

## **An Act eliminating the requirement for a resident farmer on the board of directors of the Alaska Commercial Fishing and Agriculture Bank.**

AS 44.81.020(a) is amended as follows:

"The bank shall be governed by a board of directors consisting of seven to nine natural persons. The number is determined by the bank's bylaws. Two board members shall be appointed by the governor of the state. The other board members shall be elected by the members of the bank as provided in the bank's bylaws, [ , except that at least one of the elected board members must be a resident farmer.]"

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Alaska Commercial Fishing and Agriculture Bank (CFAB) was created by the Legislature in 1979 and 1980, at a time when there was considerable emphasis on the development of agriculture in Alaska. As the name of the cooperative suggests, there was hope that CFAB would be a significant factor in financing agricultural development. CFAB has indeed made many agricultural loans, and offers agricultural loans today. However, there have been no new agricultural loans by CFAB during the past 10 or more years (and almost no agricultural loan applications.) CFAB's officers believe there are two fundamental reasons for this: (1) The anticipated development did not occur - indeed, many former agricultural operations have succumbed to urban and suburban development, and; (2) The State of Alaska, through its Agricultural Revolving Loan Fund, which operates at below-market rates, has commanded a near-monopoly of the agricultural loan market.

Since CFAB's elected directors are drawn from (and elected by) its membership, and since membership is essentially a function of a borrowing relationship, the number of persons eligible to serve as a "farmer director" has dwindled. Directorship involves no significant perquisites, and compensation is minimal. In recent years the matter has been resolved through persuasive pressure on competent and cooperative individuals, as well as contrived relationships intended to meet the letter of the statute and the bylaws.

These circumstances have resulted in increasing pressures on the individuals involved, on CFAB's other directors, and on CFAB's efforts to maintain its viability and to properly serve its various constituencies. CFAB is a private cooperative serving, and owned by, Alaska residents. It is a relatively small institution, governed by an active and committed board of directors, and is now entering its 30th year of service. Despite the logical and well-intended requirement of the past, it has now become critical for CFAB's members to reach into the broad pool of its total membership, consisting not only of fishers and (theoretically) farmers, but tourism operators and other resource-based businesses as well, in order to maintain the highest level of competence within its governing body.

## DISCUSSION - Proposed "Examination" Legislation

It may seem odd, to say the least, that a financial institution would seek - actively seek - some new level(s) of oversight and/or potential criticisms, especially where it will involve new and uncontrollable financial costs.

But Alaska Commercial Fishing and Agriculture Bank (CFAB) is different. Established and guided by AS44.81, it is a private institution - a status addressed judicially and quasi-judicially several times over the years - but it exists (according to the statute) *"for a public purpose."*

Despite the "private" status, there are no proprietary interests in CFAB; there are no mechanisms by which a party may invest in CFAB with profit as an objective. Even at the staff and management levels, there are no mechanisms or incentives designed to encourage anything other than adherence to the statutory mandates.

Instead, CFAB represents a collection of diverse, but nevertheless related, fiduciary responsibilities. It borrows money and lends that money to resident participants in the commercial fishing community and in other resource-based industries. It operates as a cooperative corporation. Therefore: (1) It has a fiduciary obligation to those who have borrowed in the past and, as a result of the cooperative structure, continue to own a financial interest; (2) It has a fiduciary obligation to those who are borrowing today, who have been promised the benefits of patronizing a cooperatively-structured lender; and (3) it has a fiduciary obligation to those as-yet-unidentified Alaska residents who will at some point in the future experience the borrowing requirements which the founding Legislatures sought to recognize. Finally, it has a fiduciary responsibility to the State of Alaska - First, because it was a financial investment of the State (since repaid) which sustained CFAB in its earliest years, and, Second, because CFAB is the only private enterprise with the authority to encumber a Commercial Fishing Limited Entry Permit with a consensual lien.

CFAB's Board of Directors, Managements, and staff members have always been sensitive to those diverse fiduciary responsibilities. While they seem simple enough in the telling, the oft-required "balancing acts" can be challenging. And since CFAB deals in credit, an activity which demands privacy and discretion with regard to essentially every important matter, not even the varied constituencies are in position to assess the effectiveness and appropriateness of corporate actions and directions.

It is true that CFAB is subject to, and welcomes, an annual financial audit by a professional firm; and it is true that the results of that audit are widely disseminated. But such audits are focused primarily on quantitative values and accounting protocols. Only peripherally, do they touch upon the qualitative aspects of lending policies, practices, and results. The State's bank examiners, however, are trained in analytical and evaluative procedures, and they are prepared to express a judgment, in each case, as to the likelihood of a loan's repayment in full. In addition, the examiners have access to the results and experiences of numerous other financial institutions and can establish norms or guidelines by which CFAB's effectiveness can be measured. So, in total, CFAB's Board of Directors and Management are

enthusiastic in support of the measure at hand, and they look forward to both the internal confidence and the external credibility which will be engendered by the examiners' reports.

There is one final - secondary, but not lesser - benefit to be gained by CFAB from the contemplated examination process. Over the 20+ years since CFAB's recovery from its earliest misadventures, its executives and credit staffs have taken great pride in the professionalism of its lending practices and results. The extension of commercial credit, however, is a socially and legally acceptable form of discrimination, based frequently on subjective evaluations and judgments. While not at all lacking in confidence, CFAB's lending principals are committed to the realities that a second (or more) look, another set of eyes, an opinion based on a different set of experiences, can be invaluable in reaching the "right" conclusion. While recognizing that the examination process can inherently give rise to challenging differences of opinion, CFAB's Management and other staff look forward to the very real values of an independent and professional review of their collective actions.