth of all types of business corporations intended to be profit producing".

(6) In line 10, after the word "broadening", insert the word "equity".

(7) In Section 1, line 22, which begins with "(A)", add the following: "if the sponsoring jurisdiction be a State, it".

(8) Amend Section 1(B) in its entirety to read as follows:

"(B) provides for the borrowing by the GSOP from individuals, banks, insurance companies, pension or other retirement funds, governmental agencies, or other loan

sources, for the purpose of investing the proceeds of such loans in the voting equity shares of any business corporation carrying on at least a significant part of its operations within the boundaries of the political entity that established such GSOP, with or without a limited or unlimited guarantee of the repayment of such debt by such political entity or a subdivision thereof or a governmental entity of which it is a subdivision, provided that:

(i) the corporate entity in which such investment is made by said GSOP shall fully meet criteria of credit worthiness established by regulations adopted by the political entity which established said GSOP or by the GSOP if the power to make such regulations has been delegated to it by such sponsoring political entity, which criteria shall be designed to assure the adequacy of the dividends to be paid by the corporation in which such investment is made over the term or terms of the loan or loans incurred by the GSOP to make such stock investment or investments, and which criteria shall take into consideration the added financial feasibility resulting from the guarantee of the repayment of such loan or loans by such political entity;

(ii) the shares of the issuing corporation purchased with each such investment shall have a fair market value at the time of closing of such purchase, or if such shares are not traded in any market or in quantities sufficient to constitute an effective market, an appraised value as determined by a qualified and experienced independent appraiser, at least equal to the purchase price paid therefor by said GSOP and

shall be sufficient in number (to be achieved by the splitting of said shares or the consolidating of said shares, as may be required) to permit the allocation of shares or fractions of shares to the approved GSOP stock purchase escrow account of each such participant, as of the times of each repayment of an installment of the GSOP's money purchase indebtedness. Such allocation shall be on the basis of the original purchase price and may be based upon the anticipated aggregate principal and interest of the indebtedness over the term of the financing loan or loans, with allocations being made substantially equally over the aggregate number of repayment periods, and equally to each participant account existing at the end of each installment repayment period;

(iii) "approved GSOP purchase escrows" may be established within the corporation whose shares are purchased by said GSOP if said corporation be authorized by law to carry on such trust and escrow functions, or in any bank or other corporation legally authorized to do a trust business within the jurisdiction of the political entity establishing said GSOP, if the escrow operations of such escrow holder conform to regulations relating thereto promulgated by the political subdivision establishing said GSOP or its duly authorized delegate;

(iv) the vesting of the ownership of such shares so purchased by the GSOP shall take place pro tanto only as the principal and interest of the loan financing incurred to purchase such shares is repaid;

(v) each participant shall be authorized to establish

only one GSOP purchase escrow account, and all shares purchased by such GSOP in all corporations in which it may invest, to the extent that such shares are allocated to such participant, shall be allocated to that sole escrow account;

(vi) after the loan financing, principal and interest, applicable to the purchase of particular shares of stock in which said GSOP has invested is repaid, the dividends paid upon such shares, reduced only by deductions of a proportionate part of the expenses of operating the GSOP, which shall be allocated equally among all accounts in said GSOP, shall be paid into the escrow accounts in which such shares are held, and shall thereupon be promptly paid, after deduction only for approved escrow fees of the escrow agent, to the GSOP participant as the owner of said escrow account;

(vii) each corporation having shares of its equity stock purchased by said GSOP, whether upon original issue, or upon subsequent purchase from an intermediate buyer, shall, in order to make said shares eligible for purchase by said GSOP, legally commit itself in writing, in terms satisfactory to the GSOP, periodically to pay to said GSOP its full net earnings (gross earnings, less operating expenses and necessary and reasonable operating reserves and depreciation) allocable to the shares of its stock so purchased by said GSOP, in return for which, said GSOP shall commit itself, with the approval of the political entity which established said GSOP, to equity stock purchase participation in the future growth requirements of such issuing corporation in the proportion

that the market value of the number of shares in said issuing corporation theretofore purchased by said GSOP shall bear, at the time of the closing of each such subsequent financing, to the total debt and equity capital of said issuing corporation;

(viii) the GSOP provides for the allocation to each existing GSOP purchase escrow of securities purchased by the GSOP since the last preceding allocation as of the last day of the GSOP's fiscal year in which the individual who established such escrow account became a participant in the GSOP, in a manner which does not discriminate among such participants on the basis of race, sex, age, income, or ownership of property."

(9) Section 1, paragraph "(C)", subparagraph "(i)", line 1, change the number at the end of the line from "5" to "10".

(10) Section 1, paragraph "(D)", line 2, after the words "by the trust" (changing as throughout the word "trust" to the word "plan"), insert the words "which it is authorized and directed to distribute to participants".

(11) Section 1, line 58, strike paragraph "(F)" in its entirety and insert the following:

"(F) provides that dividend payments made to a GSOP participant under the age of eighteen (18) years may be paid by the escrow holder for the account of such GSOP participant to his parent or other legally appointed guardian, but no dividends shall be paid, nor shall any of the securities held in such GSOP purchase escrow be distributed to the participant or his heirs or beneficiaries, and that before the distribution

of portfolio securities shall be made to a participant, or his heirs or beneficiaries, he, or such heirs or beneficiaries, shall have taken and passed with a grade established by the GSOP to be satisfactory, an economic literacy test which shall be prescribed by the political entity establishing said GSOP, which political literacy test shall be designed to determine that the participant seeking the release from escrow of his portfolio securities is aware of the full significance of the ownership of equity stock representing productive capital; of the necessity of maintaining intact so far as may be economically feasible for such individual the principal of such equity portfolio, with such sales and reinvestment of the proceeds thereof in other and presumably more desirable equity or debt securities, should such be available, and using for purposes of consumption the income or yield thereof; that productive capital contributes to the production of goods and services in the same senses that labor does and that an individual may just as legitimately and morally engage in producing his income through such private capital ownership as through the exercise of his privately owned labor power; that because productive capital is a major source of affluence and economic security in a modern economy, such participant should interest and involve himself in the adequacy of the economic performance of the companies in which he holds equity investments, and upon such other matters as said political entity or the GSOP as its delegate shall determine appropriate for such economic literacy tests with a view to promoting stable, long-term investors to the extent of

the capabilities of said GSOP."

(12) Section 1, last sentence beginning with "(G)", change the word "be" to "by".

(13) Section 2, line 9, after the word "security" insert "and only then to the extent he shall fail to reinvest the proceeds of such sale in income producing capital or equity stock representing such capital."

(14) Section 2, first paragraph, line 14 (the second line from the bottom of the page), after the figure "1954" add "to the extent that such sums are applied by the GSOP to the repayment of principal and/or interest of loans incurred for the purchase thereof, nor thereafter".

(15) Section 3, line 14, change the last word in the line, "a", to "General Stock Ownership Plan (GSOP) purchase escrow."

(16) Section 3, under subsection "(b) DEFINITIONS" in line 10, following the words "any individual for whom", change the word "an" to "a GSOP stock purchase escrow".

(17) In line 15, after the words "benefits are distributed from the", change the word "trust," to "GSOP stock purchase escrow,".

(18) Section 4, line 7, change the word "trusts" to "plans".

(19) Section 5, line 2 (in the title to the section), change the word "TRUSTS" to "PLANS".

THE ECONOMIC REASONING SUPPORTING THE CONTRACTING
BY THE STATE OF ALASKA FOR AN IN-DEPTH ANALYSIS OF
THE FEASIBILITY OF AND THE FINANCIAL AND ECONOMIC
DESIGN ALTERNATIVES FOR ESTABLISHING A GENERAL STOCK
OWNERSHIP PLAN FOR THE PURPOSE OF BUILDING CAPITAL
OWNERSHIP INTO EVERY ALASKAN CITIZEN IN THE COURSE
OF DEVELOPMENT OF THE NATURAL RESOURCES OF THAT STATE

By Louis O. Kelso and Patricia Hetter*

Everywhere the realization is growing that something basic in modern society is radically wrong; that in the words of Pope Paul's economic encyclical of a decade or so ago, "The world is sick." This assessment applied to the U. S. economy by former Chairman of the Federal Reserve Board who, before leaving that office, observed, "The old rules do not seem to work today." The most obvious symptom of this sickness is the accelerating tendency of the rich to grow richer, and of the poor to remain poor. But while the evidence of defective social structure everywhere stands out, it does not readily lead its victims to identify the responsible institutions. The very familiarity of institutions makes them invisible; the efforts of critics and reformers are invariably deflected to what they can see -- symptoms and effects. This is what prompted Thoreau to observe: "There are a thousand hacking at the branches of evil to one who is striking at the root."

The proposal of Kelso & Co., Incorporated (Kelso & Co.) involves an application of the theory of Universal Capitalism or Two Factor Economics, as it is called with equal propriety, to analyze the feasibility and to carry out a financial and economic design study for a General Stock Ownership Plan (GSOP) for the State of Alaska by showing the efficiency with which a properly designed GSOP for the State of Alaska can build general affluence into all Alaskan

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citizens over a reasonably brief span of time. It will lay bare the false concepts and institutions responsible for the relentless concentration of wealth in an industrial society; it will show how they work, how they malfunction in the economy, and how many of the economic evils of contemporary life are directly or indirectly related to these false concepts and deficient institutions.

Endemic poverty in a world which has all the physical, managerial and engineering prerequisites for producing general affluence is only one symptom of the wealth concentration syndrome. Less obvious, but just as causally connected, are misuse of technology, resource waste, despoliation 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.

The Kelso & Co. study, if accepted and underwritten by the State of Alaska, will demonstrate that the specific mechanisms that concentrate wealth are correctable, and will propose the detailed concrete methods for achieving the correction.

But it is appropriate here to ask why society has so long tolerated, and indeed remained officially oblivious to, institutional defects that were brutally apparent even in the earliest years of the Industrial Revolution. Why have we ignored the solid facts and so desperately clung to the straws of illusion? Why, for example, are we still pretending to believe that labor's productivity is rising? That technology creates toil? That we have achieved, within about five percent, legitimate "full employment" in the

United States today, or in any other industrial economy, or that full employment is a possible, or even an adequate economic goal?

The explanation for such massive intellectual dishonesty, we believe, is to be found in a simple but ancient misconception about how wealth is produced in the real physical world. Transmitted through generations of economists like a defective gene, the misconception has kept economics from developing into a rational science -- very much as the doctrine of spontaneous generation kept medicine from developing into a science until Pasteur's experimental researches crumbled organized resistance to the germ theory.

What the doctrine of spontaneous generation (the "hypothetical" production of living things from inanimate matter) was to 19th Century medicine, the labor theory of value and its offspring, the idea of full employment as an adequate economic goal and a pragmatic solution to the problem of income distribution, are to 20th Century economics. The notion that labor is the only, or chief, factor of production is the keystone of the conventional economic wisdom. Laissez-faire, Marxian Socialist and Keynesian theoreticians all treat the physical things that are factually the chief producers of wealth in an industrial economy -- tools, machines, structures and increasingly productive land -- as if they were extensions of the worker himself (the hammer, an extension of the hand; the wheel, of the foot; the computer, of the brain), or as if they were magic helpers that miraculously increased labor's productivity, or as if they were natural resources functioning gratuitously like the sun to raise labor productivity. So long as we indulge this myth, we need not concern ourselves with who owns what capital in the economy, nor with the fact that its ownership is unbelievably concentrated.

In the pre-industrial past, where labor was the principal factor

of production and nature had endowed every individual with the power to labor, the labor theory of value was at least half a truth; the events that would expose the other, and most important, half had not yet occurred. But with the invention of the spinning jenny, the Newcomen engine, and the power loom, and hundreds of other non-human producers, the non-human factor of production moved explosively into the forefront and began its rapid conquest of the domain of production of goods and services. Unnoticed and uncomprehended, reality swiftly outgrew one-factor economic thought and the economic institutions erected upon it.

Technology was the momentum behind the Industrial Revolution, but pre-industrial laborcentric concepts were not able to provide a rational philosophy of technology; hence, enlightened, realistic human goals logically consistent with the tendency of technology were impossible to formulate. In the humanistic medieval world, toil had been only a means. Now in an industrial age where technology is eliminating toil, means has become elevated into end. Instead of toiling to live, man now finds himself obliged to live to toil. Under one-factor economic thought, technology itself must function to create toil, and the enormous evidence of the absurdity of this contention must be ignored, falsified, or rationalized away.

In his great quarrel with the medical traditionalists who upheld the doctrine of spontaneous generation, Louis Pasteur wrote that "the characteristic of erroneous theories is the impossibility of ever foreseeing new facts; whenever such a fact is discovered, those theories have to be grafted with further hypotheses in order to account for them."

For the past forty-eight years, the public economic policies of the Western industrial nations, and the public philosophy advanced to justify them, have borne witness to the accuracy of Pasteur's observation, and demonstrated

the theoretical inadequacy of one-factor economic thought. As expedients are grafted onto expedients, the official explanations of reality become more and more contrived; finally, the bonds of credulity are reached and overreached; the practitioners of the conventional wisdom are obliged to sidestep reason entirely and resort to open intellectual fraud. In the United States, where advancing technology has created the widest gap between reality as it is and reality as it is interpreted through defective one-factor theories, the Federal Government spends an incalculable amount of manhours and money to persuade an increasingly skeptical and suspicious public that policies and goals which are irrational, dangerous and destructive are rational, effective and sound.

When an intellectually false theory persists against all evidence, it must be drawing sustenance from a live, powerful, non-rational source. We believe that the viability of the labor theory of value, the full employment goal and the Procrustean institutions built upon them can be traced to the Puritan ethic -- the idea that "if any would not work, neither should he eat." In essence, the Puritan ethic is a production ethic. Its meaning is that human beings ought to produce the wealth they wish to consume. This injunction is philosophically, economically, and morally sound. Experience shows that men hate being objects of charity just as much as they hate being the victims of parasitism; it is economically motivating both for people to produce the wealth they consume, and to receive the wealth they produce. In a pre-industrial world, where labor was the only active factor of production, it was natural that production was interpreted as synonymous with toil. The Marxian ethic is based on the identical assumption; it and the Puritan ethic are indistinguishable.

But what was practical common sense and moralistically sound in a pre-industrial economy becomes nonsense in an industrial one, not because the

principal has changed, but because the environmental facts have changed.

The rhetorical statement of the rationale of the Puritan ethic for a one-factor economy simply will not suffice in a two-factor economy; it does not accommodate itself to the changed facts. Indeed, a principle of unquestioned justice becomes a source of woeful injustice. In attempting to impose a one-factor ethic on a two-factor world, older generations are unconsciously seeking to make new generations suffer the same hardships that pre-industrial life forced on them and their predecessors. The poet Robert Frost understood the intent, if not the mechanics, of conventional economic policies that uncomprehendingly exhort toil and self-denial in an age where technology has shifted most of the burden of production onto machines, and where mass consumption is essential to support the mass production which is the point of an industrial economy. Thus, a one-factor interpretation of the Puritan ethic threatens the very source of general affluence.

Institutional renewal and reform, we believe, must begin with the Puritan ethic. If its moral essence is not that men and women should toil for toil's sake, but that they should produce for production's sake, the question becomes: How are people to be economically productive in an age when wealth is chiefly produced by things? An updated Puritan ethic would hold that individuals produce just as legitimately through their ownership of productive things as they do through their personal toil (i.e., through their privately and personally owned labor power). In the economic sense, the owner of an equity interest in a oil pipeline, or gas pipeline, or petrochemical production facilities is immeasurably more productive than the most skilled and industrious blacksmith in a pre-industrial village. Modern institutions must recognize this physical fact, and modern ethical and philosophical concepts must deal with it. Our reverence for toil is purely hypothetical -- what sane

man, in real life, seeks to toil for the goods of subsistence? Much closer to reality is the historical fact that human slavery partially originated in man's revulsion for toil, and that moral sentiment was incapable of abolishing slavery until technology provided us with machines to take the place of the slave. Also much closer to reality than our pious affection for "full employment" is the historical use of hard labor as punishment for crime.

Until we understand the modern implications of the Puritan ethic, we shall not be able to design a rational economic system for a two-factor world. We shall continue to misuse, misdirect and waste technology; to concentrate its ownership into those who already own too much of it, and to deny those who need to own it but do not have any legitimate means of acquiring it; to squander resources, talent and human lives; to throw away man's opportunity for peaceful, affluent leisure in our political and institutional attempts -- futile, absurd and monstrosly hypocritical -- to recreate the pre-industrial state of toil that management, engineering and technology constantly seek to destroy.

Not toil, but leisure; not the pinnacle affluence which has characterized all Western industrial societies to date, but general affluence -- these, we maintain, must be the goals of a rational industrial economy. Moreover, once recognized and acknowledged, they are goals that are easily achievable, as the proposed Alaskan feasibility study will show.

Since affluence is not the product of the human factor, but the non-human factor, it is necessary to structure the economy so that a growing proportion of families, and eventually all families, produce an expanding proportion of their income through their private ownership of tools, machines, structures, facilities and productive land that produce wealth, and (under the irrefutable Say's Law) simultaneously generate exactly enough purchasing

power to enable populations to consume it. For although the "boom-bust" cycles characteristic of industrial economies are caused by insufficient purchasing power (this is the defect Keynesian redistribution purports to correct), the physical fact is that every production cost in a market economy is the income of some participant in production. Thus, there could be no physical shortage of purchasing power in an economy where every household made a viable productive input and received the income its input produced.

The techniques involved in the General Stock Ownership Plan are techniques for connecting every household in the economy with the productive power of capital instruments, organized into productive entities through the instrumentality of the Alaskan General Stock Ownership Corporation. Today, under financing techniques inherited from the pre-industrial past, individual ownership of the non-human factor of production is concentrated in no more than the top five percent of U. S. families. Conventional business finance operates to shrink the proprietary base even further. Financing methods, such as the Employee Stock Ownership Plan (ESOP), the Consumer Stock Ownership Plan (CSOP) and the General Stock Ownership Plan (GSOP), developed by Kelso & Co., Incorporated finance capital ownership for individuals at the same time they finance corporate expansion. Thus financing techniques employing two-factor economic principals create new capital owners simultaneously with new productive power.

New productive power is an absolute requisite for general affluence, simply because -- the assertions of politicians and economists to the contrary -- no economy in the world today is physically capable of providing an affluent stream of goods and services to all the people in it, although the potential physical capacity to do so through accelerated growth of new capital formation is present in most of the world's economies. The "affluent economy"

of the United States, we flatly assert, is illusory. But the United States, Canada and most of the Western economies have or have access to the physical ingredients necessary to produce general affluence within a space of two decades or so, and so does the State of Alaska. The limitations that bind them now are not physical, but institutional. What is lacking is an economic system built on the rationale of two-factor concepts that would build the economic power of the people to consume simultaneously with building the industrial power of their economies to produce general affluence.

In today's illogical economies, the corporate sector puts new productive power into place by means that channel the income it will produce to the already affluent few who perforce must invest it, rather than to the many, who will spend it, and in so doing, fully close the production-consumption circuit. Thus, consumption is increasingly achieved through coercive redistribution by government and organized power blocs in the private sector (with the blessing of government) and through that delusive doctrine, full employment. This we believe is the bitter fruit of an invalid corporate strategy. Since the corporate sector produces 87% of non-agricultural, non-governmental goods and services, it also generates 87% of the economy's purchasing power. In not structuring the invisible sector of enterprise so that a growing number of families are connected with the productive power of capital, management is neglecting one-half of its prime responsibility and opportunities. In so doing, it is spearheading the destruction of private property in the American economy, and hastening the totalitarian society in which the corporation will serve as the welfare arm of the state. The Alaskan General Stock Ownership Corporation can correct this for Alaskans, beginning in a very short time.

The proposed GSOP for Alaska should appeal to the three executive powers