

ALASKA LEGISLATURE SPECIAL COMMITTEE / SUBJECT FILES 8672
957 SCOM44: HOUSE POWER ALTERNATIVES STUDY COMM. 1979-80

The illogic of this argument is so obvious that further comment would seem unnecessary. Senator Gravel appears to say that a failure of the Prudhoe Bay field or of the TAPS system would be so devastating to the state's economy that Alaskans would be indifferent to further disasters such as the loss of all value in their AGSOC shares and the drain of hundreds of millions of dollars on an already depleted state treasury in order to make good on pipeline loan guarantees. Most of our eggs are already in one basket. Therefore, he tells us, it is no matter if we put the rest of our eggs there!

Summary. BP's share of TAPS looks like an exceedingly questionable first investment for AGSOC:

Nobody knows what method FERC will ultimately use to set the TAPS tariff;

Until FERC does finalize its ratemaking methodology, moreover, the value of TAPS ownership will be pure conjecture, and bargaining will take place in the dark;

Whatever ratemaking method FERC adopts, it is unlikely to allow AGSOC to profit from its Subchapter U tax exemption; and

Even if AGSOC's tax position did make ownership of the pipeline more valuable to AGSOC than to BP, the latter would be able to bargain away some, and possibly the major part, of this additional value.

SOME AGSOC INVESTMENT POSSIBILITIES

The factors reviewed in this report --- both the tax and accounting considerations examined in Part I and the financial and regulatory principles reviewed just now --- drastically narrow the range of projects and investment strategies for which a GSOC has a decisive advantage over other forms of business organization. They do not, however, entirely eliminate AGSOC as a vehicle for citizen participation in the ownership of Alaska business, provided the legislature is willing to appropriate equity for AGSOC or to provide state guarantees for its financing.

The most promising opportunities for (1) financing AGSOC investments with a relatively high proportion of non-recourse debt, and (2) turning the provisions of Subchapter U to an advantage for the shareholders rather than a handicap or a hazard, are ventures that can operate under long term cost-of-service contracts to utilities or other large purchasers, but which are not themselves regulated utilities. The following pages examine three such ventures, their prospects for securing highly leveraged financing, and their ability to make effective use of a GSOC's special tax status.

The gas conditioning plant. One investment that may meet these standards is the Prudhoe Bay gas conditioning plant. This facility is an ideal subject for a highly leveraged project-financing (a debt ratio of 75 percent or more), because it will operate under long-term cost-of-service contracts either to the gas producers or to the shippers of gas through the Alaska Highway pipeline. But the conditioning plant will not itself be a regulated utility, and probably will not carry the severe disabilities for GSOC ownership that utility status creates.

FERC interprets the relevant laws (the Natural Gas Act [NGA], the Alaska Natural Gas Transportation Act [ANGTA], and the Natural Gas Policy Act of 1978 [NGPA]) to mean that the conditioning plant is not a gas transportation facility subject to FERC's direct regulatory jurisdiction, but is rather a part of the production process. Thus, the return to equity, the treatment of corporate and ad valorem property taxes paid or not paid, and other components of the conditioning charges need not conform strictly to utility law or to FERC's accounting practices.

The Commission does believe, however, that NGPA gives it the authority to decide what part of the gas conditioning costs may be passed along to gas consumers, and what part must be absorbed by the producers. Thus far, FERC has insisted that the producers bear all of the conditioning costs, but may modify this ruling during the current negotiations over pipeline financing. In any event, both FERC and the producers are likely to view the reasonableness of conditioning charges quite broadly. To the extent the alternative to AGSOC ownership is a conventional, taxable private corporation, neither the producers nor FERC is likely to insist that conditioning charges be reduced by the amount of AGSOC's tax exemption, as would be required by strict public utility rate-making principles.

A conventional, taxable private corporation is not necessarily the only feasible alternative to a GSOC for financing and operating the conditioning plant, however. For example, the state of Alaska, which is also exempt from corporate income taxes, and which in addition might be able to obtain capital for the project (at least indirectly) from the tax-exempt bond market, might build and operate the plant, taking advantage of its own favorable tax position to earn after-tax profits equal to a conventional corporation's taxable profits.

Still another possibility is that the producers themselves establish such a non-profit (and effectively tax-exempt) 100-percent-debt financed entity. Whatever entity ultimately owns and operates the gas conditioning plant, however, it can be project-financed only on the basis of guarantees from some party or group of parties that the plant and the entire Alaska gas transportation system will be completed and go into operation within a certain time and within a certain cost. It is still quite unclear who will provide these guarantees. Thus, we can not accurately assess the feasibility, or the magnitude and distribution of benefits, of AGSOC ownership --- or of any other arrangement for financing, building, and operating the conditioning plant --- except as part of an overall agreement regarding financing of the entire gas transportation system.

Coal mining. Another kind of enterprise that might capitalize on AGSOC's tax advantages, and thereby enable financing with a high proportion of non-recourse debt, is a coal mining venture under contract to an electric utility company, in (say) California or Japan. Like the gas conditioning plant, such a venture would not be subject to strict utility-type regulation. The California Public Utilities Commission (CPUC), for example, would scrutinize any service agreement for the sale of Alaska coal to a California utility, but would bar the utility from executing a contract only if it seemed "imprudent" --- that is, if the terms were patently inferior to those obtainable from some alternative source of supply.

As was the case for the gas conditioning plant, the alternatives are likely to involve production of the coal by fully taxable private corporations. If the delivered price of coal from an Alaska GSOC were competitive, the CPUC probably would not veto a contract that let AGSOC capture all or most of its tax advantages.

Shipping. A GSOC might build or buy and operate tankers or offshore service vessels under charter to oil companies, or coal carriers under charter to a utility. Ships can easily be moved from one market to another, and though their resale prices are volatile, they can readily be sold or chartered to other parties. Ships also have much lower risks of prolonged construction delay, non-completion, or unserviceability than specialized, fixed installations such as Arctic pipelines, refineries, and electrical generating plants.

As a result, ships can often be conventionally financed with very low down payments, even during the design and construction periods. Title XI of the U.S. Merchant Marine Act provides federal loan guarantees of 75 percent for most kinds of U.S. ships, and up to 85 percent for ocean-going tugs and LNG tankers. Thus, it is not unknown for ships to be privately financed 100 percent (or more) with non-recourse debt.

In general. As we have seen, there are many factors that determine whether a particular business enterprise organized as a GSOC would actually produce more after-tax income for its owners than some other kind of business organization, and whether Subchapter U of the Internal Revenue Code would be an advantage or a handicap. Likewise, uncertainties plague any judgment about whether an otherwise sound GSOC financing plan might actually require some shareholders to pay out more in additional income taxes than they receive in GSOC dividends.

While other equally worthwhile investments surely exist, the three specific cases examined here (the gas conditioning plant, a coal mining venture under contract to an outside utility, and ships built or bought for charter to outside companies) offer the best prospects for GSOC success. Nevertheless, even these ventures may not turn out to be

particularly prudent, profitable, or otherwise appropriate GSOC investments. Among them, only the shipping venture offers more than the slimmest possibility of 100 percent debt-financing without state loan guarantees.

Finally, no matter how compatible with the GSOC form of organization and highly-leveraged financing a class of projects seems to be, the state government should not encourage the purchase or construction of any kind of facility until the prospective cash flow and risks of a particular project have been carefully scrutinized.

STATE APPROPRIATIONS, DIRECT LOANS, AND LOAN GUARANTEES

Promoters of the AGSOC concept originally described it as a means to transfer the state's oil wealth to private citizens (through a state government equity contribution or guarantee for borrowed money). Interestingly, they have now abandoned that rationale, and seem to imply that AGSOC is a means of creating wealth virtually out of thin air, solely by capitalizing on a GSOC's federal tax exemption.

We have seen, however, that there is little chance a major GSOC investment can be financed 100 percent with non-recourse debt. If a GSOC is to become a reality in Alaska, it must therefore get its initial funding and its ability to attract additional private capital from some infusion of surplus state revenues. And, if the state's treasury or credit is involved, it is only prudent for the legislature to weigh the merits of AGSOC against other vehicles for transferring state oil wealth to individual Alaskans. Whatever organizational vehicle may be chosen, the three methods by which this transfer can be accomplished are state equity contributions, direct loans, or loan guarantees.

State equity contributions. The most straightforward and efficient way to transfer wealth from the state government to individuals is by direct appropriation. If the legislature wants to capitalize the excess revenues of state government and distribute them as income-earning shares in a GSOC or some other kind of state-sponsored enterprise, the most straightforward and efficient, and the safest method is to grant it a direct appropriation of equity capital.

With an equity appropriation, the citizens and the legislature will know just how much they are putting at risk. They will also have a clear standard for comparing

alternative investment opportunities: what rates of return do they expect to earn on each project? Finally, they will have a clear measure by which to judge the results of actual investments and to assess the performance of a project's managers: what rate of return has the equity in fact earned?

An appropriation of state equity, coupled with debt furnished by financial institutions and other private lenders under market terms without a state guarantee, is also the most prudent capitalization strategy for a state-sponsored enterprise. The private capital market can thereby be expected to serve as a check against over-leveraged capitalization schemes --- capital structures in which the debt service burden can exceed the venture's cash flow if something goes wrong.

Direct loans. There is, however, little point for state government to lend money to AGSOC or any other state-sponsored business enterprise at market rates and terms. Such loans only displace outside private capital that the enterprise otherwise would be able to borrow. After all, the market rate is simply the rate at which money is actually available for a certain purpose, and subject to a certain level of risk. A direct loan from the state can, however, be tailored to create more favorable business prospects for a GSOC than would a conventional private loan:

- 1 The state may charge AGSOC a lower interest rate than private lenders would demand for investments of similar risk. The reduced service obligation might make an otherwise submarginal venture competitive, or leave a greater part of a profitable venture's total cash flow in the form of earnings that can be distributed as dividends.

Like a state appropriation of equity capital, an interest subsidy in a direct state loan allows citizens and the legislature to know exactly how much they are contributing to AGSOC. The cost-effectiveness of an interest subsidy is much harder to judge, however, than that of an equity appropriation. And "soft loans" often tend to make bad investments and bad management look much better than they really are.

2. The state might lend AGSOC a greater proportion of the capital it needs than private lenders would deem prudent --- as much as 100 percent. State loans would thus reduce AGSOC's need for equity and permit it to earn a higher rate of return on that reduced equity commitment --- provided, of course, that everything goes well.
3. The state might grant AGSOC a direct loan, subordinated to loans from private parties, and in doing so allow AGSOC to begin with a highly leveraged capital structure that it would otherwise be unable to attain.

In both of these cases, it would be impossible to measure the true size of the subsidy. Instead of a clearly discernible interest rate discount relative to private market rates, the state's contribution would be to assume part or all of the risk that is normally borne by equity capital. No direct cost to the state will appear until something goes wrong, but at that time, the cost can be far greater than any interest discount ever would have been.

Loan guarantees. A state loan guarantee can serve the same function in capitalizing a GSOC as a direct state loan:

1. State credit backing may allow the GSOC to obtain lower interest rates in the private capital market than would otherwise be available. Again, the reduced debt service obligation may make an other-

wise submarginal venture competitive or leave a greater part of a profitable venture's total cash flow in the form of earnings that can be distributed as dividends.

2. A state loan guarantee can induce financial institutions to lend AGSOC a greater proportion of its needed capital than they would normally deem prudent --- even as much as 100 percent. Such loans will thus reduce AGSOC's need for equity and permit it to earn a higher rate of return on the reduced equity commitment.

In either case, the state's contribution to AGSOC would be to assume all or a part of the risks that are normally borne by equity capital. Here the citizens and the legislature would have no way whatsoever to measure their contribution to AGSOC, because no burden will become apparent until something goes wrong. Once more, the cost to the state in case of trouble might be far greater than if it had simply granted the GSOC a direct equity contribution or an interest subsidy. What may not be readily apparent, however, is that the use of state loans or loan guarantees to create a highly leveraged capital structure for AGSOC makes trouble more likely. The following pages explain why this is so.

Assumption of risk and creation of risk. Government loans or loan guarantees are needed in an Alaska GSOC's capital structure only to the extent that private lenders are not convinced that its cash flow will cover its debt service under every plausible circumstance, or that the value of the GSOC's assets would offset its debts should it become insolvent. Thus, state credit or credit backing to a venture that otherwise could not be financed bears an equity risk --- it consists of funds that in fact may not earn their specified return or be repaid. But it also carries a debt service burden --- the return of and return on debt capital is a fixed cost that must be paid in good times and bad if the business is to remain solvent.

The adverse impacts of soft credit. It is a truism that direct state loans or loan guarantees can make even the poorest business venture financible by reducing or eliminating the risks to private lenders. It is not so widely realized that they can also make the most promising venture unsafe by encouraging over-leveraging.

If financial institutions refuse to supply as much debt capital as AGSOC seeks unless the state backs the loans, they are saying that AGSOC's proposed capital structure is over-leveraged, undercapitalized, and therefore unsafe. A capital structure that is unsafe for private lenders will also be unsafe for the state as a lender or guarantor.

It is, moreover, unsafe for AGSOC's shareholders, because it carries the danger that their equity could be wiped out by a relatively small business setback. When private lenders insist that each project have enough paid-in equity that its debt service obligations will never exceed the cash available to meet those obligations, they are guarding not only their own investment from default but that of the shareholders from insolvency and liquidation. Alaskans should not ignore this free advice and protection, except for the most compelling reasons.

Shareholder tax liability. In addition to the dangers of insolvency, the extension of state credit or guarantees in order to create an over-leveraged capital structure poses another risk to AGSOC shareholders. Under Subchapter U of the Internal Revenue Code, the income of a GSOC is taxable to its shareholders in proportion to their ownership, without regard to the dividends the GSOC actually pays.

Part I of this report showed that there were a number of plausible circumstances in which ownership of GSOC shares would create personal tax liabilities that exceeded the

shareholder's dividend receipts. The likelihood of such a situation increases with the amount of debt in the GSOC's capital structure and its resulting need to use net earnings to retire debt rather than to pay dividends. The danger is thus an additional reason to avoid using the state's credit strength for the purpose of arranging a highly leveraged AGSOC capitalization.

Today's Alaskans and future Alaskans. The various measures for capitalizing AGSOC affect present and future Alaskans quite differently.

Subchapter U of the Internal Revenue Code and the AGSOC bills before the legislature require AGSOC to be a closed corporation, in which the only Alaskans to receive shares without charge will be those who reside in the state at a specific time. While these initial shareholders may not transfer their shares to nonresidents, they would be allowed to take their shares with them if they moved out of Alaska. Any person who moved to Alaska after the distribution date and wished to own AGSOC shares would have to buy the shares either from an out-migrant or (after five years) from another resident shareholder. Individual Alaska residents could each accumulate up to ten shares from the original distribution or by inheritance, gift or purchase.

As of the time of initial distribution, therefore, the ownership of AGSOC shares would be almost identical with the state's population. But as time passed, the distribution of stock ownership in any one GSOC would diverge substantially from the state's population at that time.

An appropriation of current funds by today's legislature, which represents today's Alaskans, for the purpose of funding a private corporation that benefits all of today's Alaskans is one thing: The population making the appro-

priation, the population whose revenues are appropriated, and the beneficiary population are identical. Once the legislature makes such an equity grant, moreover, the state treasury will bear no further obligation to the GSOC or because of it.

Direct loans and guarantees for AGSOC are quite another matter: Once again it would be today's Alaska population that commits the state's credit and receives an equal distribution of whatever benefits it conveys. But the risk of default on loans or loan guarantees granted by a past legislature will be borne by a quite different group of people. That is, the GSOC formed today, will in the future be owned much less equally by a group composed of some (but not all) Alaska residents together with some non-residents. The propriety, fairness, and legality of such an arrangement is certainly worth questioning.

Summary. The outlook for financing AGSOC's initial investments entirely by borrowing as described by Senator Gravel and the AGSOC Educational Committee is extremely slim unless the state of Alaska lends or guarantees some or all of the debt. Direct loans from the state or state loan guarantees for this purpose, however, have little to recommend them:

1. The true cost of direct loans or loan guarantees is impossible to measure accurately;

2. The cost-effectiveness of a state financed contribution to AGSOC in the form of direct loans or loan guarantees cannot be estimated with any confidence;

3. Soft loans or state-guaranteed loans make it harder to monitor the quality of AGSOC investments or the performance of management;

4. Loans or loan guarantees that one used to increase the leverage of a GSOC's capital structure also increase the likelihood of insolvency and business failure;

5. Loans or loan guarantees that increase a GSOC's debt ratio increase the danger that the shareholders' personal tax liability on GSOC earnings would exceed their dividend receipts; and

6. The Alaskans who will bear the costs of state loans or loan guarantees for AGSOC will be a quite different population from those who benefit from the state's financial aid.

State loans and loan guarantees are thus an undesirable means of capitalizing AGSOC. An Alaska GSOC should carry no more debt in its capital structure than financial institutions would regard as prudent for a conventional private corporation in similar circumstances.

To the extent the legislature wants to provide financial assistance to an Alaska GSOC, state participation should take the form of an appropriation of equity capital. This route is straightforward; its costs and risks are measurable, it preserves the ability to judge the quality of investments and AGSOC management, and the people who bear its costs are the same as those who benefit. An equity appropriation is, in short, the honest, direct, and efficient way of financing AGSOC.

PART III: AGSOC SHAREOWNERSHIP AND MANAGEMENT

Kelso's ideology. Louis Kelso, originator of the GSOC concept, is the leading spokesman for a distinctive, radical social philosophy whose details need not concern us here. In general, however, Kelso's ideology combines an emphasis on capital (as opposed to labor) as the principal source of prosperity, with a deep hostility to the private enterprise system as it actually exists. The chief evil of contemporary capitalism, according to Kelso and his followers, is the concentration of wealth and economic power in the hands of a few wealthy individuals. This concentration, he believes, results in:

" . . . endemic poverty . . . misuse of technology, resource waste, despoilation of the environment, declining personal freedom, increasing lawlessness and civil disorder, the waning of liberal education, the civil rights impasse, the youth revolt, urban concentration, rising public and private debt, public loss of confidence in leadership and the seemingly irreversible advance toward a totalitarian society." [Kelso, et al, "Design of an Alaskan General Stock Ownership Plan" Volume I, p.16.(February 15, 1979)]

Restrictions on shareownership, transfer, and voting.

Instead of welfare measures or state socialism, however, Kelso advocates an equal or more nearly equal distribution of capital in the form of shares in new kinds of corporate enterprise, one of which is the General Stock Ownership Corporation (GSOC). The special restrictions on share ownership, transfer, and voting rights incorporated in Subchapter U of the federal tax law, and in the proposed Alaska GSOC legislation, stem directly from Kelso's theories and social philosophy. These restrictions include the following:.

1. The original distribution of shares is limited to residents of the state, and no shareholder may transfer stock to a non-resident (even by inheritance);

2. Only natural persons (not corporations or associations) may own GSOC stock;
3. No resident shareholder may transfer his stock (except by inheritance) for 5 years after its issue;
4. No person may acquire more than ten shares in total through original distribution, inheritance, purchase, or otherwise; and
5. Proxy and cumulative voting are prohibited.

The first four provisions are required by Subchapter U, and the last is a feature of the proposed Alaska legislation. The purpose of these restrictions is to preserve the identification of the GSOC with its home state, to prevent the concentration of control in the hands of a few large shareholders, and to deter "speculation" in GSOC stock (as opposed to its retention for income). These are elements of the new economic order that Mr. Kelso and Senator Gravel would create.

Will the example of a new, broadly-based form of business enterprise revolutionize the economic system or the social order?

If state-sponsored GSOCs were to acquire substantial productive assets, they would indeed have some impact on the overall distribution of wealth. But that influence, for good or evil, is not likely to be profound, and in many cases its direction will be quite different from that envisioned by Kelso or other GSOC boosters. On the other hand, fears that AGSOC could become a "rival government" or a pernicious economic and political power, are probably unjustified. The following pages review a few of the implications of existing federal and proposed state legislation governing GSOC shareholding and management.

The experience of the cooperative movement. It is useful to consider another form of broadly-based business enterprise with which we have already had extensive experience. Cooperatives on the Rochdale model have existed in Western Europe and the United States for more than 140 years, and have deep cultural roots in the farmer, labor, and socialist movements. In our judgment, at least, their philosophical bases are more respectable intellectually, and they are certainly more acceptable to more people than Mr. Kelso's "two-factor" theory.

The federal tax treatment of cooperatives is, interestingly, much more liberal than that which applies to GSOCs, and the legal restrictions on their membership and their investment strategy are considerably less onerous. A cooperative does not need a special state charter, for example; any group of citizens (or non-citizens, for that matter) may establish one. A large body of experience with successful (and unsuccessful) cooperatives in different economic sectors exists to guide those who would set up a new enterprise. Successful cooperatives exist in retailing, in the marketing of agricultural and fishery products, in finance (credit unions), and in health (HMOs). Cooperatives predominate in the electric utility business in Alaska, for example.

Yet despite successful precedents in all these fields, despite the tax advantages of corporations over ordinary corporate enterprise, despite the attractiveness of economic democracy and broad-based shareholder participation, the cooperative movement has not swept the nation, nor has it perceptibly changed the distribution of economic or political power.

Mutual savings banks and savings and loan associations are also successful vehicles for widening the ownership of financial capital. The thrift institutions are theoretically owned and governed by their depositors, just as mutual insurance companies are theoretically owned and governed by the policyholders. Federal and state laws grant such collectivist enterprises certain tax and other advantages over commercial banks and stock insurance companies, respectively, but their impact on the distribution of wealth and power is no more evident than that of the cooperatives.

Despite their origins in radical or reform movements, cooperatives and mutual enterprises are really specialized parts of a highly pluralistic capitalist economy, distinguished from other corporations by somewhat different rules regarding their financial structure, government, and accounting systems. In practice, they neither reform nor subvert the economic and social system. There is little reason to believe that the influence of GSOCs --- if they ever managed to overcome the handicaps we have enumerated --- would be any more profound.

Management incentives. Viewed from the standpoint of the business enterprise itself, the Kelso formula for economic democracy probably does not lend itself to effective management and business performance. Broadly-based enterprises like cooperatives and mutual aid societies have been most often successful where they are specialized, single-purpose ventures with relatively standardized operations and in which the shareholder-member can easily measure management performance: How do the premiums and benefits of a specific mutual insurance company compare with its competitors? What interest rate does this credit union charge, and what does it pay as dividends on share deposits? How long is the wait to see a doctor at the Group Health Association? Etc.

Though important exceptions do exist, the most successful cooperatives and related organizations are not usually those with an active and involved membership --- but rather those with a competent and usually self-perpetuating professional business management. The coop member's most effective remedy for poor performance is to shop or bank, or sell his crop elsewhere. Thus, those associations that fill an appropriate niche in the economy and are well-managed thrive, while those who do not meet both specifications flounder and disappear.

These are exactly the means by which customers and shareholders alike exact performance from ordinary business corporations. Very few customers or shareholders want to become involved in the governance of the enterprises that serve them, or in which they invest, and very few take advantage of the opportunity to participate in management even when it is offered to them. The dissatisfied customer goes elsewhere, and the small investor sells his stock.

This option on the part of shareholders is the ultimate discipline on corporate management and the most fundamental incentive for economic efficiency, and against sloth, gold-plating, pyramid building, and management self-dealing. The net worth of efficient and profitable corporations appreciates (whether or not they pay dividends) --- these are the corporations whose management have access to both the internal and external funds needed for rapid growth.

In addition to the ability of the shareholders to "vote" on management in the stock market, the most important protection that small shareholders have is the large shareholder.

One or one hundred shares in a company usually does not make it worthwhile for a shareholder to learn much about a corporation or become active in its affairs. The fact that there are wealthy individuals, banks, or other large institutions for whom business is a profession, and for which the corporation's efficiency and profitability makes a difference of millions --- means that someone is almost always looking out for the interests of the "little guy" and of the legendary "widows and orphans."

In their naive hostility toward the capitalist system as it operates today, and in their idealistic desire to protect the little guy, AGSOC advocates like Mr. Kelso and Senator Gravel would substantially dilute forces that create efficiency incentives, and the value of shareownership:

1. By requiring a GSOC to flow-through as dividends at least 90 percent of its taxable income, Subchapter U limits the GSOCs ability to generate capital gains --- which in the long run constitutes the largest benefit from owning common stock;
2. By restricting the sale of shares in various ways, the federal and state GSOC legislation limits the growth of a market for GSOC shares, and further reduces the shareholders' ability to benefit from appreciation of stock values;
3. By restricting shareholders to natural persons, the law effectively prevents individual shareholders from borrowing money on their stock, and thus from using their GSOC wealth as a foundation for additional investments. (This is a particularly ironic restriction, in light of Kelso's belief that it is the access of the wealthy to credit that is the root of their economic power);
4. By limiting an individual to ten shares, the law guarantees that no shareholder will have a sufficiently large stake in the GSOC to make it worthwhile for him or her to pay careful attention to the quality, conduct, or performance of the directors or management.

We can not predict with any confidence what the net impact of the dispersal of AGSOC ownership and voting rights on business performance would actually be.

1. As we noted earlier, some broadly-based organizations --- specialized cooperatives, thrift institutions, and insurance companies, perform as well as their conventional corporate rivals. In most successful instances, however, the membership seems to be apathetic (or just content?) and the management is more-or-less permanent.

2. In other cases, including, for example, many non-profit hospitals and nursing homes, some labor unions or professional organizations and their welfare funds, a large and inactive membership coexists with an incompetent, indifferent, or corrupt management.

3. Finally, there are still other instances where broad-based economic organizations have a relatively large group of active members, but where the organization is constantly convulsed by turmoil and factional warfare, a situation that is hardly conducive to achieving the organization's economic objectives.

All three models and all gradations between them, are visible among Alaska Native corporations today. Of all the types of organizations with which Alaskans are familiar, the Native corporations are probably the most similar in objectives and structure to a GSOC, and their history and performance are probably good predictors of the outcome of a GSOC experiment in Alaska. It is anybody's guess, however, which kind of Native Corporation AGSOC would most closely resemble.

STATE OF ALASKA

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ALASKA CITIZENS WEALTH OWNERSHIP PROGRAM

A Brief Summary

1. What is the purpose?
 - transfer wealth to people;
 - means for direct participation by individuals in newly organized enterprises;
 - greater resident control over existing Alaskan industries; and
 - wider participation in and understanding of capitalist system through wider ownership.
2. Who organizes or runs the Program?
 - the program is housed in the Department of Revenue;
 - the Commissioner must propose at least one wealth distribution plan but not more than three to the Legislature each session;
 - the Legislature may approve or amend the plan and appropriate any sums required for its implementation;
 - some plans may require the creation of new private organizations, such as GSOC's or mutual funds.
3. What types of assets could be distributed under the Program?
 - Energy Resource Trusts, which pass on a portion of the State's oil and gas royalties directly to holders of certificates in the trust;
 - Industrial Development Projects, which are major projects involving State financial participation which would be distributed by the State to residents;
 - General Stock Ownership Corporations, which are widely held corporations organized under sub-chapter U of the Internal Revenue Code;

- Investment Funds, which are regulated investment companies (mutual funds) holding securities of corporations doing business in Alaska;
 - Real Estate Trusts, which invest in Alaska real estate developments; and
 - Existing Private Enterprises, large blocks of shares of which could be purchased by the State and distributed to residents.
4. Who is eligible for participation in the program?
- all Alaska residents as defined in the bill;
 - eligibility for each Plan is established by dates included in the Plan.
5. What State appropriations would be required?
- an appropriation of the assets to be distributed under the plan; and
 - amounts required to administer the Program.
6. What actions would be mandatory?
- only that the Commissioner of Revenue prepare and present at least one Plan and not more than three Plans for each legislative session.
7. What actions would be elective?
- legislative adoption of a Plan and appropriations necessary to implement it; and
 - individual participation in a Plan.
8. What would individual residents receive?
- free distribution of a minor portion of the assets included in a Plan;
 - an option to purchase additional shares or securities in the remaining assets; and
 - the assets distributed under the Program would be the unencumbered private property of the beneficiaries except as otherwise provided by law.

CHAPTER 9. BEAUFORT SEA OIL AND GAS ROYALTY TRUST PLAN OF 1980

§AA.ZZ.110 CREATION OF TRUST. The Commissioner shall create by trust indenture an Alaska Energy Resource Trust in accordance with the provisions of this Chapter and other provisions of this Act, to be known as the Beaufort Sea Oil and Gas Royalty Trust of 1980, and its trustee may transact affairs in that name.

§AA.ZZ.120-150. [SAME AS CORRESPONDING SECTIONS OF CHAPTER 8]

§AA.ZZ.155. CONVEYANCE OF ROYALTIES. (a) The Commissioner shall convey by deed to the trust, 30 percent of the first "\$X" million, 50 percent of any amount exceeding "\$X" million but less than "\$Y" million, and 70 percent of any amount exceeding "\$Y" million in any calendar month, from the State's reserved royalty interest in the following leases:

[INSERT PROPERTY DESCRIPTION]

[INTERVENING LANGUAGE SAME AS CORRESPONDING SECTIONS OF CHAPTER 8]

§AA.ZZ.410. CREATION OF BENEFICIAL SHARES AND CERTIFICATES. (a) The entire beneficial interest in the Trust shall be divided into _____ units. The ownership of the units shall be evidenced by certificates in substantially the following form.

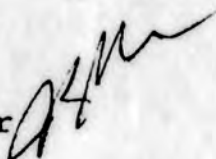
CERTIFICATE OF BENEFICIAL INTEREST
IN
THE BEAUFORT SEA OIL AND GAS ROYALTY TRUST OF 1980

Created by, Issued under, and subject to the Beaufort Sea Oil and Gas Royalty Trust Indenture dated as of _____

THIS CERTIFIES THAT _____ is the owner of _____ Units of Beneficial Interest ("Units") in that certain Trust known and designated as the Beaufort Sea Oil and Gas Royalty Trust of 1980 . . .

[REMAINING LANGUAGE SAME AS CORRESPONDING SECTIONS OF CHAPTER 8]

MEMORANDUM

To: Arlon Tussing
From: John R. Messenger 
Date: March 26, 1980
Re: Legal Issues relating to the establishment
of the Alaska Citizens Wealth Ownership
Program

In the course of drafting legislation for the Alaska Citizens Wealth Ownership Program, it has been necessary to consider numerous legal issues which are not immediately apparent from a reading of the proposed legislation. The purpose of this memorandum is to identify those issues, indicate how they have been dealt with in the proposed legislation and indicate what issues remain unresolved at this time. This final point is particularly important because in the time available, it has not been possible to undertake a complete analysis of all the legal issues.

Perhaps because of the novel and ambitious nature of the project, the legal questions are numerous and wide ranging. For example, it has been necessary to address several federal and state constitutional issues, including: a) whether the program serves a public purpose as required by Art. IX, §6 of the Alaska Constitution, b) whether the conveyance to a trust of the state's oil and gas royalty interests results in a dedication of revenues in violation of Art. IX, §7 of the Alaska Constitution, c) whether the restrictions on eligibility for ownership and/or the restrictions on alienation of the ownership interests runs afoul either of federal and state equal protection clauses, the due process clauses or the federal privileges and immunities clause of the United States Constitution, and d) whether enactment of the proposed legislation is sufficiently similar to the AGSOC initiative certified by the Lt. Governor so as to void the initiative petition as provided for in Art. XI §4 of the Alaska Constitution. In addition to these constitutional matters, we have had to consider federal statutory and regulatory questions in the area of federal securities law, federal income

tax, and federal restrictions on the alienation of the state's minerals. The discussion which follows is intended only to provide a brief, general review of these issues.

EQUAL PROTECTION, DUE PROCESS, AND PRIVILEGES
AND IMMUNITY CLAUSES OF THE FEDERAL AND STATE
CONSTITUTIONS

Restricting the benefits of the wealth ownership program to residents, creating a closed class of eligible participants, prohibiting the transfer of beneficial rights to nonresidents, each raise serious questions under the federal and state equal protection clauses, due process clauses, and under the federal privileges and immunities clause of the U. S. Constitution and State of Alaska Constitution.

Without reviewing in detail the specific standards state and federal courts might use in reviewing this legislation, we can say that a court will look to the purposes of legislation and the nature of the governmental interests involved, the nature of the interests affected, and how carefully the legislation is tailored to meet the purposes of the legislation.

. Because the court will carefully scrutinize the public purposes addressed by the legislation, substantial care must be exercised in stating these purposes and structuring the classifications and restrictions in legislation as closely as possible to accomplish these purposes and not any improper purposes. Each restriction must be examined to determine if it is necessary and whether it is the best, or perhaps only, way to accomplish the desired objective.

There are several legitimate state purposes which can be advanced for an Alaska Citizens Wealth Ownership program and which are set out in the proposed legislation. To the extent possible, the restrictions appear to have been drawn to meet these objectives.

Notwithstanding the care in the legislative drafting, serious constitutional questions remain. At this point, it is difficult to predict how a court will resolve these issues. I believe additional analysis should be done before any plan is implemented.

PUBLIC PURPOSE

An investment of state funds in business enterprises or the transfer of public property at less than its full value, raises the question whether those investments or

transfers have a public purpose as required by Art. IX, §6 of the Alaska Constitution. In order to satisfy this provision of the State Constitution, a court must be able to conclude that the state funds expended under the Alaska Citizens Wealth Program are being used for a public purpose.

* } Many older court cases hold that state and local governments may only tax sufficiently to pay for the basic functions of government such as education, police protection, and maintaining public works and may not use public funds for investing in or aiding private individuals or business. In fact, some of those early cases struck down aid given to, and subscription of stock in, private business. Modern case law has given states much more latitude to venture into the private economy to relieve economic stress and unemployment, to encourage industrial development, and to promote local industry. These purposes have been achieved and sustained through the use of loans, loan guarantees, revenue bonds, and tax credits.

Because the courts will not set aside a legislative finding of public purpose unless it appears that the finding is arbitrary and without any reasonable basis in fact; the proposed legislation has been structured to state the legitimate public purposes that would be served by the program. I believe these findings, buttressed by a record of public hearings and debate should allow the legislation to withstand a public purpose challenge.

DEDICATION OF REVENUES

The transfer of the state's royalties, especially if made at less than full value, might be interpreted as a dedication of revenues in violation of Art. IX, §7 of the Alaska Constitution. Although a plain reading of section 7 would seem to say that only the dedication of taxes and license fees is prohibited, the Attorney General has ruled that the constitutional prohibition applies to all revenues including royalties from minerals produced from State-owned lands.

If we accept the Attorney General's conclusion that the dedication of royalties is proscribed, there is a significant possibility that the transfer of royalties to the trust is in violation of section 7 of Article IX. This possibility is increased to the extent, that the royalty interest is sold for less than its full market value and/or is stripped of many of its property ownership attributes.

* public purpose in
democratic distribution
of wealth to accomplish
same purposes.

The legislation has attempted to deal with this problem by structuring the transfer as a sale of the royalty at its fair market value. We believe a fair market sale, where the proceeds from the sale go to the general fund, may overcome the dedication of revenue problems. We also note that, notwithstanding the ruling of the Attorney General, there is a possibility that royalty revenues are not subject to the constitutional prohibition against dedication.

SUBSTANTIALLY SIMILAR LEGISLATION

It is difficult to say whether or not the proposed legislation is sufficient to void the initiative petition creating a general stock ownership corporation.

The Alaska Supreme Court has held that the legislature has wide discretion when enacting legislation and has, therefore, found legislation to be substantially similar, if in general the legislative act achieves the same general purpose as a proposed initiative by comparable means. The court, however, was closely divided over the question. A minority of the court concluded that the legislature has considerably less discretion and that the legislature must almost duplicate the initiative in order to remove it from the ballot.

With respect to the proposed legislation, there are reasons for concluding that the Alaska Citizens Wealth Ownership Program achieves the same general purposes as the initiative. However, there are also reasons for concluding that not all the purposes of the GSOC approach are met by the proposed legislation. If we assume the Supreme Court will adhere to the test established earlier, the outcome is uncertain. On the other hand, if the court should move closer to the minority position, then it is likely that this legislation does not void the GSOC initiative since the means used to reach the public purposes are different.

RESTRICTIONS ON THE ALIENATION OF THE STATE'S MINERALS

Under section 6(i) of the Alaska Statehood Act, the state is required to retain all minerals in mineral lands conveyed to the state by the federal government pursuant to section 6(a) and (b) of the Statehood Act. If the State attempts to convey the mineral estate, the Attorney General of the United States may bring an action for the forfeiture of the lands affected by the purported conveyance.

Although there is room for debate on the matter, I believe a conveyance of only the royalty interest to the trust would not be a violation of section 6(i). The proposed

legislation attempts to assure this outcome by requiring the Commissioner expressly to retain the mineral estate. I must note, however, that the oil and gas law of other states treats the royalty interest in many different ways, and in the absence of Alaskan case law on the subject, it is not possible to predict how an Alaskan state or federal court might treat the conveyance of a royalty interest.

It is possible to avoid the 6(i) prohibition by conveying to the trust only those leases or portions of leases on lands received by the state by operation of the Submerged Lands Act of 1953. Since there is no restriction on the alienation of the state's mineral interest in lands received under the Submerged Lands Act, the state can convey the royalty interest from such lands without fear of the 6(i) forfeiture.

A cautious approach would dictate that only submerged lands be conveyed to the trust.

FEDERAL TAX QUESTIONS

There are several tax questions which must be analyzed further before any of the ownership plans are implemented. Indeed, since the federal tax consequences to both the state and individual citizens are of great importance, I suggest the state request a ruling from the Internal Revenue Service prior to final implementation.*

Some of these questions are:

- (1) Must the state pay federal taxes on the income received from the earnings on and sale of assets purchased by the state under each of the plans;
- (2) Must citizens who receive (or purchase) ownership rights pay federal taxes on the rights received (or purchased);
- (3) Must the trust or other entity pay federal taxes on the earnings of the assets held by them.

* The IRS has refused to issue a ruling on the tax status of two recently created royalty trusts of the type included in the proposed legislation.

Although a state is not generally taxed on the income received from its investment of surplus funds, the issue is not free from doubt when the state owns and operates a business enterprise. To avoid this problem, the legislation is structured so that the state's role is limited to that of making short term investments and subsequent sale of those investments.

Any sale or distribution of ownership rights at less than full value might be the basis for an IRS contention that the individual Alaskan has realized income from the transfer.

On the other hand, purchase of an asset which will produce income in the future does not necessarily result in taxable income to the purchaser in the year of purchase simply because the asset is valuable. The draft legislation contains provisions which require assigning a value to the ownership rights and further requires that the participants pay that value. To the extent, however, that this value is below full market value, it is possible, and perhaps even probable that the IRS will treat the difference between the purchase price and the true value as taxable income to the participant at the time he receives his ownership rights.

Whether the entities to be created under the program will be subject to federal taxation will depend upon the nature of the entity created. Some of the entities contemplated under the program are vehicles which, if properly implemented, should avoid taxation at the corporate or trust level.

In the case of the Energy Resource Trust, the legislation has been drafted to avoid the trust being taxable and to provide that the income and allowable deductions flow through to the individual certificate holders. It should be noted, however, that there are only a few trusts of this type and a dearth of precedent on their taxable status. Whether the trust established under the proposed legislation would be nontaxable is not absolutely free from doubt. If the state decides to implement the trust, it should press the IRS for a ruling.

SECURITIES LAW

The distribution of ownership rights to Alaskans, raise several securities law questions.

For example, the proposed distribution of trust participation certificates under the Energy Resource Trust involves certain federal and state securities law issues. The key issue is

whether the distribution of trust participation certificates will be exempt from the registration requirements of the Securities Act of 1933 ("the 1933 Act") and the Alaska Securities Act of 1959 ("the 1959 Act"). In this regard, the Trust may be deemed to be a "public instrumentality" of the state, exempt from registration under Section 3(a)(2) of the 1933 Act and Section 45.55.140(1) of the 1959 Act may be available. In addition, it is possible that the distribution of trust participation certificates could be exempt from registration under the 1933 Act if the distribution complies with the requirements of Section 3(a)(11) of the 1933 Act regarding securities offered and sold to residents of a single state. The state, in any event, should obtain a "no action" letter from the Securities Exchange Commission before proceeding with the offering. As part of the distribution, the state must comply with the disclosure requirements of the 1933 Act, the 1959 Act and the Securities and Exchange Act of 1934, through the preparation and distribution of a prospectus containing detailed information about the trust and the trust participation units.

If the state elects to sell the trust participation units on an installment basis, it should seek a determination by the Federal Reserve Board that the margin requirements do not apply to such sales. While it appears that the margin regulations do not apply, clearance from the Federal Reserve Board should be sought before any distribution of the trust participation certificates. Similarly, in regard to the other plans being reviewed by the Commissioner, the extension of credit by the state in connection with sales of stock or other participation units raises the issue of compliance with the Federal Reserve margin regulations. Each plan may present differing problems and require separate analysis. A possible planning method would be the issuance of serial warrants to purchase the stock or participation units which could then be exercised by the citizen recipients over a period of time.

PACE

1/22

Rogers
Singer
to Ulmer
Gardner
Sund
M. Miller
Morgan
Tombak

General bill or specific proposal?

[Loyalty Trust - on Beantst, could also be "net profit share" trust]

DPZ - have Messenger draft of Prudhoe Bay royalty trust

many technical details - need professional advice

lek - concerned about effect of trust on ONR management
" that Beantst income ^{might} be needed when it comes due - don't know what state's fiscal situation will be - don't know what the benefits will be

Problems: public purpose

Severance Tax distribution
via credit

process for Dept. of Revenue
determination

section 43².17.060(d) - hazy (eliminate?)

.160. voting rights - depends on method of transferring assets

+ all issues brought up in PF dividend program - problem w/ treating state residents different from US citizens

assets v. appropriation

income tax -

federal tax liability, gift (?) etc.

WPT -

applicability of securities law

GIVE BRIAN PACE MEMOS

CONCEPTUAL OUTLINE
for
ROYALTY TRUST IMPLEMENTATION
through
P.A.C.E.

DRAFT

Program Elements

Detailed Components

Assets to be
distributed

- select principal amount required based on estimated number of shares and value per share, and desired annual earnings per share level.
- identify leases whose value or portion thereof equals principal amount and yields royalty cash flow at desired levels for per share value and earnings per share.
- identify fine-tuning options for structuring Trust so earnings per share are sensitive to wellhead prices or royalty revenues.
- identify appropriations options and requirements for transferring royalty interest to trust.

Corporate Mechanism
for administration of
Royalty Trust

- specify details of existing Royalty Trusts (see attachment).
- identify desired Trust attributes, develop draft Trust indentures and corporate organization.
- specify options for Trustee, e.g., Commissioner, private trust company, etc.

- specify Trust duties, e.g., maintain principal, pass through income, administer dispersal of share certificates, limitations on lease negotiation involvement, etc.

- identify funding source for Trust operating costs.

Eligibility to
~~and/or~~ receive free *and/or*
 to purchase additional
 shares

- identify status of durational or other residency requirements.
- specify eligibility requirements for participation in Trust.

Disposition of Shares
 by either gift or sale
 or both

- select per capita allocation of either free shares or shares for sale or both.
- identify installment sale options, i.e., terms and conditions, duration of State sale, other financing details and limitations.
- select free share distribution mechanism.
- select share sale mechanism.
- identify and select limitations on transferability of shares.

TS/dg

R.T.

Personal Investing

Trusts That Rake Royalties Off the Top

by Aimée L. Morner

Inflation hedgers flocking into natural-resource investments have been eyeing some unusual vehicles known as royalty trusts. These trusts, a few of which have been around since the early 1950's, are unincorporated enterprises that act as conduits for distributing royalty income to investors. Four of the five large publicly traded trusts (see table) derive their income from royalties on sales of oil and gas; the other, Mesabi Trust, gets its royalties from iron ore. Not surprisingly, the oil and gas trusts have risen the most in the last few years, and in mid-March a big new one—Houston Oil Royalty Trust—was about to come to market.

All of the royalty trusts share some common characteristics. None of them owns any real property; instead, they hold interests in royalties from properties owned by, or leased to, one or more operating companies. The royalties, figured as a certain percentage of sales, are paid "off the top"—i.e., before the operator makes any deductions for expenses or taxes. The trusts thus bear none of the risks or costs of drilling or mining. In fact, they are required by the Internal Revenue Service to remain "passive" and, in addition, to pay out virtually all their earnings.

In return, IRS rulings allow the trusts, and investors in their "units of beneficial interest," some tax breaks. The trusts themselves pay no federal income taxes, and the IRS takes the view that investors have a stake in the assets that produce income for the trust. Consequently, part of the cash payout is regarded as depletion, a return of capital, so shareholders pay income tax on that portion.

The bookkeeping is tough

The yields on most of the trusts are fairly generous. The highest—11.4 percent for Mesabi Trust—is more than twice the yield of the steel giant Cleveland-Cliffs, Inc., the world's largest iron-ore producer. Estimates of the other trusts range between 6 percent for North European Oil Roy-

alty Trust to 8.1 percent for Mesa Royalty Trust. By comparison, the yield on the S.&P. index of nine domestic oil companies is a slim 3.3 percent.

Figuring the taxes on the trusts' yields is nettlesome, but the bookkeeping is worth the trouble. Investors who have bought into oil and gas trusts in the last few years take "cost depletion," which involves using a depletion rate that is determined annually for each trust by independent engineers. The rates vary—from about 4 percent (an estimate) for Mesa to between 7 and 8 percent for the other three in the table.

The taxpayer applies the depletion rate to the cost of his units. If the rate is 7 percent, for example, and the units have a cost basis of \$40, then \$2.80 is considered a return of capital, and the cost of the units is reduced by that amount. Most of the time the depletion calculation will yield a figure lower than the payout; the rest of the cash distribution is taxed as ordinary income. (The treatment of this excess is dif-

ferent for Mesabi unit-holders. Once its units have been held for a period of time—it varies depending on when they were bought—the excess payout is taxed as a capital gain.)

Even though the underlying assets are being used up, the few analysts who follow the oil and gas trusts expect cash distributions to increase. Frederick A. Lynn, president of F.A.L. Capital Management, has been buying these trusts because he expects oil and gas prices to keep rising, which will not only lift royalties but also cause operators to press harder for more production.

Investors trying to figure out how much production is ultimately possible will be frustrated. While the Securities and Exchange Commission requires most publicly traded companies to report information about the size of their hydrocarbon reserves, some royalty trusts can duck the requirement if the data are either unavailable or too costly to get.

And that's the case with three of the four

THE PAYOUTS KEEP GROWING

	CASH DISTRIBUTION				YIELD	
	1979	1980 estimate	1981 estimate	Rate of growth, compounded 1975-1979	1975	Recent (based on est. 1980 distribution)
North European Oil Royalty Trust	\$4.07	\$5.00	\$7.50	37.2%	6.9%	5.6%
Marine Petroleum Trust	\$2.25	\$2.80	\$3.30	45.7%	8.0%	7.8%
Tidelands Royalty Trust B	\$1.94	\$2.80	\$3.60	N.A.	N.A.	6.7%
Mesa Royalty Trust	N.A.	\$3.05	\$3.30	N.A.	N.A.	8.1%
Mesabi Trust	\$1.39	\$1.65	\$1.80	4.8%	15.9%	11.4%

Two of the four oil and gas royalty trusts shown here—North European and Marine—have boosted cash distributions to investors at a heady pace since 1975. Of the remaining two, Mesa is a newcomer that sprang up last year, and Tidelands, which first began to distribute its royalty income in 1977, has nearly quadrupled its payout in the past two years. The other trust in the group, Mesabi, gets its income from royalties on shipments of iron-

ore pellets, and its performance has been leaden. All the estimates for 1980 and 1981 were compiled from forecasts by various analysts and portfolio managers. Though the prices of trust units have risen significantly, the yields, based on the 1980 estimates, have not changed all that radically. A portion of the payouts of all the trusts, with the possible exception of Mesa, can be treated for tax purposes as a return of capital rather than income.

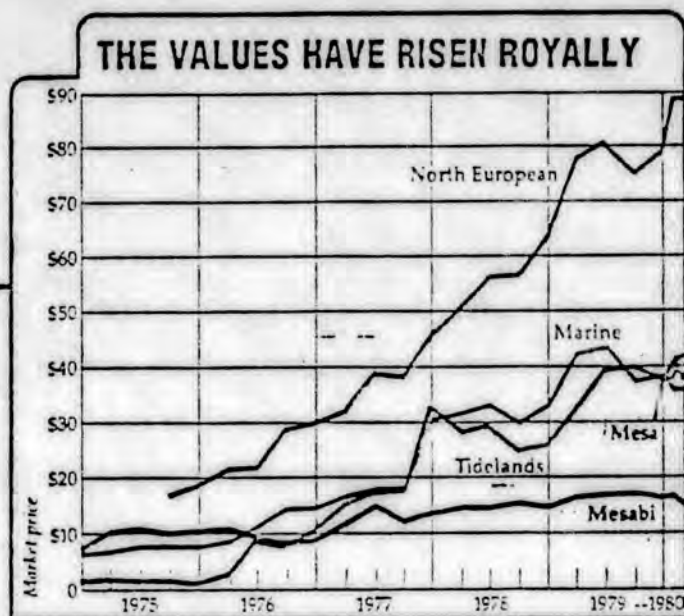
oil and gas trusts. North European Oil derives royalties from properties in West Germany that are leased to Mobil, Royal Dutch, and Exxon, which never whisper a word about the size of those reserves. Gulf Oil is just as tight-lipped about the reserves in fields it operates partly for Marine Petroleum Trust and partly for Tidelands Royalty Trust B.

Investors know a lot more about the reserves associated with Mesa Royalty Trust because of estimates in a prospectus issued last November, when the trust was spun off to shareholders of Mesa Petroleum. Independent petroleum engineers estimated proven oil and gas reserves and calculated their present value, discounting the expected income at an annual rate of 10 percent. This worked out to \$27.75 per unit, but the assumptions about the future price of oil and gas that go into such calculations are considered to be very conservative. Consequently, the units sold for about \$30 once they began trading. They subsequently rose as high as \$42, and were recently selling for about \$35.

Real-world expectations about price increases, particularly for gas, are quite bullish, for good reason. Under the Natural Gas Policy Act of 1978, prices of newly discovered gas—now about \$3 per 1,000 cubic feet (mcf)—may rise 10 percent a year until 1985. At that time controls will be lifted, and some analysts expect new gas to sell at a parity with oil. If they are right, even if oil were to sell at only \$30 a barrel, the price of gas will rise some 65 percent, to \$5 per mcf, in five years, since that quantity of natural gas has one-sixth as much heating power as a barrel of oil.

Life in new leases?

Buyers of Marine Petroleum Trust are betting primarily on the higher gas prices. Marine's royalties—a low 0.75 percent of sales—are derived solely from the trust's interest in 500,000 acres leased to Gulf Oil in the Gulf of Mexico. Half of that acreage now produces oil and gas, much of it coming from "mature" fields. While Gulf could yet find oil or gas in the other half, investors are primarily intrigued that some 70



In the last two years, the standout in this group has been North European, whose units have doubled in price. But over the period shown, Tidelands' shares have gone up even more—from only about \$1 in 1975, to \$42 recently. Shares of Marine (which owns a third of Tidelands' units) have retreated somewhat since reaching a record level last year. With the exception of Mesa and Mesabi, the trusts have relatively few units outstanding, and their prices tend to be quite volatile.

percent of Marine's royalties come from "old" natural gas with an average price of only \$1.20 per mcf. As contracts expire, or if new gas is discovered, that figure will inevitably go a lot higher. And the kicker in Marine is its 32.6 percent equity interest in Tidelands Royalty Trust B.

Tidelands is primarily a speculative bet on an increase in production. The Tidelands trust agreement with Gulf Oil covers 1.3 million acres offshore, and Gulf has so far leased only 40,000 of them. Analysts expect Gulf to seek new leases in the area and to spend freely on wildcat drilling. Tidelands will also benefit, though not as much as Marine, from rising prices: the Tidelands gas sells at an average price of around \$1.80 per mcf.

The price on much of the gas in which Mesa Royalty Trust has an interest is strictly bargain-basement. Close to 80 percent of the gas in its largest field sells under contract at a paltry 25 cents per mcf. The contract won't expire until 1989, but new gas from the same field would, of course, sell for a lot more.

Mesa investors are buying units in the face of an unusual risk: the IRS hasn't yet ruled that it can be treated as a trust. Regardless of how this issue is resolved, a hefty portion of the payout will almost certainly be taxed as ordinary income because Mesa's depletion rate this year is expected to be so low.

The new trust in the wings, an offspring of Houston Oil & Minerals, also lacks an IRS ruling on its tax status. The properties in which Houston Oil Royalty Trust has an interest include a substantial amount of unexplored acreage that would be worth a lot if Houston Oil & Minerals made dis-

coveries there. The company's success in finding new reserves, however, has recently been only fair.

The hottest trust in the market lately has been North European. Unit holders have benefited from the rise in the value of the D-mark because the operating companies involved sell what they produce in West Germany, where the fields are. In the last three years, the trust's royalty income, in dollars, has more than doubled. Carey E. Tharp Jr., an analyst at Stillman, Maynard & Co., is convinced the payout will continue to spurt ahead. He points out that more and more of the gas sold in Germany is coming from a field that produces royalties at a rate 7.5 times higher than the rate on sales from the field that is currently producing much of the trust's income.

A direct link to inflation

The iron trust, Mesabi, hasn't been particularly popular with investors lately. Its royalties come from properties in Minnesota's Mesabi range—the nation's largest iron-ore reserve. They are mined by Reserve Mining, which ships pellets made from the ore to the two steelmakers—Armco and Republic—who jointly own the company. Reserve pays Mesabi a base royalty that depends on the volume of pellets shipped, which means the trust's income is sensitive to the demand for steel. The base is also adjusted by a factor that reflects the annual change in the producer price index. That inflation hedge hasn't swayed investors, who are aware that Reserve's pellet factory could be struck this August when labor contract expires. After the worker went out three years ago, Mesabi's cash distributions were slashed.

Question (iv), about newly discovered oil in a reservoir underlying producing formations, raises a ticklish issue. The Regs require that in such cases, the fact that the new reservoir constitutes a separate source of oil must be supported by a written finding by the "appropriate governmental agency", which is either the state regulatory agency or the U.S. Geological Survey. There is probably an exception, if the old production is from a unit limited to a specified depth which is less than the newly discovered formation. If you do not have such certification, it is advisable to get it before audit.

The requirements for furnishing data on twenty day notice (obviously for audit) includes a lot of things you are bound to have, but also:

Copies of the original lease, farm-out assignments, and all other legal instruments which affect the right to produce.

supporting documentation for any subdivisions, geographically or by formation.

Production records, including the dates the initial well was commenced or re-working began, and the date of completion or recompletion; the date of installation of production facilities (tanks, gathering system, etc.); and the identity of the first purchaser of any oil, and of oil in commercial quantities.

So much for certification. Now for some good news:

PL 96-499

Congress passed the \$1,000 credit for royalty owners (only individuals or "farm corporations") but not for working interests. A credit can be taken on their tax returns for all WPT withheld, up to \$1,000. Since the returns are already printed, just where this is to be inserted on the form is not yet clear.

WPT inflation adjustment factors for use in the first quarter of 1981 have been declared to be 1.1187 for Tiers 1 and 2, and 1.1469 for Tier 3.

Extensions have been granted for various filings of WPT data. The revised timetable is as follows:

First purchasers must notify producers as to WPT withheld during 1980 by 1/31/81. This is the amount you can deduct as a business expense in your 1980 return. You may find this figure on your Form 1099 from the pipeline. Producers who redistribute to other producers, and partnerships, have another 15 days to pass this data on.

First purchasers must file Form 6248, which is the official annual WPT information return, by 3/31/81. This includes data on all WPT withheld on oil purchased in 1980 (including that paid for in 1981). One Form 6248 is filed for each producer, covering all leases from which the first purchaser makes payment to such producer. If he redistributes, the producer similarly issues a single Form 6248 for each party to whom he redistributes. There appears to be no way in which anyone will ever be able to make any sense out of these reports; but a copy must be attached to any claim for refund, so don't throw it away. Copies of these Form 6248's must be filed with IRS (including those from redistributors) by 4/30/81.

Underpayment of WPT must be corrected by payment accompanied by Form 6249 (which is not yet available in final form) by 5/31/81. After that date, interest and penalties will be charged.

continued ...

First purchasers may make corrections in tax withheld at any time before they file their Form 6248. Since it will be simpler to have them correct mistakes than to file with IRS (and also less likely to inspire audits), keep after the pipelines to make corrections as soon as possible.

Now, about the happier subject of refunds of WPT: There will be more than IRS had dreamed. They may be claimed as credits in your 1980 return; but it seems unlikely that the data to compute them will be fully available by the time you file (due in no small part to the fact that Regs promised in October have not yet appeared).

The alternative procedure for handling refunds, which will be used in most cases, is to file Form 843. This form, designed to handle overpayments of excise taxes, does not really fit WPT, and will probably be supported by both Forms 6248 and 6249, neither of which is available in final form. Forms 843 have heretofore been processed by the dozen, and are expected to be filed by the thousands for WPT refunds. In other words, refunds will be some time in materializing.

Calculation of some aspects of Net Income Limitation (NIL) remain swathed in mystery, until the missing Regs are published. However, some progress has been made in how to determine which leases may qualify.

All Tier 1 leases (both old and new oil) will qualify for 15% or more refund, without regard to operating expenses or "as-if" cost depletion. This means that even royalty owners with Tier 1 interests will be entitled to a refund - although the cost of preparing the claims may exceed the refunds. Operators should notify them, and also start computing expenses, depletion, etc.

Only "high-cost" Tier 2 and Tier 3 leases will qualify. How high is "high-cost" has been dodged in most WPT seminars. However, IOPA calculations, based on Tri-State prices and severance tax rates (which, by changing the "windfall", affect the calculation) indicate that for 40 gravity oil, a lease will qualify (before "as-if" depletion or depreciation) if its lifting cost per barrel exceeds:

	<u>Tier 2</u>	<u>Tier 3</u>
Illinois	\$14.85	\$16.90
Indiana	15.10	17.10
Kentucky	15.70	17.60

This limit is increased by about one cent for each point of gravity below 40. If the lifting costs exceed these figures by any substantial amount, a full-scale calculation may produce enough refund to make it worth while. YOU SAW THIS HERE FIRST!!

Claims for NIL refunds can (if they tell us how) before filed after 2/28/81 by calendar year taxpayers. Fiscal year taxpayers can file on the portion of their fiscal year between 3/1/80 and the end of the fiscal year after 2/28/81, on the portion between the end of their fiscal year and 12/31/81 in their 1980-81 return, and on the rest of their fiscal year after 2/28/82. Fiscal years are becoming less fun.

HAPPY NEW YEAR!! It can't be any more confusing than 1980!!

press: Carpenter AT
Kizer AP
Capital 81(?)
PGinzburg APRN

(left)
Gordian Malone Royce, Hayes, Vascon, Halford, Randolph
+ Fanning (left)

HB 33 - PACE

2/17
full committee present

Gordian
7⁰⁰ to 7²⁰ pm

- alt. to PF dividend program
similar goals

boom & bust economy / extraction

Alt one of richest political jurisdictions in world
\$17,000 per capita - modern economy - unlike LDC's.

but bad social problems - alcoholism

richer, but rich, educated populace

how long will bubble last - will cartel fall apart?
feds take it?

models:

/ European socialism / Venezuela

— Do we want to be controlled exclusively by corporations
owned by outsiders?

Royalty trust will be introduced — next week (?)

AGSOC different - outside the govt

State investment → project → one time distribution of assets
Not just cash, but asset that produces cash

Various combinations of free & purchased shares are
possible (BRIC example)

Malone - Public Purpose question (LAA 2/12 memorandum)

(725) Fran Ulmer

Gov Hammond enthusiastic about concept
want, to be involved

PACE general idea -

Gov supports HB 33

specific ~~part~~ proposals need further evaluation

Gov -
early brainstorming w/ Bennett, BC premier

PACE emerged as substitute for AGSOL

prudent management includes &

- save (PF)
- invest (loans, pf investments, development)
- spend (budget)
- share (pf dividends)

Solution lies in raising wealth, not debt of Alaskans

Avoid quasi-public organization w/ management prerogatives
Decisions should pass through budget process

PACE very different from PF program - would not
jeopardize PF suit.

735 Arlon Tussing

HFianna - analysis of AGSOC - pointed out # of difficulties

Wanted to rescue what was good in AGSOC

BC experience - new govt had promised to deregulate industries
leg, timber
auto insurance

experts - you couldn't do it yourselves

ministers - didn't want to give away good businesses

BC established holding company - for socialized businesses,
plus added mineral rights

each resident - 5 shares for free

+ could buy several thousand additional shares
at a fixed price

sold \$400 million worth of shares

Tussig, cont.

AGSO - idea of direct participation in energy good
Gardner - buying out foreign ownership

7:45 pm

+ state intervention necessary for building gasoline

- state would pass out ownership interest

Success of BC - had profitable assets to distribute

AK owns no other assets but oil leases

ARRL could be privatized

don't start w/ turkeys + lemons; Chrysler + lemons

biggest difficulty w/ PB - WPT

royalty oil must be used for "public purposes"
to be exempt

PB ng would be workable, Kuperate oil

7:50

- distribution possibilities - gift or sale

HD 33 - BC model

bank through sale - often people would have hard time refuelling

marol - some sacrifice to obtain

less exposure to IRS liabilities

less legal problems

7:55

serial warrants

people can take shares out of the state

8:00 pm

Dick Randolph - profit or no profit

AT - not a corporation. Trust is pass-through
depends on enterprise

Randolph - fed tax liabilities

AT - (explanation) see tax specialists

805

Halford - IRS has charged interest
on no-interest loan if intent &
benefit recipient is present

AT different - from public

Vasca - free shares v. purchased?
how many can one individual purchase?

AT - proxy voting - w/o it, no check on
management

815 Randolph - q's, comments

820

Rogers - public purpose
assets directly & resident,
would least problem

Any oil co. which gives overriding royalty &
royalty trust can deduct it from royalty
payments (from tax payments)

AT - Const. Amendment solution

Gardiner - should let voters decide - amendment

830 - Art

1 IN THE HOUSE

BY GARDINER

2 HOUSE BILL NO. 33

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act establishing the portfolio of Alaska citizen
7 enterprises; and providing for an effective date."

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

9 * Section 1. DECLARATION OF POLICY, PURPOSES AND FINDINGS. (a) It is
10 the policy of the state to provide for the use, development, and conserva-
11 tion of the state's natural resources and the income derived from them for
12 the maximum benefit of its people.

13 (b) The purposes of this Act are to

14 (1) transfer part of the wealth derived from the natural re-
15 sources of the state to its residents;

16 (2) provide a means for the direct participation of state resi-
17 dents in the financing of business enterprises which benefit the state, and
18 to provide residents with the opportunity to share in potential profits;

19 (3) reduce ownership and control of industries in the state by
20 nonresidents;

21 (4) encourage greater participation in and understanding of the
22 capitalist system by residents through a wider distribution of economic
23 interests in state business enterprises;

24 (5) encourage increased awareness and involvement by state resi-
25 dents in the management of state natural resource production and develop-
26 ment;

27 (6) encourage increased awareness and involvement by state resi-
28 dents in state participation in business enterprises; and

29 (7) encourage increased awareness and involvement by state resi-

1 dents in the development of local industry.

2 (c) The legislature finds that

3 (1) it is in the public interest and furthers a public purpose to
4 distribute a part of Alaska's wealth derived from natural resources to state
5 residents to increase their involvement and awareness regarding the manage-
6 ment of the state's natural resources, the development of its local industry,
7 and the capitalist system;

8 (2) a mechanism allowing the state to distribute a part of its
9 resource wealth to residents will best promote the state's interest in
10 creating direct involvement by residents in the decisions concerning the
11 state's natural resource management; and

12 (3) a mechanism allowing the state to distribute a part of its
13 ownership interests in business enterprises to residents will best promote
14 the state's interest in creating direct involvement by residents in the
15 decisions concerning state investments and development of local industry.

16 (d) Except as otherwise required by law, it is intended that distribu-
17 tions to residents under this Act shall be unencumbered property.

18 * Sec. 2. AS 43 is amended by adding a new chapter to read:

19 CHAPTER 17. PORTFOLIO OF ALASKA CITIZEN ENTERPRISES.

20 ARTICLE 1. PORTFOLIO OF ALASKA CITIZEN ENTERPRISES PROGRAM.

21 Sec. 43.17.010. ESTABLISHMENT OF PROGRAM. The portfolio of
22 Alaska citizen enterprises is established in the department to provide
23 for distribution of state assets to state residents.

24 Sec. 43.17.020. PORTFOLIO PLANS. (a) The department shall de-
25 velop portfolio plans for distribution of state assets. A portfolio
26 plan must

27 (1) provide for contribution or transfer of assets owned by
28 the state or to be acquired by the state;

29 (2) provide for distribution of interests in the assets

owned by the state or to be acquired by the state to eligible residents
by issuing certificates representing units of

- (A) a state energy resource trust;
- (B) a state industrial development project;
- (C) a state general stock ownership corporation;
- (D) a state investment fund;
- (E) a state real estate trust;
- (F) a business enterprise.

(3) specify the assets to be distributed;

(4) specify how the assets not then owned by the state will
be acquired by the state;

(5) specify the date on which an individual must be a state
resident to be eligible to participate in the distribution of units
under AS 43.17.060 - 43.17.090;

(6) specify how an individual applies for a unit;

(7) specify the types of assets involved, an appraisal of
their value, the number of units to be distributed, and the manner in
which the units will be distributed;

(8) specify the terms of payment for units to be sold and
the number of units to be distributed without charge;

(9) specify restrictions on the transfer or encumbrance by
the state of a distributed unit;

(10) provide a financial assessment of the portfolio plan
including

- (A) administrative costs;
- (B) initial costs;
- (C) a projection of future costs;
- (D) contingent costs or liabilities;
- (E) a projection of future earnings;

1 (F) value of the units in the plan;

2 (G) probable financial and tax consequences for pur-
3 chasers and recipients of units;

4 (11) list and evaluate state and federal laws and regulations
5 affecting the portfolio plan;

6 (12) propose legislation needed to implement the portfolio
7 plan; and

8 (13) include other information considered necessary by the
9 commissioner.

10 (b) If a corporation or trust is needed to implement the port-
11 folio plan, the plan must include

12 (1) the proposed articles of incorporation and bylaws of the
13 corporation or the proposed trust indenture of the trust;

14 (2) the names of the incorporators and directors of the
15 corporation or the trustees of the trust or the method of selecting
16 those individuals.

17 Sec. 43.17.030. PORTFOLIO PLANS SUBMITTED TO LEGISLATURE. (a)
18 The commissioner shall submit one or more portfolio plans to the Second
19 Session of the Twelfth Legislature and to both regular sessions of the
20 Thirteenth Legislature. This submission shall be made on or before the
21 30th day of each legislative session.

22 (b) A portfolio plan may not be implemented until it has been
23 approved by law.

24 ARTICLE 2. DISTRIBUTION OF UNITS.

25 Sec. 43.17.050. ELIGIBILITY. (a) To be eligible to purchase a
26 unit under AS 43.17.080 - 43.17.090 or to receive a unit distributed
27 under AS 43.17.070, an individual must

28 (1) be a resident of the state on the eligibility date
29 established in the portfolio plan under which the unit is distributed;

1 (2) apply to the department; and

2 (3) submit with the application a signed, sworn certifica-
3 tion that he was a resident of the state on the eligibility date and
4 other proof of residency as the commissioner may require, including

5 (A) evidence that he was registered to vote in Alaska
6 on the eligibility date, and actually voted in the last statewide
7 general election before that date;

8 (B) an Alaska driver's license, or a resident hunting,
9 fishing, or trapping license, issued on or before the eligibility
10 date, and valid on the eligibility date;

11 (C) evidence that, on the eligibility date, he had
12 telephone or utility service at a residence in the state listed in
13 his name or in the name of a spouse, or, if the individual is a
14 minor, in the name of a parent or guardian;

15 (D) an affidavit of one or more individuals having
16 personal knowledge concerning his residency on the eligibility
17 date; and

18 (E) other documentary evidence of residency acceptable
19 to the commissioner.

20 (b) An individual is presumed to be a resident of the state on
21 the eligibility date if he provides at least two items specified in
22 (a)(3) of this section.

23 (c) The department shall prescribe and furnish a form for ap-
24 plications and for certification of residency.

25 Sec. 43.17.060. NUMBER AND PURCHASE PRICE OF UNITS ISSUED. (a)
26 For each portfolio plan the commissioner shall establish a purchase
27 price for each unit to be sold under AS 43.17.080 - 43.17.090. The
28 price for each unit may not exceed \$50.

29 (b) The commissioner shall determine the total number of units to

1 be distributed under a portfolio plan by dividing the value of the
2 assets contributed under the plan by the purchase price for a unit
3 established under (a) of this section.

4 (c) The value of assets contributed to a state industrial develop-
5 ment project, a state general stock ownership corporation, a state
6 investment fund, a state real estate trust, or a business enterprise,
7 is equal to the cost to the state of the assets contributed to the
8 portfolio plan, plus an amount that compensates the state for the
9 administrative costs of acquiring, holding, and distributing those
10 assets.

11 (d) The value of assets contributed to a state energy resource
12 trust is the conservatively appraised value of the assets. A con-
13 servatively appraised value for assets in a state energy resource trust
14 is a value determined by generally accepted appraisal methods and shall
15 be calculated using

16 (1) estimates of resource production volumes having an accu-
17 racy confidence level of 75 percent or greater;

18 (2) an assumed rate of increase in future world prices for
19 resources not exceeding the general rate of price inflation in the
20 United States; and

21 (3) a discount rate reflecting the judgment of private in-
22 vestors as to the expected rate of return before payment of taxes re-
23 quired to justify incremental investments in the exploration and de-
24 velopment of resources comparable to those committed under a portfolio
25 plan.

26 (e) Before a sale of units, the commissioner shall publish notice
27 of the purchase price..

28 Sec. 43.17.070. FREE DISTRIBUTION. A part of the units to be
29 distributed in accordance with AS 43.17.060(b) shall be distributed

1 equally without charge to all eligible individuals who apply to receive
2 them. The number of the units to be distributed under this section
3 shall total at least five percent, but not more than 15 percent, of all
4 units to be distributed.

5 Sec. 43.17.080. FIRST RESTRICTED SALE. (a) The commissioner
6 shall offer for sale in a first restricted sale all units authorized to
7 be distributed under a portfolio plan, other than those distributed
8 without charge under AS 43.17.070.

9 (b) In a first restricted sale, an individual may subscribe for
10 any number of units by submitting an application and certificate of
11 residency under AS 43.17.050 and a deposit equal to 10 percent of the
12 purchase price of the units. The deposit must be in the form of cash,
13 check, or money order. The individual shall indicate on his applica-
14 tion whether he wishes to pay for the units at one time or under an
15 extended purchase plan.

16 (c) If a sale is oversubscribed, each eligible individual apply-
17 ing under this section may purchase the lesser of

18 (1) the number of units he applied for; or

19 (2) the number of units which allows for an equal distribu-
20 tion among all applicants of the units authorized for sale.

21 (d) The commissioner shall notify each subscriber who elects to
22 pay for units at one time of the total number of units he is entitled
23 to purchase and the balance due. On receipt of cash, check, or money
24 order equal to the balance due, the commissioner shall issue to the
25 subscriber a certificate for each unit purchased. If the subscriber
26 fails to complete the purchase within 60 days of notification, the
27 commissioner shall issue to him the number of units paid for by the
28 deposit, and refund any balance remaining from the deposit.

29 (e) The commissioner shall notify each subscriber who elects to

1 pay for units under an extended payment plan of the total number of
2 units that he is entitled to purchase in the first restricted sale, and
3 issue to him

4 (1) certificates for one-tenth of the units;

5 (2) a refund of the difference, if any, between the deposit
6 and the purchase price for the number of units represented by certifi-
7 cates issued; and

8 (3) purchase warrants in accordance with AS 43.17.110 for
9 nine-tenths of the units.

10 Sec. 43.17.090. SECOND RESTRICTED SALE. (a) If the first re-
11 stricted sale under a portfolio plan is undersubscribed and if the plan
12 authorizes a second restricted sale, the commissioner shall conduct a
13 second restricted sale.

14 (b) At a second restricted sale an individual may submit one or
15 more sealed bids, each of which must specify the number of units that
16 he wishes to purchase and a bid price for each unit. The bid price
17 must equal or exceed a minimum bid price specified by the commissioner,
18 which may be less than, equal to, or more than the purchase price at
19 the first restricted sale.

20 (c) The sealed bid must be accompanied by an application and
21 certificate of residency under AS 43.17.050 and by a deposit equal to
22 10 percent of the total bid price. The deposit must be in the form of
23 cash, check, or money order.

24 (d) The commissioner shall tally the bids in descending order of
25 bid price, until the total number of units bid for equals the number of
26 units to be sold. If the number of units to be sold exceeds the number
27 of units bid for, the commissioner shall accept the bids that have been
28 tallied. If the number of units to be sold is less than the number of
29 units bid for, the commissioner shall accept all bids equal to or

1 greater than the specified minimum bid price.

2 (e) Units sold at a second unrestricted sale must be paid for at
3 one time. The commissioner shall notify a successful bidder of the
4 total number of units he is entitled to purchase and of the balance
5 due. On receipt of cash, check, or money order the commissioner shall
6 issue to the bidder certificates representing the units purchased. If
7 the bidder fails to complete the purchase within 60 days, the commis-
8 sioner shall issue to him certificates representing the number of units
9 paid for by the deposit and refund any balance remaining from the de-
10 posit.

11 Sec. 43.17.100. UNRESTRICTED SALE. Except as expressly pro-
12 hibited by this chapter or under the terms of a portfolio plan, the
13 commissioner may hold as investments or may sell those units authorized
14 to be distributed under a portfolio plan which remain undistributed
15 after completion of the free distribution, the first restricted sale,
16 and the second restricted sale, and which are not reserved under pur-
17 chase warrants.

18 Sec. 43.17.110. PURCHASE WARRANTS. (a) A purchase warrant
19 entitles a subscriber to purchase nine-tenths of the number of units he
20 was entitled to purchase in a first restricted sale according to the
21 following schedule:

22 (1) one-tenth of the units not later than one year after the
23 purchase warrant was issued;

24 (2) one-tenth of the units not later than two years after
25 the purchase warrant was issued;

26 (3) one-tenth of the units not later than three years after
27 the purchase warrant was issued;

28 (4) one-tenth of the units not later than four years after
29 the purchase warrant was issued;

1 (5) one-tenth of the units not later than five years after
2 the purchase warrant was issued;

3 (6) one-tenth of the units not later than six years after
4 the purchase warrant was issued;

5 (7) one-tenth of the units not later than seven years after
6 the purchase warrant was issued;

7 (8) one-tenth of the units not later than eight years after
8 the purchase warrant was issued;

9 (9) one-tenth of the units not later than nine years after
10 the purchase warrant was issued.

11 (b) The total price for a unit purchased with a purchase warrant
12 is the purchase price of the unit at the time of the first restricted
13 sale increased by an amount equal to the weighted average rate of
14 interest paid by the state on bonds issued after the first restricted
15 sale and before the time the purchase warrant is used compounded from
16 the date the purchase warrant was issued to the date of payment for the
17 units. The purchase price shall be decreased by the amount of divi-
18 dends, interest, royalties, or profits received by the state from
19 holding the units between the date the purchase warrant was issued and
20 the date of payment for the units, except that the price may not be
21 reduced below 50 percent of the purchase price for a unit at the time
22 of the first restricted sale.

23 (c) Payment for units purchased using a purchase warrant may be
24 made by cash, check, or money order.

25 (d) A purchase warrant is void if transferred. A purchase warrant
26 may not be used except by an individual who is a resident of the state.

27 Sec. 43.17.120. DISPOSITION OF PROCEEDS. The commissioner shall
28 deposit net proceeds from the sale of units under this chapter into the
29 Alaska permanent fund established in art. IX, sec. 15 of the state

1 constitution and AS 37.13.010.

2 ARTICLE 3. GENERAL PROVISIONS.

3 Sec. 43.17.150. DISPOSITION OF UNITS. (a) Except as provided in
4 (b) of this section, an individual has an unrestricted right to sell,
5 transfer, devise, pledge or dispose of a unit, an interest in a unit,
6 or earnings from a unit which is his.

7 (b) A portfolio plan for a state general stock ownership corpora-
8 tion or for a state energy resource trust may include restrictions on
9 the transfer or disposition of units in the corporation or trust.

10 Sec. 43.17.160. VOTING RIGHTS. (a) The commissioner may exer-
11 cise the voting rights attached to a unit that the state owns, holds in
12 trust, or reserves for future distribution.

13 (b) The voting rights attached to ownership of a unit distributed
14 under a portfolio plan must be conveyed unrestricted to the individual
15 receiving the unit. The commissioner may not reserve a voting right or
16 require as a condition of the distribution that the recipient waive a
17 voting right, grant a proxy, or adhere to a voting trust.

18 Sec. 43.17.170. AUTHORITY TO PARTICIPATE IN MARKET. (a) If the
19 commissioner determines that an efficient public market does not exist
20 for the sale of units, he may buy, sell, and trade in units for the
21 purpose of establishing a market.

22 (b) If the commissioner trades in units as authorized in (a) of
23 this section, he shall maintain an average markup sufficient to compen-
24 sate the state for the administrative costs of his trading activity and
25 shall publish regularly the bid and asking prices for units traded.

26 (c) In this section, "efficient public market" means a market in
27 which the units distributed under this chapter have a readily ascer-
28 tainable market value and in which they may be bought or sold readily
29 without unnecessary or unreasonable transaction costs.

*Would
a plan
necessity
include
voting
rights*

1 Sec. 43.17.180. WAIVER OF RESTRICTIONS. AS 37.10.085 does not
2 apply to the acquisition of assets under this chapter.

3 Sec. 43.17.190. REGULATIONS. The department may adopt regula-
4 tions necessary to administer this chapter.

5 Sec. 43.17.200. PENALTIES. In addition to any criminal penalties
6 imposed, if an individual is convicted of perjury or unsworn falsifica-
7 tion on the basis of a certification made under AS 43.17.050 and the
8 conviction is not reversed, he is not eligible for a distribution of
9 units under this chapter.

10 Sec. 43.17.210. DEFINITIONS. In this chapter,

11 (1) "assets" means shares of stock, debentures or other debt
12 obligations, royalties or other interests in minerals, or other inter-
13 ests in business enterprises or natural resources;

14 (2) "business enterprise" means a private corporation en-
15 gaging or about to engage in the state in manufacturing, transportation,
16 communication, trade, services, natural resource extraction, or natural
17 resource processing, whose securities the commissioner has purchased
18 under AS 37.10, or has proposed to purchase under the terms of a port-
19 folio plan established under this chapter;

20 (3) "certificate" means an instrument evidencing ownership
21 of one or more units and includes stock certificates, debentures or
22 other debt instruments and trust certificates;

23 (4) "commissioner" means the commissioner of revenue;

24 (5) "department" means the Department of Revenue;

25 (6) "eligibility date" means a date established by the
26 commissioner for a distribution of units under a portfolio plan estab-
27 lished under this chapter;

28 (7) "extended purchase plan" means the purchase of units
29 over a period of time through the exercise of purchase warrants;

1 (8) "individual" means a natural person;

2 (9) "oversubscribed" means a sale in which the total number
3 of units subscribed for exceeds the total number of units available for
4 sale;

5 (10) "purchase warrant" means an instrument authorizing the
6 purchase of units under this chapter;

7 (11) "resident" means an individual who maintains a permanent
8 place of abode in the state with the intention of making the state his
9 permanent residence and who stays in the state continuously except for
10 temporary absences taken with the intent of returning; an individual is
11 not a resident solely by reason of his presence and does not cease to
12 be a resident solely by reason of his absence because of marriage to a
13 person engaged in the civil or military service of this state or the
14 United States; an individual does not cease to be a resident while a
15 student at an educational institution, while in an institution at
16 public expense, while confined in prison, while engaged in the naviga-
17 tion of waters of this state, of the United States, or of the high
18 seas, or while residing in an Indian or military reservation; a minor
19 takes the residence of his parent or of his legal guardian; a married
20 woman may establish her own residence and does not presumptively take
21 the residence of her husband;

22 (12) "state energy resource trust" means a trust established
23 under this chapter the assets of which consist of a right to receive
24 income equal to a specified part of the rentals, royalties, or net
25 profits belonging to the state under specified leases of state land for
26 the extraction of oil, gas, coal, oil shale, or other minerals or a
27 specified part of the revenue from the sale of oil, gas, coal, oil
28 shale, or other minerals taken by the state as in kind royalties under
29 those leases;

1 (13) "state general stock ownership corporation" means a
2 corporation formed in accordance with subchapter U, Chapter 1 of the
3 Internal Revenue Code of 1954, as amended (26 U.S.C. secs. 1391 -
4 1397);

5 (14) "state industrial development project" means a business
6 enterprise engaged or about to engage in the state in manufacturing,
7 transportation, communications, natural resource extraction, or natural
8 resource processing, and to which the state or an agency or subdivision
9 of the state contributes an investment of equity or debt exceeding
10 \$100,000,000;

11 (15) "state investment fund" means a regulated investment
12 company organized in accordance with subchapter M, Chapter 1 of the
13 Internal Revenue Code of 1954 as amended (26 U.S.C. secs. 851 - 855);

14 (16) "state real estate trust" means a real estate investment
15 trust organized in accordance with subchapter M, Chapter 1 of the
16 Internal Revenue Code of 1954 as amended (26 U.S.C. secs. 856 - 858);

17 (17) "undersubscribed" means a sale in which the total number
18 of units available for sale exceed the number of units subscribed;

19 (18) "unit" means an undivided fractional ownership right or
20 interest in a trust, corporation, fund, project or enterprise estab-
21 lished under this chapter.

22 * Sec. 3. This Act takes effect immediately in accordance with AS 01.10.-
23 070(c).

Introduced: 4/15/80
Referred: Finance

1 IN THE HOUSE

BY THE RULES COMMITTEE

2 HOUSE BILL NO. 1006

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 ELEVENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act establishing the portfolio of Alaska citizen
7 enterprises; and providing for an effective date."

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

9 * Section 1. DECLARATION OF POLICY, PURPOSES AND FINDINGS. (a) It is
10 the policy of the state to provide for the utilization, development and
11 conservation of the state's natural resources and the income derived from
12 them for the maximum benefit of its people.

13 (b) The purposes of this Act are to

14 (1) transfer part of the wealth derived from the natural resources
15 of the state to its residents;

16 (2) provide a means for the direct participation of state resi-
17 dents in the financing of business enterprises which benefit the state, and
18 to provide residents with the opportunity to share in potential profits;

19 (3) reduce ownership and control of industries in the state by
20 nonresidents;

21 (4) encourage greater participation in and understanding of the
22 capitalist system by residents through a wider distribution of economic
23 interests in state business enterprises;

24 (5) encourage increased awareness and involvement by state resi-
25 dents in the management of state natural resource production and development;

26 (6) encourage increased awareness and involvement by state resi-
27 dents in state participation in business enterprises; and

28 (7) encourage increased awareness and involvement by state resi-
29 dents in the development of local industry.

1 (c) The legislature finds that

2 (1) it is in the public interest and furthers a public purpose to
3 distribute a part of Alaska's wealth derived from natural resources to state
4 residents to increase their involvement and awareness regarding the management
5 of the state's natural resources, the development of its local industry, and
6 the capitalist system;

7 (2) a mechanism allowing the state to distribute a part of its
8 resource wealth to residents will best promote the state's interest in creat-
9 ing direct involvement by residents in the decisions concerning the state's
10 natural resource management; and

11 (3) a mechanism allowing the state to distribute a part of its
12 ownership interests in business enterprises to residents will best promote
13 the state's interest in creating direct involvement by residents in the
14 decisions concerning state investments and development of local industry.

15 (d) Except as otherwise required by law, it is intended that distribu-
16 tions to residents under this Act shall be unencumbered property.

17 * Sec. 2. AS 43 is amended by adding a new chapter to read:

18 CHAPTER 17. PORTFOLIO OF ALASKA CITIZEN ENTERPRISES.

19 ARTICLE 1. PORTFOLIO OF ALASKA CITIZEN ENTERPRISES PROGRAM.

20 Sec. 43.17.010. ESTABLISHMENT OF PROGRAM. The portfolio of Alaska
21 citizen enterprises is established in the Department of Revenue to
22 provide for distribution of state assets to state residents.

23 Sec. 43.17.020. PORTFOLIO PLANS. The department shall develop
24 portfolio plans for distribution of state assets. A portfolio plan must
25 provide for

26 (1) contribution or transfer of assets owned by the state or
27 to be acquired by the state;

28 (2) distribution of interests in the assets to eligible
29 residents by issuing certificates representing units of

- (A) a state energy resource trust;
- (B) a state industrial development project;
- (C) a state general stock ownership corporation;
- (D) a state investment fund;
- (E) a state real estate trust;
- (F) business enterprises.

Sec. 43.17.030. PORTFOLIO PLANS SUBMITTED TO LEGISLATURE. (a)
Beginning with the First Session of the Twelfth Legislature and ending
with the First Session of the Thirteenth Legislature, the commissioner
shall submit to the legislature, on or before the 30th day of each
legislative session, one or more portfolio plans.

(b) A portfolio plan submitted to the legislature under this
section must

- (1) specify the assets to be distributed;
- (2) specify the manner in which the assets not then owned by
the state will be acquired by the state;
- (3) specify the date on which a person must be a state resi-
dent to be eligible to participate in the distribution of units under
AS 43.17.060 - 43.17.090;
- (4) specify the manner in which a person must apply to pur-
chase or receive a unit;
- (5) specify the types of assets involved, an appraisal of
their value, the number of units to be distributed, and the manner in
which they are to be distributed;
- (6) specify the terms of payment for units to be sold and the
number of units to be distributed free;
- (7) specify restrictions on the transfer or encumbrance of a
unit distributed by the state;
- (8) propose needed legislation;

1 (9) include proposed articles of incorporation and bylaws of
2 a corporation or the proposed trust indenture of a trust needed to
3 implement the plan;

4 (10) if a corporation or trust is needed to implement the
5 plan, include a method of selection or the names of the incorporators
6 and initial directors of a corporation and trustees of a trust;

7 (11) provide a financial assessment of the plan including

8 (A) administrative costs;

9 (B) initial costs;

10 (C) a projection of future costs;

11 (D) contingent costs or liabilities;

12 (E) a projection of future earnings;

13 (F) value of units;

14 (G) probable financial and tax consequences for pur-
15 chasers and recipients of units;

16 (12) assess applicable state or federal laws or regulations;

17 and

18 (13) provide other information considered necessary by the
19 commissioner.

20 Sec. 43.17.040. LEGISLATIVE APPROVAL. (a) A portfolio plan may
21 not be implemented until it has been approved by the legislature by law.

22 ARTICLE 2. DISTRIBUTION OF UNITS.

23 Sec. 43.17.050. ELIGIBILITY. (a) To be eligible to purchase a
24 unit under AS 43.17.080 - 43.17.090 or to receive a unit distributed
25 under AS 43.17.070, a person must

26 (1) be a resident of the state on the eligibility date estab-
27 lished in the portfolio plan under which the unit is distributed;

28 (2) file an application; and

29 (3) submit with the application a signed, sworn certification

1 that the person was a resident on the eligibility date and other proof
2 of residency as the commissioner may require.

3 (b) Other proof of residency under (a)(3) of this section may
4 include

5 (1) evidence that the person was registered to vote in Alaska
6 on the eligibility date, and actually voted in the last statewide general
7 election before that date;

8 (2) a copy of the person's Alaska resident income tax return
9 for the tax year which includes the eligibility date, or for the previous
10 tax year;

11 (3) an Alaska driver's license, or a resident hunting, fish-
12 ing, or trapping license, issued before the eligibility date, and valid
13 on that date;

14 (4) evidence that the person had telephone or utility service
15 at a private residence in the state on the eligibility date listed in
16 his name or in the name of a spouse, or in the name of a parent or
17 guardian if the person is a minor;

18 (5) an affidavit of one or more individuals having personal
19 knowledge concerning the person's residency on the eligibility date; and

20 (6) other documentary evidence of residency acceptable to the
21 commissioner.

22 (c) A person is presumed to be a resident on the eligibility date
23 if he provides at least two items specified in (b) of this section.

24 (d) The department shall prescribe and furnish a form for ap-
25 plications and for certification of residency.

26 Sec. 43.17.060. NUMBER AND PURCHASE PRICE OF UNITS ISSUED. (a)
27 For each portfolio plan the commissioner shall establish a purchase
28 price for each unit to be sold under AS 43.17.080 - 43.17.090. The
29 price for each unit may not exceed \$50.

1 (b) The commissioner shall determine the number of units to be
2 distributed and sold by dividing the value of the assets contributed
3 under the portfolio plan by the purchase price of a unit established
4 under (a) of this section.

5 (c) The value of assets contributed to a state industrial develop-
6 ment project, a state general stock ownership corporation, a state
7 investment fund, a state real estate trust, or a business enterprise, is
8 equal to the cost to the state of the assets contributed to the portfolio
9 plan, plus an amount that compensates the state for the administrative
10 costs of acquiring, holding, and distributing those assets.

11 (d) The value of assets contributed to a state energy resource
12 trust is the conservatively appraised value of the assets contributed to
13 the trust. A conservatively appraised value for assets in a state
14 energy resource trust is a value determined by generally accepted apprai-
15 sal methods and shall be calculated using

16 (1) estimates of resource production volumes having an accu-
17 racy confidence level of 75 percent or greater;

18 (2) an assumed rate of increase in future world prices for
19 resource commodities not exceeding the general rate of price inflation
20 in the United States; and

21 (3) a discount rate reflecting the judgment of private in-
22 vestors as to the expected rate of return before payment of taxes re-
23 quired to justify incremental investments in the exploration and develop-
24 ment of resources comparable to those committed under a portfolio plan.

25 (e) Before a sale of units, the commissioner shall publish notice
26 of the purchase price.

27 Sec. 43.17.070. FREE DISTRIBUTION. A part of the total number of
28 units to be distributed under a portfolio plan shall be granted in equal
29 parts without consideration to all eligible persons who apply to receive

1 them. The part of the units to be distributed under this section shall
2 be at least five percent, but not more than 15 percent, of the total
3 number of units to be distributed unless otherwise required by law.

4 Sec. 43.17.080. FIRST RESTRICTED SALE. (a) The commissioner
5 shall offer for sale in a first restricted sale all units authorized to
6 be distributed under a portfolio plan, other than those distributed
7 under AS 43.17.070.

8 (b) In a first restricted sale, a person may subscribe for any
9 number of units by submitting an application and certificate of resi-
10 dency under AS 43.17.050 and a deposit equal to 10 percent of the pur-
11 chase price of the subscribed units. The deposit must be in the form of
12 cash, check, or money order.

13 (c) The person shall indicate on his application whether he wishes
14 to pay for the units at one time or under an extended purchase plan.

15 (d) If the sale is oversubscribed, each person subscribing under
16 this section may complete the purchase of the lesser of

17 (1) the number of units he subscribed for; or

18 (2) the number of units which allows for an equal distribu-
19 tion of all the units authorized for sale among all the subscribers.

20 (e) The commissioner shall notify each subscriber who elects to
21 pay for units at one time of the total number of units he is entitled to
22 purchase and of the balance due, after crediting his deposit, to complete
23 the purchase. On receipt of cash, check, or money order equal to the
24 balance due, the commissioner shall issue to the subscriber a certificate
25 for each unit purchased. If the subscriber fails to complete the pur-
26 chase as provided in this subsection within 60 days of notification, the
27 commissioner shall issue to him the number of whole units paid for by
28 the deposit, and refund any balance remaining from the deposit.

29 (f) The commissioner shall notify each subscriber who elects to

1 pay for units under an extended payment plan of the total number of
2 units that he is entitled to purchase in the first restricted sale, and
3 issue to him

4 (1) certificates for one-tenth of the units;

5 (2) a refund of the difference, if any, between the deposit
6 and the purchase price for the number of units represented by certifi-
7 cates issued; and

8 (3) purchase warrants under AS 43.17.110 for nine-tenths of
9 the units.

10 Sec. 43.17.090. SECOND RESTRICTED SALE. (a) If the first re-
11 stricted sale under a portfolio plan is undersubscribed and if the plan
12 authorizes a second restricted sale, the commissioner shall conduct a
13 second restricted sale.

14 (b) A person may submit one or more sealed bids, each of which
15 must specify the number of units that he wishes to purchase and a bid
16 price for each unit. The bid price must be equal to or exceed a minimum
17 bid price specified by the commissioner, which may be less than, equal
18 to, or more than the purchase price at the first restricted sale.

19 (c) A sealed bid must be accompanied by an application and certifi-
20 cate of residency under AS 43.17.050 and by a deposit equal to 10 percent
21 of the total bid price. The deposit must be in the form of cash, check,
22 or money order.

23 (d) The commissioner shall tally the bids in descending order of
24 bid price, until the total number of units bid for equals the number of
25 units to be sold. If the number of units to be sold exceeds the number
26 of units bid for, the commissioner shall tally all bids at or above the
27 minimum bid price. The commissioner shall accept each bid that has been
28 tallied.

29 (e) Units sold in a second unrestricted sale may not be paid for

1 under an extended payment plan. The commissioner shall notify a success-
2 ful bidder of the total number of units he is entitled to purchase and
3 of the balance due, after crediting his deposit, to complete the pur-
4 chase. On receipt of cash, check or money order the commissioner shall
5 issue to the bidder certificates representing the units purchased. If
6 the bidder fails to complete the purchase within 60 days, the commis-
7 sioner shall issue to him certificates representing the number of whole
8 units paid for by the deposit, and refund any balance remaining from the
9 deposit.

10 Sec. 43.17.100. UNRESTRICTED SALE. Except as expressly prohibited
11 by this chapter or under the terms of a portfolio plan, the commissioner
12 may hold as investments or may sell for maximum revenue any units autho-
13 rized to be distributed under a portfolio plan which remain undistributed
14 after completion of the free distribution, the first restricted sale,
15 and the second restricted sale, and which are not reserved under issued
16 purchase warrants.

17 Sec. 43.17.110. PURCHASE WARRANTS. (a) Purchase warrants issued
18 under AS 43.17.080(f) entitle a subscriber to purchase under an extended
19 payment plan nine-tenths of the number of units which the subscriber was
20 entitled to purchase in a first restricted sale on the following
21 schedule:

22 (1) one-tenth not later than one year after the purchase
23 warrant was issued;

24 (2) one-tenth not later than two years after the purchase
25 warrant was issued;

26 (3) one-tenth not later than three years after the purchase
27 warrant was issued;

28 (4) one-tenth not later than four years after the purchase
29 warrant was issued;

1 (5) one-tenth not later than five years after the purchase
2 warrant was issued;

3 (6) one-tenth not later than six years after the purchase
4 warrant was issued;

5 (7) one-tenth not later than seven years after the purchase
6 warrant was issued;

7 (8) one-tenth not later than eight years after the purchase
8 warrant was issued;

9 (9) one-tenth not later than nine years after the purchase
10 warrant was issued.

11 (b) The total price for a unit purchased under this section shall
12 be the purchase price of the unit at the time of the first restricted
13 sale under AS 43.17.080 increased by an amount equal to the weighted
14 average rate of interest to be paid by the state on bonds issued during
15 the prior fiscal year compounded from the date the purchase warrant was
16 issued to the date of payment for the units. The purchase price shall
17 be decreased by the amount of dividends, interest, royalties, or profits
18 received by the state from holding the units between the date the pur-
19 chase warrant was issued and the date of payment for the units, but the
20 price may not be reduced below 50 percent of the purchase price for the
21 units at the time of the first restricted sale.

22 (c) Payment for units purchased by exercising a purchase warrant
23 may be made by cash, check or money order.

24 (d) A purchase warrant may not be transferred, and may not be
25 exercised except by a person who is a resident at the time the purchase
26 warrant is exercised. A purchase warrant is void if transferred.

27 Sec. 43.17.120. DISPOSITION OF PROCEEDS. The commissioner shall
28 deposit net proceeds from the sale of units under this chapter into the
29 Alaska permanent fund established in art. IX, sec. 15 of the state

1 constitution and AS 37.13.010.

2 ARTICLE 3. GENERAL PROVISIONS.

3 Sec. 43.17.130. DISPOSITION OF UNITS. (a) Except as provided in
4 (b) of this section, a person has an unrestricted right to sell, trans-
5 fer, devise, pledge or dispose of a unit, an interest in a unit, or
6 earnings from a unit.

7 (b) A portfolio plan for a state general stock ownership corpora-
8 tion or for a state energy resource trust may include restrictions on
9 the transfer or disposition of units in the corporation or trust.

10 Sec. 43.17.140. VOTING RIGHTS. (a) The commissioner may exercise
11 the voting rights attached to a unit that the state owns, holds in
12 trust, or reserves for future distribution.

13 (b) The voting rights attached to ownership of a unit distributed
14 under a portfolio plan must be conveyed unrestricted to the person
15 receiving the unit. The commissioner may not reserve a voting right or
16 require as a condition of the distribution that the recipient waive a
17 voting right, grant a proxy, or adhere to a voting trust.

18 Sec. 43.17.150. TAX TREATMENT. (a) The receipt by a person of a
19 unit distributed under AS 43.17.070 - 43.17.090 is not taxable under
20 AS 43.20. Earnings from a unit and from a sale or transfer of a unit
21 are taxable under AS 43.20.

22 Sec. 43.17.160. CREDIT FOR FEDERAL TAXES PAID. If the receipt by
23 a person of a unit distributed under AS 43.17.070 - 43.17.090 is treated
24 as income under the Internal Revenue Code and if, as a result, the
25 person is required to pay additional federal income tax, the amount of
26 additional tax attributable to that income may be applied as a credit
27 against the person's Alaska individual income tax for the tax year in
28 which the additional federal income tax is paid.

29 Sec. 43.17.170. AUTHORITY TO PARTICIPATE IN MARKET. (a) If the

1 commissioner determines that an efficient public market does not exist
2 for the sale of units held by persons, he may buy, sell, and trade in
3 those units for the purpose of establishing that market. The commis-
4 sioner shall publish regularly the bid and ask prices for those units.

5 (b) If the commissioner trades in units as authorized in (a) of
6 this section, he shall maintain an average markup sufficient, in his
7 judgment, to compensate the state for the administrative costs of his
8 trading activity.

9 (c) In this section, "efficient public market" means a market in
10 which the units distributed under this chapter have a readily ascer-
11 tained market value and in which they may be bought or sold readily and
12 without unnecessary or unreasonable transaction costs.

13 Sec. 43.17.180. WAIVER OF RESTRICTIONS. AS 37.10.085 does not
14 apply to the acquisition of assets under this chapter.

15 Sec. 43.17.190. REGULATIONS. The department may adopt regulations
16 necessary to administer this chapter.

17 Sec. 43.17.200. PENALTIES. In addition to any criminal penalties
18 imposed, if a person is convicted of perjury or unsworn falsification on
19 the basis of a certification made under AS 43.17.050 and the conviction
20 is not reversed, that person is not eligible for a distribution of units
21 under this chapter.

22 Sec. 43.17.210. DEFINITIONS. In this chapter,

23 (1) "assets" means shares of stock, debentures or other debt
24 obligations, royalties or other interests in minerals, or other inter-
25 ests in business enterprises or natural resources;

26 (2) "business enterprise" means a private corporation engaging
27 in or about to engage in natural resource extraction or processing, or
28 in manufacturing, transportation, communication, trade or services in
29 the state, whose securities the commissioner has purchased under his

1 existing investment authority under AS 37.10, or has proposed to purchase
2 under the terms of a portfolio plan established under this chapter;

3 (3) "certificate" means an instrument evidencing ownership of
4 one or more units and includes stock certificates, debentures or other
5 debt instruments and trust certificates;

6 (4) "commissioner" means the commissioner of revenue;

7 (5) "department" means the Department of Revenue;

8 (6) "eligibility date" means a date established by the commis-
9 sioner for a distribution of units under a portfolio plan established
10 under this chapter;

11 (7) "extended purchase plan" means the purchase of units over
12 a period of time through the exercise of purchase warrants;

13 (8) "oversubscribed" means a sale in which the total number
14 of units subscribed for exceeds the total number of units available for
15 sale;

16 (9) "person" means a natural person;

17 (10) "purchase warrant" means an instrument authorizing the
18 purchase of units under this chapter;

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

1 or of the high seas, or while residing upon an Indian or military reser-
2 vation; a minor takes the residence of his parent or of his legal guar-
3 dian; a married woman may establish her own residence and does not
4 presumptively take the residence of her husband;

5 (12) "state energy resource trust" means a trust established
6 under this chapter the assets of which are a right to receive income
7 equal to a specified part of the rentals, royalties, or net profits
8 belonging to the state under specified leases of state land for the
9 extraction of oil, gas, coal, oil shale, or other minerals or a speci-
10 fied part of the revenue from the sale of oil, gas, coal, oil shale, or
11 other minerals taken by the state as in kind royalties under those
12 leases;

13 (13) "state general stock ownership corporation" means a
14 corporation formed in accordance with subchapter U, Chapter 1 of the
15 Internal Revenue Code of 1954, as amended (26 U.S.C. secs. 1391 - 1397);

16 (14) "state industrial development project" means a business
17 enterprise engaged in or about to engage in natural resource extraction
18 or processing, or in manufacturing, transportation, or communications in
19 the state, and to which the state or an agency or subdivision of the
20 state contributes an investment of equity or debt exceeding \$100,000,000;

21 (15) "state investment fund" means a regulated investment
22 company organized in accordance with subchapter M, Chapter 1 of the
23 Internal Revenue Code of 1954 as amended (26 U.S.C. secs. 851 - 855);

24 (16) "state real estate trust" means a real estate investment
25 trust organized in accordance with subchapter M, Chapter 1 of the
26 Internal Revenue Code of 1954 as amended (26 U.S.C. secs. 856 - 858);

27 (17) "undersubscribed" means a sale in which the total number
28 of units available for sale exceed the number of units subscribed;

29 (18) "unit" means an undivided fractional ownership right or

1 interest in a trust, corporation, fund, project or enterprise established
2 under this chapter.

3 * Sec. 3. The enactment of a version of Senate Bill No. 170 or House Bill
4 No. 240 relating to general stock ownership corporations and creating the
5 Alaska General Stock Ownership Corporation constitutes approval of a portfolio
6 plan under AS 43.17.030 enacted by sec. 2 of this Act. After enactment of
7 either, the commissioner of revenue shall implement the portfolio plan in
8 accordance with this Act, subject to necessary appropriation. If the port-
9 folio plan is approved under this section, the commissioner of revenue may,
10 notwithstanding the approval, submit to the legislature by the 30th day of
11 the First Session of the Twelfth Legislature a revised portfolio plan if in
12 his judgment a revised plan is necessary to accomplish the policy, purposes
13 and findings under this Act or to provide complete information concerning the
14 plan. A revised portfolio plan submitted under this section is subject to
15 legislative approval under AS 43.17.030.

16 * Sec. 4. This Act takes effect immediately in accordance with AS 01.10.-
17 070(c).

SCOMM

#44:8

STATE OF ALASKA

THE LEGISLATURE

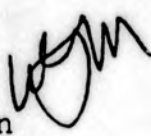
BUDGET AND AUDIT COMMITTEE

FINANCE DIVISION
POUCH WF-STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3795

March 12, 1980

MEMORANDUM

TO: Milt Barker, Fiscal Analyst
Legislative Finance Division

FROM: Wallace Miller, Consultant
to Legislative Finance Division 

SUBJECT: Energy Related Budget Items

Pursuant to our discussions, I have reviewed the supplemental and regular budgets and have prepared a summary of budget areas which either are fully or partially related to the energy area.

If you, Mark and Dave would mark up the general budget areas contained in Attachment I identifying where you would like more detailed information, I will be able to focus my efforts on these areas.

Secondly, Attachment II is a somewhat different description of existing energy related programs which was prepared by the Governor's office. You may wish to mark up Attachment II as well for areas where you want more detailed information.

WM:pw

Attachment

**SUMMARY OF ENERGY RELATED CAPITAL AND OPERATING BUDGET ITEMS
CONTAINED IN THE FY 80 SUPPLEMENTAL AND FY 81 CAPITAL AND
OPERATING BUDGET REQUESTS**

	<u>Amount Requested</u>
<u>FY 80 Supplemental Capital Budget Request</u>	
1. LC&ED Susitna Feasibility Analysis	\$ 7,500.0
2. DOTPF Energy Conservation Measures	~~25,000.0~~ <i>needs work</i>
Total	\$32,500.0
<u>FY 80 Supplemental Operating Budget Request</u>	
1. DOTPF Marine Transp. Fuel Cost Increases, FY 79	73.0
2. DOTPF Marine Transp. Fuel Cost Increases, FY 80	3,022.1
3. DOTPF Building Maint. Fuel Cost Increases	457.7
Total	\$ 3,552.8
<u>FY 81 Capital Budget Request</u>	
DNR - Geologic/Geophysical Interpretation (seismic interpretation of proposed lease sale areas)	2,000.0 <i>follow up</i>
Dept. of Public Safety	
Emergency Generator (state's Tudor Road facility)	563.3
Emergency Generator (7 skid mounted generators)	100.0
✓ Dept. of Commerce & Economic Development	
Single wire Ground Return Demonstration AEC	50.0
Energy Supply and Demand Assess	100.0
Facilities Grant Program (Energy Conservation) <i>rationing & fuel match should be DOTPF</i>	2,655.0
✓ Alternative Energy Demonstration Projects	
Phase I - Feasibility plan	75.0
Alternative Demonstration Projects AEC	475.0
Sub-total	550.0
✓ Alaska Power Authority	
Susitna Feasibility Analysis	3,335.0
Swan Lake Hydroelectric Project	18,000.0
AVEC Fuel Conservation Project	125.0
Dillingham Hydroelectric Project	100.0
Kisaralik Hydroelectric Project	100.0
Haines/Skagway Hydroelectric Project	100.0
Mennonite Creek Hydroelectric Project (Kodiak)	200.0
Larsen Bay Hydroelectric Project (Kodiak)	200.0
Old Harbor Hydroelectric Project (Kodiak)	200.0
AVEC Villages Hydro Study	325.0
Discretionary Study Funds	75.0
Lake Tyee Hydroelectric Project	10,000.0

✓ further work

Amount
Requested

DOTPF - Public Facilities

Governor's Mansion Maintenance	\$ 29.0
Generator Replacement - Interior	103.2
Furnace Replacement - Southeast	18.8
Capitol Building - Cleaning/Repairs <i>(conservation)</i>	102.0
Capitol Building - Emergency Generator	98.0
Building Energy Conservation Program	165.0
Solar Alaskan School Research	140.0
Fuel Cell Testing <i>AEC</i>	60.0
Satellite Packet Broadcast Data System?	100.0
Remote Facility Monitoring System?	300.0
Meteor Burst Demonstration Project	40.0
New Building Products Testing & Development	100.0
Facilities Planning	
Facility Energy Standards	275.0
Energy Conservation Regulations (state facilities)	?
Energy Audits	? <i>★</i>
Energy Conservation Measures	10,000.0 <i>needed work</i>

Department of Administration - Uninterruptable Power
Supply, Juneau Computer Center

485.4

TOTAL Energy Related Items-FY 81 Capital Budget

\$50,794.7

FY 81 Operating Budget Request

University of Alaska-Organized Research (research and
testing of energy systems--solar, wind, small hydro,
compost systems)

?

Department of Natural Resources

Geological Investigations	199.7
Mineral and Energy Development	
Coal Development	? 173.7 -
Geothermal Development	340.0 -
Oil and Gas Conservation Comm.	1,843.5
Gas Pipeline Surveillance	2,669.0

Department of Law

Consumer Protection (false energy saving devices)	575.7
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Commerce and Economic Development

The Alaska Public Utilities Commission <i>load management - PURPA</i>	1,523.1
The Alaska Pipeline Commission	516.3

Department of Military Affairs

Disaster Planning and Control	615.9
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Amount
Requested

Commerce and Economic Development	
Economic Enterprise (coal development)	\$ 1,354.4
Energy and Power Development	3,890.0 <i>not a #</i>
Alaska Power Authority	332.1
Alaska Renewable Resources Corp. ?	1,476.1
Community and Regional Affairs	
Local Government Assistance (Coastal Energy Impact Program)	585.2
Office of the Governor	
Policy Development & Planning	1,492.7
Growth Policy Council	168.7
Public Forum	190.6
Department of Administration	
Council on Science & Technology <i>Northern Tech to AEC</i>	303.0
Department of Revenue	
Petroleum Revenue	1,447.2
Dept. of Transportation & Public Facilities	
Facilities Planning and Research	7,156.4

?

Life-cycle costing?

① problems - DOT conservation program
is poorly structured.

② R+D projects to Alaska Energy Center

③ information collection

EXISTING PROGRAMS

1. FINANCIAL ASSISTANCE

DIVISION OF EMERGENCY SERVICES FUND:

Emergency relief, natural disasters (power station fires, etc.).

FEDERAL LOW INCOME ENERGY ASSISTANCE:

State administration of Federal energy relief funds to low-income families, \$5 million available for winter of 79-80.

ALASKA POWER AUTHORITY:

- A. Revolving loan fund to design, build, equip, etc., facilities for power production in Alaska.
- B. Revenue bonding to finance construction of power production facilities.

PUBLIC FACILITIES MODIFICATION:

Federal-State program to improve energy efficiency in schools, hospitals, public care facilities.

ALTERNATIVE TECHNOLOGY REVOLVING LOAN FUND:

State loans up to \$10,000 to finance up to 50% of costs to purchase, build, install alternative power sources (9 1/2% and 20 year term maximums).

NORTHERN TECHNOLOGY GRANTS PROGRAM:

Grants up to \$5,000 to demonstrate alternative energy technologies.

State Agency

MILITARY
AFFAIRS

HEALTH &
SOCIAL
SERVICES

ALASKA
POWER
AUTHORITY

COMMERCE

COMMERCE

SCIENCE &
TECHNOLOGY
COUNCIL

ALTERNATIVE TECHNOLOGY GRANTS PROGRAM:

COMMERCE

Approximately \$250,000 will be available to Alaska this year; State administers Federal funds.

SMALL BUSINESS LOANS:

COMMERCE

State loans which can be used to finance energy conservation expenditures and alternative energy systems for commercial enterprises.

ALASKA RENEWABLE RESOURCES CORPORATION:

ALASKA
RENEWABLE
RESOURCE
CORP.

Loans, grants, equity participation for potential renewable energy resource enterprises.

ALASKA HOME WEATHERIZATION PROGRAM:

COMMERCE

Provides weatherization assurance to low income persons; priority on unemployed, elderly, and handicapped.

2. TECHNICAL ASSISTANCE

needs to be coordinated w/ DOTPF

STATEWIDE ENERGY CONSERVATION PROGRAM:

COMMERCE

Energy audits, public involvement, community outreach, information, education on conservation.

RURAL ENERGY EDUCATION:

COMMERCE

Education-information materials and energy workshops geared to the particular problems and solutions for rural Alaska.

ENERGY CONSERVATION EXTENSION SERVICE:

COMMERCE

Technical assistance based on university cooperative extension service concept.

COMMUNITY FUEL ASSISTANCE:

COMMERCE

Help communities locate, move and use abandoned bulk fuel tanks.

FEDERAL-STATE FACILITIES COORDINATION:

COMMERCE

Program assuring local community impacts and needs are accounted for in planning government facilities.

STATE ALTERNATIVE ENERGY DEMONSTRATION PROGRAM:

COMMERCE

Funding special alternative energy system demonstration projects.
Examples: electrical transmission systems in Lower Kuskokwim; Pilgrim Hot Springs Geothermal; Nelson Lagoon Wind System; Newhalen Wind Generator; Bethel Waste Heat project.

to
AEC

STATE RESEARCH & DEVELOPMENT PROGRAM:

COMMERCE

Energy systems research and development, Examples: low BTU gasification; gasohol from coal or barley; geothermal for salmon aquaculture; waste heat use.

and
TRANSPORTATION

+ AEC

ALASKA SOLAR CLEARINGHOUSE:

COMMERCE

Information center for solar, wind, small-scale hydro, geothermal, other alternative technologies.

ALASKA WIND ANEMOMETER LOANS:

COMMERCE

Loan of anemometers for determining potentials for wind energy systems.

3. INCOME TAX CREDITS

RESIDENTIAL FUEL CREDIT:

REVENUE

5% State income tax credit on residential fuel bills.

RESIDENTIAL FUEL CONSERVATION TAX CREDIT:

REVENUE

State income tax credit, 10% of cost of energy saving capital improvements, and/or alternative energy systems, (maximum credit \$200).

4. IN-STATE USE OF ENERGY RESOURCES

20% MINIMUM ROYALTY:

NATURAL
RESOURCES

A minimum of 20 percent royalty will be required as a condition of all future oil and gas leases issued by the State.

IN-STATE USE OF ROYALTY OIL AND GAS:

NATURAL
RESOURCES

Statutory requirements (AS 38.05.183(d)) encourages use in-state of royalty oil or gas taken in kind.

ALPETCO:

NATURAL
RESOURCES

State contract with the Alaska Petrochemical Company (ALPETCO) includes a requirement that at least 30,000 barrels a day of fuel products will be available for in-state use.

NORTH POLE:

NATURAL
RESOURCES

The State now sells royalty oil to the North Pole refinery at Fairbanks, which has contributed significantly to the holding down of fuel prices in the area.

GAS PIPELINE:

The Northwest Alaskan Pipeline Company is currently attempting to arrange financing. When operational the gas pipeline will provide opportunities for in-state use of natural gas for home heating and industrial purposes.

NATURAL RESOURCES

DIRECTORY OF STATE AGENCIES

OFFICE OF THE GOVERNOR

Juneau Office	465-3500	Pouch A Juneau, Alaska 99811
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Fairbanks Office	452-1545	675 7th Avenue Fairbanks, Alaska 99701
Nome Office	443-2770	P.O. Box 25 Nome, Alaska 99762
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Division of Business Loans	465-2510	Pouch D Juneau, Alaska 99811
Division of Energy and Power Development	276-0508	338 Denali Street Anchorage, Alaska 99501

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

Helen Beirne Commissioner	465-3030	Pouch H-01 Juneau, Alaska 99811
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DEPARTMENT OF MILITARY AFFAIRS

Division of Emergency Services	272-0594	1306 East 4th Anchorage, Alaska 99501
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DEPARTMENT OF NATURAL RESOURCES

Robert LeResche Commissioner	465-2400	Pouch M Juneau, Alaska 99811
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DEPARTMENT OF REVENUE

Thomas Williams Commissioner	465-2300	Pouch S Juneau, Alaska 99811
Alaska Renewable Resources Corporation	465-4616	P.O. Box 1647 Juneau, Alaska 99811

DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

Robert Ward Commissioner	465-3900	Pouch Z Juneau, Alaska 99811
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STATE ENERGY ADMINISTRATION

An Analysis of State Roles and
Responsibilities in Energy Matters

Prepared By:

Division of Policy Development and Planning
Office of the Governor

TO:

Attorney General Av Gross
Commissioner Phillip Hubbard
Commissioner Robert LaResche
Commissioner Lee McAnerney
Ron Lind

DATE

July 6, 1977

FROM:

Russ Colwell for
Fran Ulmer, Director
Policy Development and Planning
Office of the Governor

SUBJECT:

The Governor has, for some time, been concerned with the proliferation of programs and responsibilities in the energy area of this Administration. The attached draft report was prepared at his request by the Division of Policy Development and Planning to assist him in evaluating the situation.

In order to help determine the most effective allocation of responsibilities and assignments in the energy area, I am submitting this report for your review and comment. I would suggest meeting at the end of this month to discuss the report and come up with some recommendations or options for the Governor. The Governor is expecting our recommendations within the next two months.

I am also sending a copy of the draft report to the staff of the legislatively-mandated State Energy Policy Committee. It is hoped that this document will stimulate the deliberations of that group.

Attachment

BL/tt

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