

Original sponsors: Kelly and Sturgulewski

1 IN THE SENATE BY THE FINANCE COMMITTEE
2 CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 408 (Finance) am
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the division of banking, secu-
7 rities, and corporations; establishing the real prop-
8 erty liquidating program within the division; au-
9 thorizing certain public corporations to participate
10 in the program; and providing for an effective date."

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

12 * Section 1. LEGISLATIVE FINDINGS AND INTENT. (a) The legislature
13 finds that

14 (1) there have been in the state several failures of state and
15 federally chartered financial institutions and one bank consolidation by
16 the Federal Deposit Insurance Corporation under 12 U.S.C. 1823(c);

17 (2) these financial institutions as well as other businesses and
18 state and federal agencies currently hold large portfolios of distressed
19 real estate loans and real property;

20 (3) these businesses and government agencies need to be permit-
21 ted to cooperate in administering these loans and properties to avoid fur-
22 ther adverse effects on the state's real estate markets and to stabilize
23 the state's banking system; and

24 (4) the maintenance of stable and orderly markets for the pur-
25 chase and sale of commercial and residential real estate in the state is
26 essential to the economy of the state and the welfare of its citizens, as
27 is the stability of the state's banking system.

28 (b) The legislature intends to ensure the stability of the state's
29 banking system and real estate markets and prevent a precipitous decline in

1 real estate prices by displacing competition with government regulation in
2 matters relating to the administration, management, and disposition of real
3 property in the state and loans secured by the property held by financial
4 institutions, other businesses, and state and federal agencies. By au-
5 thorizing the creation of real property liquidating organizations and
6 mandating active state supervision of these organizations, the legislature
7 intends that each real property liquidating organization and all persons
8 and entities who subscribe or grant assets to, contribute funds or services
9 to, obtain a beneficial interest in, or participate in the management of
10 the organization will be fully immunized against potential liability under
11 federal antitrust laws and state antitrust, competition, and trade prac-
12 tices laws arising from the operation of the organization or the activities
13 of any person or entity performed in connection with the organization.

14 * Sec. 2. AS 06 is amended by adding a new chapter to read:

15 CHAPTER 50. REAL PROPERTY LIQUIDATING PROGRAM.

16 Sec. 06.50.010. RESPONSIBILITY OF DIRECTOR. (a) The real
17 property liquidating program is established in the division of bank-
18 ing, securities, and corporations. The director of the division shall
19 administer this chapter.

20 (b) By February 1 of each year the director shall submit a
21 report to the legislature summarizing activities of the division under
22 this chapter during the previous year.

23 Sec. 06.50.020. FORMATION. (a) Three or more grantors may
24 create a real property liquidating organization by filing the orga-
25 nizational documents with the director. The director and the governor
26 shall review the documents and may approve them if they comply with
27 (c) of this section and are consistent with the purposes of this
28 chapter. Conveyance of assets to or disposition of assets by an
29 organization is not effective until the organizational documents have

1 been reviewed and approved by the director and the governor.

2 (b) At the time organizational documents are filed with the
3 director under (a) of this section, a copy shall be made available by
4 the grantors to the legislative auditor. The legislative auditor
5 shall review the documents and report to the Legislative Budget and
6 Audit Committee. The committee may recommend approval or disapproval
7 of the documents to the governor.

8 (c) The organizational documents may not provide for transfer by
9 a grantor to an organization of assets other than real property in the
10 state, loans secured by real property in the state, and cash. The
11 organizational documents must

12 (1) state the purpose of the organization;

13 (2) identify all grantors who have subscribed to the orga-
14 nization and all persons who will possess an interest in the orga-
15 nization upon its formation;

16 (3) describe the manner in which the organization will be
17 managed;

18 (4) prescribe the method under which distributions to the
19 grantors and other beneficiaries will be made;

20 (5) provide for the conveyance to the organization of all
21 or part of the grantors' portfolios of commercial and residential real
22 property in the state and real estate loans secured by real property
23 in the state;

24 (6) provide for the transfer to the organization of cash in
25 sufficient amounts to enable the organization to operate;

26 (7) ensure that each grantor contributes a reasonable
27 amount of cash to be used for operating expenses of the organization;

28 (8) ensure that all assets transferred to the organization
29 are appraised at fair market value at the time of the transfer;

1 (9) provide for the orderly disposition of the real prop-
2 erty and real estate loans of the organization at prices to be de-
3 termined by the organization under regulations adopted by the direc-
4 tor;

5 (10) provide for expenditures to manage organization assets,
6 including expenditures to preserve or enhance the value of the orga-
7 nization's properties;

8 (11) establish terms for the dissolution of an organization;
9 and

10 (12) provide for the establishment of other terms and con-
11 ditions relating to the sale or other disposition of assets that the
12 grantors consider necessary or appropriate to ensure that the orga-
13 nization will be operated in a manner that will provide for orderly
14 disposition of the organization's assets and promote stable real
15 estate markets and a stable banking system in the state.

16 Sec. 06.50.030. AUDITS AND REPORTS. (a) In addition to the
17 record keeping requirements specified in regulations adopted by the
18 director or in the organizational documents, the organization shall
19 retain a certified public accountant to annually prepare and submit to
20 the director on or before April 1 an audited balance sheet, income
21 statement, statement of principal, statement of changes in financial
22 position, schedule of all dispositions of real property, real estate
23 loans, and other assets made by the organization during the previous
24 calendar year, and letters

25 (1) certifying that all dispositions of real property, real
26 estate loans, and other assets, and all distributions during the year
27 were made in accordance with the provisions of the organizational
28 documents and this chapter, or identifying any variance; and

29 (2) with respect to the internal financial controls and

1 practices of the organization, providing recommendations the accoun-
2 tant considers appropriate.

3 (b) The organization shall prepare and file with the director
4 and the legislative auditor, on a quarterly basis, a report containing
5 the following:

6 (1) a schedule of all real property, real estate loans, and
7 other assets held by the organization;

8 (2) the sale price and all other significant terms of sale
9 for real property sold by the organization and amount of proceeds
10 received by the organization from real estate loans and other assets
11 since the date of the previous report; and

12 (3) a proposed operating plan for the next quarterly period
13 that conforms with regulations adopted under this chapter.

14 Sec. 06.50.040. REVIEW AND APPROVAL. (a) The director shall
15 review each report filed under AS 06.50.030(b) and approve or disap-
16 prove the proposed operating plan within 20 days after filing. In
17 reviewing each report and operating plan, the director shall consider
18 current market conditions. The director may approve an operating plan
19 if the director finds that the report and plan

20 (1) comply with the purposes of this chapter;

21 (2) ensure all provisions of trust agreements and agree-
22 ments between state entities and organizations are adhered to;

23 (3) provide policies that meet the requirements of law and
24 regulations, establish sound fiscal practices, and ensure proper
25 management;

26 (4) ensure state investments will not be adversely affected
27 by poor management or policies, including payment of excess compen-
28 sation or benefits to officers and employees of the organization; and

29 (5) ensure that the organization will have the amount of

1 cash necessary for operating expenss during the quarter.

2 (b) If a proposed operating plan is approved by the director, it
3 shall be submitted for approval or disapproval by the governor. The
4 legislative auditor shall review the operating plan and report to the
5 Legislative Budget and Audit Committee. The committee may recommend
6 approval or disapproval of the plan to the governor.

7 (c) Within five days after the director notifies an organization
8 of its intention to inspect business records, all business records
9 maintained by the organisation shall be available for review and
10 examination by the division of banking, securities, and corporations
11 at the organization's principal place of business, during regular
12 business hours. The director shall examine the business records of an
13 organization on a regular basis at least twice each calendar year to
14 determine whether they demonstrate

15 (1) proper endorsements of loans and agreements;

16 (2) perfection of interests in collateral;

17 (3) proper appraisals and other determinations of value;

18 (4) proper assessment of the financial position of gran-
19 tors, investors, or borrowers; and

20 (5) other matters the director considers necessary.

21 (d) If the governor or director disapproves a proposed operating
22 plan or the director concludes, after an inspection of business re-
23 cords, that the organization is being administered materially contrary
24 to statute, regulation, or a previously approved operating plan, the
25 director shall notify the organisation and all grantors in writing,
26 specifying all deficiencies and prescribing appropriate remedies. If
27 the organisation fails to remedy deficiencies in accordance with the
28 director's prescriptions within 60 days after receipt of the notice,
29 the director may commence proceedings under AS 06.01.030. A revised

1 operating plan is also subject to approval by the director and the
2 governor and shall be made available for review by the legislative
3 auditor.

4 (e) The expenses of the division of banking, securities, and
5 corporations reasonably incurred in reviewing and approving a proposed
6 operating plan or inspecting business records under this section shall
7 be charged to and paid by the organization. Receipts shall be depos-
8 ited into the general fund and may be appropriated to the Department
9 of Commerce and Economic Development for costs of administering this
10 chapter.

11 Sec. 06.50.050. LEGISLATIVE AUDITS. (a) The legislative audi-
12 tor shall audit each organization at least once each year. The legis-
13 lative audit division has free access to all books and papers of an
14 organization that relate to its business and books and papers kept by
15 a director, officer, or employee relating to or upon which a record of
16 its business is kept, and may summon witnesses and administer oaths or
17 affirmations in the examination of the directors, officers, or employ-
18 ees of the organization or any person in relation to its affairs,
19 transactions, and conditions, and may require and compel the produc-
20 tion of records, books, papers, contracts, or other documents by court
21 order if not voluntarily produced.

22 (b) The legislative auditor and the auditor's employees may not
23 disclose information acquired by them in the course of an audit of an
24 organization concerning the particulars of the business or affairs of
25 a person unless the information is required to be disclosed by law or
26 under a court order. However, the legislative auditor shall prepare a
27 report summarizing findings of an audit conducted under this section
28 for the president of the senate, the speaker of the house of represen-
29 tatives, and the Legislative Budget and Audit Committee. Upon

1 approval of the Legislative Budget and Audit Committee, a report pre-
2 pared under this section shall be made public.

3 Sec. 06.50.060. EXEMPTION. (a) If the director determines that
4 the exemption is necessary to carry out the purposes of this chapter,
5 the Department of Commerce and Economic Development may by regulation
6 exempt transactions under this chapter by organizations from any fee,
7 authorization, permit, filing, or registration requirement of or
8 administered by the department.

9 (b) Each organization is exempt from AS 45.50.562 - 45.50.596.
10 Activities in connection with an organization of a person or entity
11 that subscribes, contributes real property, real estate loans, or cash
12 to, obtains a beneficial interest in, or participates in the manage-
13 ment of the organization are exempt from AS 45.50.562 - 45.50.596.

14 Sec. 06.50.100. DEFINITIONS. In this chapter

15 (1) "director" means the director of the division of bank-
16 ing, securities, and corporations;

17 (2) "grantor" means a federally or state chartered finan-
18 cial institution, federal or state agency, municipality, licensed
19 insurer, or financing company that conveys real property in the state,
20 loans secured by real property in the state, and cash to, and thereby
21 obtains a beneficial interest in and the right to participate in the
22 management of, a real property liquidating organization;

23 (3) "real property liquidating organization" or "organiza-
24 tion" means a corporation, trust, fund, partnership, joint venture, or
25 other entity created, following the enactment of this chapter, to
26 acquire, maintain, manage, market, administer and sell, liquidate, or
27 otherwise dispose of real property in the state or loans secured by
28 real property in the state and to distribute the proceeds to its
29 beneficiaries, in accordance with organizational documents.

1 * Sec. 3. AS 18.56.090 is amended by adding a new paragraph to read:

2 (29) convey real property in the state, loans secured by
3 real property in the state, and cash in an amount not to exceed
4 \$15,000,000 to, acquire a beneficial interest in, and participate in
5 the management of, a real property liquidating organization estab-
6 lished under AS 06.50 if

7 (A) state corporations and agencies are granted pri-
8 ority to the assets of the organization over other grantors; and

9 (B) the corporation will realize a cumulative annual
10 rate of return of at least five percent in its total investment
11 in the organization.

12 * Sec. 4. AS 44.33 is amended by adding a new section to read:

13 Sec. 44.33.027. DIVISION OF BANKING, SECURITIES, AND CORPORA-
14 TIONS. The division of banking, securities, and corporations is
15 established in the department. The director of the division of bank-
16 ing, securities, and corporations shall be appointed by the governor
17 and serve a four-year term or until a successor is appointed. The
18 director serves at the pleasure of the governor. The director

19 (1) must be a United States citizen;

20 (2) must, within 15 years before appointment to office,
21 have had a minimum of five years management experience with a finan-
22 cial institution or as an employee of a state or federal agency that
23 supervises financial institutions;

24 (3) may not, within five years before appointment to of-
25 fice, have served as an officer or director of a financial institution
26 that was subject to a disciplinary order issued by the division of
27 banking, securities, and corporations, or a federal agency or agency
28 of another state that supervises financial institutions, during the
29 five-year period.

- 1 * Sec. 5. AS 44.88.080 is amended by edding a new paragraph to read:
2 (25) to convey real property in the state or loans secured
3 by real property in the state to, acquire a beneficial interest in,
4 and participate in the management of, a real property liquidating
5 organization established under AS 06.50 if
6 (A) state corporations and agencies are granted pri-
7 ority to the assets of the organization over other grantors; and
8 (B) the corporation will realize a cumulative annual
9 rate of return of at least five percent in its total investment
10 in the organization.
- 11 * Sec. 6. AS 06.50.010, 06.50.020, 06.50.030, 06.50.040, 06.50.050,
12 06.50.060, 06.50.100; AS 18.56.090(29); and AS 44.88.080(25) are repealed.
- 13 * Sec. 7. Sections 1 - 5 of this Act take effect June 1, 1988.
- 14 * Sec. 8. Section 6 of this Act takes effect June 1, 1993.