

HB

30

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44.54.230.240.250  
FOR IPADDRESS AND  
EXTRA COMMENTS  
PLEASE REFER

$$16.10.333 = 44.54.240$$

$$16.10.335 = 44.54.240$$

$$16.10.333 = 44.54.240$$

MEMORANDUM

TO: Mr. Richard H. Eakins  
Director, Division of  
Economic Development  
DEPARTMENT OF COMMERCE  
& ECONOMIC DEVELOPMENT  
Pouch EE  
Juneau, Alaska 99811

FROM: Peter Argetsinger *Pa*  
WOHLFORTH & FLINT

DATE: April 6, 1979

RE: Commercial Fishing & Agriculture  
Bank/Comments On SSHB 30

On April 4, you requested our assistance in preparing a position paper as to SSHB 30 for submission to the Legislature next week. The comments on the subject bill which follow are submitted for your consideration. They are structured in such a way that you need only add introductory and concluding paragraphs and insert a discussion of policy matters as appropriate, particularly in the areas of composition of the Board of Directors (where I sensed a strong feeling at the April 4 meeting in favor of independence) and in the area of the business judgments to be made when considering loans for entry permits which are to be secured by those permits. (Although, perhaps nothing additional need be said on the latter subject.)

✓ Section 1. Addition of the word "Alaska" to the name of the Bank is desirable and, in fact, reflected in the draft Articles of Incorporation and By-Laws of the Bank now under consideration by the Board of Directors.

Section 2. The Board of Directors of the Bank under the present law is composed of five members, initially appointed by the Governor, who serve staggered terms. Following expiration of the initial term, directors are then elected by the member/shareholders of the Bank which under AS 44.54 is organized as a cooperative corporation. AS 10.15.140, to which the Bank is subject, requires that the elected directors be members of the cooperative. Counsel to the Bank have examined the present method of constituting the Board of Directors of the Bank and have advised that,

IN ORDER TO ISSUE TAX EXEMPT BONDS  
(ON BEHALF OF) THE STATE THE BANK  
MUST BE CONSIDERED A "CONSTITUTED  
AUTHORITY"

in their opinion, under Section 103 of the Internal Revenue Code and the regulations thereunder the Bank may not issue tax exempt revenue bonds. In general, this is because in order to issue tax exempt bonds "on behalf of" the State, the Bank must be considered by the Internal Revenue Service to be a "constituted authority". To satisfy this requirement it is necessary that all members of the Bank Board of Directors be public officials of the State, be elected by the voters of the State or be appointed directly by the State. And, the requirement continues for the life of any bonds issued by the Bank.

We have also been advised by counsel that the proposed revision to AS 44.54.020 which would expand the Board of Directors to seven members, three of whom would be appointed by the Governor until such time as the Bank has repurchased all non-voting preferred shares held by the State does not satisfy the IRS criteria either. In order to issue tax exempt revenue bonds it would be necessary that the Board of Directors be composed in its entirety of gubernatorial appointees for the life of any outstanding bonds.

The present formulation of the Board, of course, is quite satisfactory to accomplish the primary purpose envisioned by the Legislature when it established the Bank, i.e., to leverage the bank's capital with the federal farm credit system banks in order to make loans to those engaged in commercial fishing and agriculture. In that regard, the federal banks require as a condition of eligibility for loans that associations such as the Commercial Fishing and Agriculture Bank be organized in such a way that not less than 80% of the voting control of the bank is held by fishermen or farmers. See, e.g., 12 USCA 2129 which sets out these requirements as they apply to the federal banks for cooperatives. At first blush, this would seem to preclude a Board of Directors where 3/7ths of the members are gubernatorial appointees rather than representatives of the membership. However, we have informally discussed the matter with representatives of the federal farm credit system in Spokane who have advised us that they do not believe that reconstituting the Bank's Board of Directors as envisioned by SSHB 30 would preclude them from working with the Commercial Fishing and Agriculture Bank. Rather, they interpret the Federal requirement to mean that the control of at least 80% of the votes which would elect the other four members of a reconstituted Board of Directors must be in fishermen and farmers.

TO SATISFY  
Requirements: members  
of Bd of Directors must be public  
officials

IRS  
All Bd members  
must be composed in its  
entirety by gubernatorial  
appointees for life of outstanding  
Bds.

80% of  
that which we have  
at least  
50% voting rights  
held by  
men + farmers

It would appear that a change in the composition of the Board of Directors as proposed in SSIB 30 would accomplish one, or both, of two objectives. One, it would establish a mechanism through which Board members who otherwise would not be eligible for election by the members (e.g., bankers, economists, business consultants) could remain on or be appointed to the Board of Directors even though they are not actively engaged in commercial fishing or agriculture.) Two, it would vest some modicum of control in the State through the power of the Governor to continue to appoint a minority of the Board during the early life of the Bank. While the first of these reasons is certainly desirable, perhaps some additional discussion of the need for State representation on the Board of Directors through gubernatorial appointees is necessary. At the outset, it should be noted that the Legislature will always retain its ability to influence the Bank through the appropriation process, particularly during the capital formation phase of the Bank, and through its ability to modify to a great extent the Bank's enabling legislation should that ever become necessary. However, a basic tenet of the federal farm credit system is that organizations such as the Bank should operate on a cooperative basis for the mutual benefit of the members.

↓ (insert additional policy considerations re independence of the bank as desired)

One final comment on Section 2 of SSIB 30. The draft bill, as well as the present statute, states that Board member election shall be by the "shareholders". Generally speaking the privilege of the vote in a cooperative corporation belongs to the member or holder of membership stock. Most members will also hold shares of capital stock, but it is entirely possible for one to be a capital stockholder (thus, a shareholder) at the time of a membership meeting, yet for several reasons not currently eligible to vote as a member. Therefore, it is our recommendation that the word "shareholders" on line 22 of page 1 of SSIB 30 be replaced by the term "members" or the term "membership". "Member" is a defined term in AS 10.15.595(9) and would be the preferred term.

✓ Section 3. The proposed amendments to AS 44.54.090 found in Section 3 of SSIB 30 are satisfactory and appear to solve the drafting problem in the present statute.

However, during the organization of the Board of Directors of the Bank two other concerns have surfaced which may be solved by adding language to AS 44.54.090. The first of these is the method to be used when determining

Such organization should operate on COOP basis.

Actual proposed change

which members of the Board of Directors shall serve for the one, two and three year term. One way to resolve this problem is to provide that the terms be determined by lot, as the Legislature has provided in other instances. (See AS 18.26.030 where such a system is applied to the Board of Directors to the Alaska Medical Facility Authority.)

*terms of Legislature*

*date of Bd members expiration of term*

The second problem is insuring that the initial terms of the Board of Director members expire on the date of the cooperative annual meeting rather than on the anniversary date of the appointment by the Governor. As the Bank's draft By-Laws provide that the annual meeting be held in November of each year, we strongly urge that AS 44.54 provide that the initial one year Board of Governor terms extend until November 1980, and that the two and three year terms expire at the time of the following two annual meetings. Since the initial appointments to the Board of Directors were made on February 19, 1979, to provide that the one year terms expire in November 1979, would not be a prudent business decision as it would mean that the expertise and experience of the one year directors would be lost to the Bank even before it is in full operation.

These recommendations may be implemented by striking the period following the word "years" on line 5 of page 2 of SSHB 30, and inserting a comma and the following language;

, to be determined by lot. The initial terms shall expire at the annual meeting of the bank held in November 1980, 1981 and 1982 respectively.

Section 4. We are aware that the language of Sections 4 and 5 of SSHB 30 tracks in most respects the language of AS 16.10.300 et seq, the Commercial Fishing Loan Act, and agree that it is desirable that the Bank as well have the power to make loans to individual commercial fishermen to purchase entry permits. The Board of Directors of the Bank will, of course, at the appropriate time be faced with the necessity of determining its policies, from a business standpoint, when considering loans to be secured by entry permits. We are aware that there are presently on appeal to the Alaska Supreme Court two Superior Court decisions in cases which challenge the limited entry permit system and/or the method by which permits have been issued. The Supreme Court decision in those cases, or future cases, may result in the issuance of a sufficient number of additional entry permits so that the value of an entry permit held by the Bank as security is substantially lessened.

*Value of Permit greatly lessened - outcome of Supreme Court case #*

Future action by the Legislature could work to the same end and must also be taken into consideration by the Bank when making loans of this type.

As to the specific language of Section 4 of SSHB 30, we note that eligibility for a loan to purchase an entry permit is conditioned upon a five year durational residency requirement which, if challenged at some future time, could be held unconstitutional. We also note that the requirement for active participation in the fishery at some time during the past five years is vague enough so that it may cause problems in determining loan eligibility. E.g., would thirty days some time during the five year period be sufficient? would seven days?

*5 yr  
resident  
req + active  
part in fishing*

Section 5. AS 44.54.230 would require that the executive director of the Bank be listed as the legal owner of a pledged permit and Section 5 at several places requires that the executive director of the Bank take certain actions in regard to a permit. While under AS 16.43 entry permits are held only by natural persons and while the Commercial Fishing Loan Act assigns the same duties to the Commissioner of Commerce and Economic Development, it is desirable in this situation that the legal ownership of an entry permit or directions for taking certain actions rest with the Bank itself, rather than with a specific individual so as to give the Bank maximum flexibility in managing its business. For that reason we recommend that the language "executive director of the" be eliminated where it appears in Section 5 of SSHB 30. But if it is determined that AS 16.43 requires that an individual be named, it nonetheless is desirable that the language "as trustee for the bank" be inserted directly following the designation of the executive director so that it is clear the capacity in which the director acts.

*Bank itself be lien  
holder rather than  
the executive director.*

AS 44.54.250(b) would allow a debtor to nominate a person to assume his note under certain conditions and require that the person so nominated qualify under the requirements of AS 44.54.230(a) i.e., that the person nominated qualify as a transferee for an entry permit under AS 16.43. There appears, however, to be no requirement that the nominee to assume the note meet the requirements set up by proposed AS 44.54.210(20), specifically that he meet the five year durational residency requirement as did the original debtor. If this is considered desirable, the language "and AS 44.54.210(20)" should be inserted immediately following the end of the partial sentence on line 1, page 5 of SSHB 30.

*that person who  
might assume note  
be of same qualifications  
of original.*

Recommendations Additions

AS 16.43 provides that entry permits may not be pledged as security or transferred except under certain conditions, one of which is as provided in the Commercial Fishing Loan Act. Similarly, it would appear that additional amendments are necessary to at least sections AS 16.43.150(g) and AS 16.43.170, which language should refer specifically to the program proposed in SSHB 30.

As a matter of convenience and style in drafting it may be desirable to consider addition of a new section .260, Definitions, to AS 44.54. Such a section initially would define the word "bank" as the Alaska Commercial Fishing and Agriculture Bank which definition was not included in Chapter 159, SLA 1978, even though extensive use is made therein of the term "bank". In addition it would appear desirable to define the word "commission" as the Alaska Commercial Fisheries Entry Commission in order to avoid the problem now found throughout Section 5 of SSHB 30 where reference is sometimes made to the Alaska Commercial Fisheries Entry Commission, but more often is made simply to the "commission".

Finally we strongly recommend that the amendments to AS 44.54 include a specific provision insuring that the Bank has the necessary power to indemnify directors, officers and employees when negligence and misconduct is not involved. Such a provision is routinely included in the by-laws of private sector organization and is specifically included among the general powers given to a cooperative corporation organized in Alaska by AS 10.15.010(13). Counsel has advised us that in its opinion the Bank does have the power to indemnify its directors, officers and employees by virtue of the fact that AS 44.54.010 subjects the Bank to the provisions of AS 10.15, except as otherwise provided in AS 44.54. Nonetheless, the fact that the specific powers of the Bank enumerated in AS 44.54.210 do not include a provision on indemnification means that it is not impossible that a court might hold that the Legislature intended the Bank not be allowed to indemnify directors, officers and employees under appropriate conditions. For that reason we recommend the addition of the same language now found in AS 10.15.010(13) as an additional paragraph numbered (21) to AS 44.54.210. Section 4 of SSHB 30 may be amended by changing the word "paragraph" on line 6 of page 2 to "paragraphs" and by inserting an additional paragraph at line 14 which reads:

(21) indemnify a director, officer or agent or former director, officer or agent, or a person who may have served at its request

*Bank  
&  
Commission*

as a director or officer of another domestic or foreign cooperative of which it is a member, against expenses necessarily incurred in defense of a proceeding in which he is a party because he served as a director, officer or agent, but this paragraph does not apply to proceedings in which the director, officer or agent is adjudged liable for negligence or misconduct in the performance of duty, and indemnification under this paragraph is not exclusive of other rights to which the director, officer or agent may be entitled.

cc: Mr. Frank M. Homan, Chairman, ✓  
Commercial Fishing and Agriculture Bank

Mr. Frank Orth, Financial Consultant  
to Commercial Fishing and Agriculture Bank

Mr. Larry Butterfield, Spokane Bank For  
Cooperatives

Mr. R. M. Gorder, Federal Intermediate  
Credit Bank of Spokane

ments to eligible cooperative associations and to extend to them other technical and financial assistance, including but not limited to discounting notes and other obligations, guarantees, collateral custody, or participation with other banks for cooperatives and commercial banks or other financial institutions in loans to eligible cooperatives, under such terms and conditions as may be determined to be feasible by the board of directors of each bank for cooperatives under regulations of the Farm Credit Administration. Such regulations may include provisions for avoiding duplication between the Central Bank and district banks for cooperatives. Each bank may own and lease, or lease with option to purchase, to stockholders eligible to borrow from the bank equipment needed in the operations of the stockholder.

Pub.L. 92-181, Title III, § 3.7, Dec. 10, 1971, 85 Stat. 605.

#### § 2120. Eligibility

Any association of farmers, producers, or harvesters of aquatic products, or any federation of such associations, which is operated on a cooperative basis, and has the powers for processing, preparing for market, handling, or marketing farm or aquatic products; or for purchasing, testing, grading, processing, distributing, or furnishing farm or aquatic supplies or furnishing farm business services or services to eligible cooperatives and conforms to either of the two following requirements:

(a) no member of the association is allowed more than one vote because of the amount of stock or membership capital he may own therein; or

(b) does not pay dividends on stock or membership capital in excess of such per centum per annum as may be approved under regulations of the Farm Credit Administration; and in any case

(c) does not deal in farm products or aquatic products, or products processed therefrom, farm or aquatic supplies, or farm business services with or for nonmembers in an amount greater in value than the total amount of such business transacted by it with or for members, excluding from the total of member and nonmember business transactions with the United States or any agency or instrumentality thereof or services or supplies furnished as a public utility; and

(d) a percentage of the voting control of the association not less than 50 per centum (70 per centum in the case of rural electric, telephone, and public utility cooperatives), or such higher percentage as established by the district board is held by farmers, producers or harvesters of aquatic products, or eligible cooperative associations as defined herein;

shall be eligible to borrow from a bank for cooperatives.

Pub.L. 92-181, Title III, § 3.8, Dec. 10, 1971, 85 Stat. 605, amended Pub. L. 94-184, § 1(a), Dec. 31, 1975, 89 Stat. 1060.

181 in original. A comma after "producers" was probably not intended.  
1975 Amendment, Pub.L. 94-184, § 1(a), Dec. 31, 1975, 89 Stat. 1060, amended Pub. L. 94-184 added provision relating to 50 per centum of voting control in the case of rural electric, telephone, and public utility cooperatives.  
Legislative History, For legislative history and purpose of Pub.L. 92-181, see 1972 U.S. Code Cong. and Adm. News, p. 2148.

#### § 2130. Ownership of stock by borrowers

(a) Each borrower at the time a loan is made by a bank for cooperatives shall own at least one share of voting stock and shall be required by the bank with the approval of the Farm Credit Administration to invest in additional voting stock or nonvoting investment stock at that time, or from time to time, as the lending bank may determine, but the requirement for investment in stock at the time the loan is closed shall not exceed an amount equal to 10 per centum of the face amount of the loan. Such additional ownership requirements may be based on

ing any quarter thereof, or upon such other basis as the bank, with the approval of the Farm Credit Administration, determines will provide adequate capital for the operation of the bank and equitable ownership thereof among borrowers. In the case of a direct loan by the Central Bank, the borrower shall be required to own or invest in the necessary stock in a district bank or banks as may be approved by the Farm Credit Administration and such district bank shall be required to own a corresponding amount of stock in the Central Bank, but voting stock shall be in the one district bank designated by the Farm Credit Administration.

(b) Notwithstanding the provisions of subsection (a) of this section, the purchase of stock need not be required with respect to that part of any loan made by a bank for cooperatives which it sells to or makes in participation with financial institutions other than any of the banks for cooperatives. In such cases the distribution of earnings of the bank for cooperatives shall be on the basis of the interest in the loan retained by such bank.

Pub.L. 92-181, Title III, § 3.9, Dec. 10, 1971, 85 Stat. 605.

#### § 2131. Loans—Interest rates and charges

(a) Loans made by a bank for cooperatives shall bear interest at a rate or rates determined by the board of directors of the bank from time to time, with the approval of the Farm Credit Administration. In setting rates and charges, it shall be the objective to provide the types of credit needed by eligible borrowers at the lowest reasonable cost on a sound business basis, taking into account the net cost of money to the bank, necessary reserves and expenses of the bank, and services provided. The loan documents may provide for the interest rate or rates to vary from time to time during the repayment period of the loan, in accordance with the rate or rates currently being charged by the bank.

#### Security

(b) Loans shall be made upon such terms, conditions, and security, if any, as may be determined by the bank in accordance with regulations of the Farm Credit Administration.

#### Lien

(c) Each bank for cooperatives shall have a first lien on all stock or other equities in the bank as collateral for the payment of any indebtedness of the owner thereof to the bank. In the case of a direct loan to an eligible cooperative by the Central Bank, the Central Bank shall have a first lien on the stock and equities of the borrower in the district bank and the district bank shall have a lien thereon junior only to the lien of the Central Bank.

#### Cancellation; application on indebtedness

(d) In any case where the debt of a borrower is in default, or in any case of liquidation or dissolution of a present or former borrower from a bank for cooperatives, the bank may, but shall not be required to, retire and cancel all or a part of the stock, allocated surplus or contingency reserves, or any other equity in the bank owned by or allocated to such borrower, at the fair book value thereof not exceeding par, and, to the extent required in such cases, corresponding shares and allocations and other equity interests held by a district bank in another district bank on account of such indebtedness, shall be retired or equitably adjusted.

Pub.L. 92-181, Title III, § 3.10, Dec. 10, 1971, 85 Stat. 606.

#### § 2132. Earnings and reserves; application of savings—Application of savings when bank has outstanding stock held by Governor

(a) Each bank for cooperatives, at the end of each fiscal year when said bank shall have stock outstanding held by the Governor of the Farm

BILL #	ABBREVIATED TITLE	SPONSOR	DATE	REFERRAL
HB 3	RELATING TO THE RESTORATION OF THE RIGHT	HILLER		
HB 18	INCREASE IN TERRITORIAL EMPLOYEES RETIREM	HILLER	3/01/79	FINANCE
HB 75	RE/PRIVACY & PUBLIC INFO/CHANGE CIVIL RUL	PARR	3/09/79	JUDICIAL
HB 155	COMPETITIVE BIDDING/FISCAL PROCEDURES ACT	MEEKINS	3/29/79	FINANCE
HB 248	MERGER OF ELECTRIC & TELEPHONE UTILITIES;	STATE AFF	3/08/79	JUDICIAL
HB 376	EXEMPTION FROM ST INCOME TAXES OF FEDERAL	BROWN	3/20/79	FINANCE
HCR 12	CONTRACT NEGOTIATIONS/STATE/MATANUSKA BOR	CARNEY	4/19/79	----
HJR 36	RE/CANADIAN PORTION OF THE SKAGWAY-CARCRO	DUNCAN	4/ 9/79	----
SB 19	AUTH ST LAND TO BE MADE AVAILABLE FOR HOM	KERTTULA	1/15/79	RESOURCE
SB 27	RELATING TO ELECTION BALLOTS	RAY	1/ 6/79	----
SB 30	RELATING TO SURPLUS PROPERTY -E.D.	RULES	2/08/79	----
SB 39	RELATING TO LONGEVITY BONUS	BRADLEY	1/16/79	FINANCE
SB 46	RELATING TO THE ALASKA LONGEVITY BONUS	BRADLEY	1/16/79	FINANCE
SB 74	RE/AK NATL GUARD/AK NAVAL MILITIA; E.D.	HOHMAN	1/25/79	JUDICIAL
SB 95	CREDIT AK INCOME TAX FOR VOTING IN PRIMAR	BRADLEY	1/31/79	FINANCE
SB 105	REGISTRATION FEES FOR PERSONALIZED PLATES	STENSON	2/05/79	FINANCE
SB 107	RE/STATE AGENCY PARTICIPATIONS	RODNEY	2/06/79	----
SB 120	RE/ESTAB JT BUDGET SUBCOMTE UNDER LEGIS B&	SACKETT	2/08/79	----
SB 126	REQUIREMENTS/RUNOFFS IN MUNICIPAL ELECTED	C&RA	2/09/79	----
SB 127	RE/PURPOSE OF STATE VOTER REGISTER	C&RA	2/09/79	----
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BILL #	ABBREVIATED TITLE	SPONSOR	DATE	REFERRAL
SB 149	RELATING TO ELECTIONS	KELLY	2/13/79	----
SB 150	ALLOWING AN INCOME TAX CHECKOFF	FAHRENBERG	2/13/79	FINANCE
SB 156	RELATING TO ELECTION CAMPAIGNS	BRADLEY	2/13/79	----
SB 160	PREFERENTIAL PRESIDENTIAL PARTY PRIMARY I	KELLY	2/13/79	----
SB 174	RELATING TO CREDITED SERVICE/PERS	RODNEY	2/13/79	FINANCE
SB 226	RE/HANNAH SLT OF AK PERMANENT FUND; E.D.	RULES	2/13/79	FINANCE
SB 254	SPEC APPROP/DOTZAI/APLT RECONSTRUCTION/BU	FERGUSON	3/21/79	FINANCE
SB 255	GEN. OBLIGATION BONDS/NOME BARGE PORT FAC	FERGUSON	3/21/79	FINANCE
SB 256	CREATE/DEPT.EMPLOYEE RELATIONS; AMEND ST	RULES	3/22/79	FINANCE
SB 268	RE/EXPENDITURE OF STATE MONEY; E.D.	KERTTULA	4/17/79	FINANCE
SCR 1	TRANSFERAL OF STATE EMPLOYMENT/URBAN TO	SUMNER	1/18/79	----
SCR 27	PREDICTABLE/ATTRACTIVE INVESTMENT CLIMATE	BRADLEY	4/03/79	----
SCR 29	URGING ADMIN TO KEEP SALARIES & BENEFITS	L&M	4/12/79	----
SJR 1	AM US CONSTITUTION RE/VOTING RIGHTS FOR D	STIMSON	1/15/79	JUDICIAL
SJR 7	AM AK CONSTITUTION/SESSION OF LEGISLATURE	BRADLEY	1/22/79	FINANCE
SJR 9	AM AK CONSTITUTION/SESSIONS OF LEGISLATOR	DANKWORTH	1/24/79	FINANCE
SJR 10	AM AK CONSTITUTION RE/TERMS OF LEGISLATOR	BRADLEY	1/24/79	JUDICIAL
SJR 11	AM US CONSTITUTION/BUDGET OF USA	BRADLEY	1/25/79	----
SJR 15	VOTING RIGHTS & REPRESENTATION FOR DISTRI	KELLY	2/01/79	C&RA
SJR 17	AM AK CONSTITUTION/RE GOVERNOR & LIEUTEN	BRADLEY	2/13/79	----
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BILL #	ABBREVIATED TITLE	SPONSOR	DATE	REFERRAL
SJR 23	REQUESTING/US DOT/REVISE TIME ZONES IN AK	COLLETTA	2/13/79	----
SJR 26	PROPOSING AN AK CONSTITUTION/RE TO FINANC	RULES	2/13/79	FINANCE
SJR 29	REQUEST CONGRESS INITIATE ARCTIC EXCHANGE	KERTTULA	3/21/79	LEI
SJR 35	AMEND AK CONSTITUTION/TAX LEVELS/AK & POL	BRADLEY	4/20/79	----
SB 1	RELATING TO THE RECONSTRUCTION	----	----	----

SUPPORTING INFORMATION

Bob Simon, Limited Entry Commissioner, stated that they personally drafted the language related to fishing loans last year and this language has been incorporated into HB 30. They feel that with the prices of permits as high as they are today, they want to give residents all the breaks they can. They strongly endorse HB 30.

I requested a position paper from Commerce and Economic Development, wherein ~~which the Commercial Fishing and Agriculture Bank is located,~~ and they will get it to us <sup>FROM COMM. FISH. BANK.</sup> as soon as possible.

HB 30 was introduced February 20 and referred to Resources and Judiciary. Resources reported it back March 10 with a DO PASS recommendation, all members concurring. To Judiciary.

Judiciary reported it back to the House on March 13 with individual recommendations. Parr and Anderson signed DO PASS. Phillips Martin and O'Connell signed NO REC. It passed the House on March 14, with a vote of 35-4. Nays: Barnes, Bettisworth, Martin, Randolph. Judiciary told me that HB 30 passed their committee quickly and without opposition. They are missing the minutes from that meeting but said it was straightforward and they had nothing in their files.

FISCAL NOTE: None

RELATED LEGISLATION: None

INTERESTED PARTIES: Gardiner  
Commerce-Dick Eakins, Dir. Econ. Ent.  
Commercial Fisheries Entry Commission.

Wife lets  
Chief Clerk of Court



# B. 1. Adds word "Alaska" to Com. Dir. Ag. Bank  
noting in the Alaska CF & AB.

2. Changes number of members on board of  
directors from 5 to 7. Amends to ~~read~~ <sup>add</sup> that  
4 of the board members shall be ~~selected~~  
elected by the shareholders. & 3 shall  
be appointed by the gov, until the  
repurchase of all the nonvoting, preferred  
shares initially issued by the Bank  
and purchased by agencies of the state.

cleaned  
up  
copy

Amends concerning terms of office. Members  
shall serve for terms of 3 years & they may  
serve successive terms.

Terms shall be staggered  
Amends to read that initial terms shall  
be 3 members serving for one year, 2  
members serving for 2 years & 2 members  
serving for 3 years.

Adds new  $\pi$  to  $\rho$  provide for making  
loans to commercial fishermen &  
specifies requirement of qualification

Adds new section entitled 2DANIS FOR PURCHASE  
~~OF~~ OF ALASKA LIMITED ENTRY PERMITS.  
States requirement of qualification &  
use of permit to be purchased as security  
for a loan; ~~and~~ Provides for note  
certification & remedy of permit certificate  
to list debtor as the legal owner.

Adds new section - Default & Foreclosure of  
Loans for Limited Entry Permits. ~~Provides~~ <sup>Concept of Default</sup>  
~~for~~ <sup>REQUIREMENTS</sup> ~~of~~ <sup>of provided</sup> ~~debtors~~ <sup>WITH</sup> ~~of~~ <sup>of</sup> ~~notice~~ <sup>of</sup> ~~default~~ <sup>PERMITS</sup>  
and required Inclusions. Provides for cancellation <sup>TERMINAL OF EQUITY</sup>  
of entry permit cards upon <sup>INVESTORS</sup> ~~debtors~~ <sup>fail</sup> to  
restate or satisfy note w/in specified time

Adds new section entitled - DEFICIENCIES AND  
TRANSFER OF ENTRY PERMITS AFTER FORECLOSURE.  
Provides AK C.F.E.C a right of 1<sup>st</sup> refusal if  
permit is subject to a buy back program  
~~and~~ ~~states~~ ~~price~~ ~~requirements~~  
If com does not exercise right, <sup>must submit to buy back</sup> debtor has  
30 days from date of note to name or  
person qualified to assume the note if  
debtor does not name a qualified person.

SUMMARY

This bill adds the word "Alaska" to the title making it the Alaska Commercial Fishing and Agriculture Bank. Changes the number of members on the board of directors from five to seven. Amends to add that four of the board members shall be elected by the shareholders and three shall be appointed by the governor, until the repurchase of all the non-voting, preferred shares initially issued by the bank and purchased by agencies of the state. Amends concerning terms of office. Provides for staggered terms. Adds new paragraph to provide for making loans to commercial fishermen and specifies requirements for qualification. Adds new section entitled: LOANS FOR PURCHASE OF ALASKA LIMITED ENTRY PERMITS. States requirements for qualification and use of permit to be purchased as security for a loan. Provides for note certification and amending of permit certificate to list debtor as the legal owner. Adds new section: DEFAULT AND FORECLOSURE OF LOANS FOR LIMITED ENTRY PERMITS, concerning defaulting and requirements of providing debtor with notice of default and inclusions required with that notice. Provides for termination of debtor's equitable interest and cancellation of entry permit cards upon debtor's failure to reinstate or satisfy note within a specified time period. Adds new section entitled: DEFICIENCIES AND TRANSFER OF ENTRY PERMITS AFTER FORECLOSURE. Provides Commercial Fishing Entry Commission the right of first refusal if permit is subject to a buy-back program and states price requirements. If the Entry Commission does not exercise this right or the permit is not subject to a buy-back program, the debtor has 30 days from date of notice (postmark date) to nominate a person qualified to assume note. If debtor does not do this the permit must be made available to a qualified person chosen by lottery by the Entry Commission.

SS

HB 30<sup>1</sup> - (pg. 47)

(pg. 516) Resumes reported at out w/ majority  
recommending DO PASS

OSTERBACK ELIASON

HALFORD CHENEY

COTTEN FULLER

CHATTERTON ZHAROFF

(545) Judiciary passed at out with individual  
recommendations

DO PASS: PARR, ANDERSON

DO NOT PASS: MARTIN

NO REC: PHILLIPS, O'CONNELL

Judge  
CARLSON - Sup Ct. Limited entry  
permits are not legal.

Rept of Fish + Game

CALL ADF

Limited Entry Comm.

# SENATE JOURNAL

## ALASKA STATE LEGISLATURE

### ELEVENTH LEGISLATURE - FIRST SESSION

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JUNEAU, ALASKA

Monday

April 23, 1979

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#### Ninety-ninth Day

Pursuant to adjournment, the Senate was called to order by President Tillion at 10:08 a.m.

The roll call showed thirteen members present. Senators Bennett, Dankworth, Hackney, Hohman, Rodey, Sackett and Sumner were absent.

The prayer was offered by the Chaplein, Lay Rabbi Danny Plotnick of the Juneau Jewish Community.

Senator Colletta moved and asked unanimous consent that the journals for the ninety-sixth, ninety-seventh and ninety-eighth legislative days be approved as certified. Without objection, it was so ordered.

#### MESSAGES FROM THE GOVERNOR

Message of April 20 was read, stating the Governor has read the following resolution and transmitted the engrossed and enrolled copies to the Lieutenant Governor's Office for permanent filing:

SENATE RESOLUTION NO. 7 amended  
(relating to ownership of earth stations)

Senate Resolve No. 5

SR  
7  
AM

MESSAGES FROM THE HOUSE

CS Message of April 20 was read, stating the House has con-  
 2d curred in the Senate amendment to COMMITTEE SUBSTITUTE  
 SS FOR 2d SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 31 (creating  
 HB the Delta Junction Bison Range Area), thus adopting:

31  
 31  
 am  
 S

COMMITTEE SUBSTITUTE FOR 2d SPONSOR SUBSTITUTE  
 FOR HOUSE BILL NO. 31 amended Senate

SCS Message of April 20 was read, stating the House has con-  
 CS curred in the Senate amendment to COMMITTEE SUBSTITUTE FOR  
 HB HOUSE BILL NO. 32 (special appropriations to the power  
 32 project revolving fund of the Alaska Power Authority),  
 thus adopting:

SENATE COMMITTEE SUBSTITUTE FOR COMMITTEE  
 SUBSTITUTE FOR HOUSE BILL NO. 32

HB Message of April 20 was read, stating the House has con-  
 195 curred in the Senate amendment to HOUSE BILL NO. 195  
 am amended (providing for an advisory committee on judicial  
 S sentencing practices), thus adopting:

HOUSE BILL NO. 195 amended Senate (providing  
 for an advisory committee on minority judicial  
 sentencing practices)

SCS Message of April 20 was read, stating the House has con-  
 HB curred in the Senate amendment to HOUSE BILL NO. 196  
 196 (special appropriation to the Judicial Council), thus  
 (R1a)adopting:

SENATE COMMITTEE SUBSTITUTE FOR HOUSE BILL  
 NO. 196 (Rules)

HCS Message of April 20 was read, stating the House has failed  
 CS to recede from its amendment to COMMITTEE SUBSTITUTE FOR  
 SB SENATE BILL NO. 53 (Finance) namely, HOUSE COMMITTEE SUB-  
 53 STITUTE FOR COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 53  
 (budget).

The Speaker has appointed the following members to a Free Conference Committee to meet with a like committee from the Senate to consider the above bills:

HCS  
CS  
SB  
53

Representative Meekins, Chairman  
Representative Duncan  
Representative Haugen

The President appointed the following members to a Free Conference Committee to meet with the like committee from the House:

Senator Sackett, Chairman  
Senator Hohman  
Senator Sumner

The Secretary was requested to notify the House.

Message of April 20 was read, stating the House has passed the following and transmitting for consideration:

FIRST READING AND REFERENCE OF HOUSE RESOLUTIONS

COMMITTEE SUBSTITUTE FOR HOUSE JOINT RESOLUTION NO. 30  
by the Rules Committee,

CS  
HJR  
30

Relating to the sale of revenue bonds of the Alaska Power Authority for the Terror Lake hydroelectric generating project at Kodiak, Alaska, and for the Solomon Gulch hydroelectric generating project near Valdez, Alaska.

was read the first time and referred to the Finance Committee.

INTRODUCTION AND REFERENCE OF SENATE RESOLUTIONS

SENATE CONCURRENT RESOLUTION NO. 35 by Senators Ferguson, Fahrenkamp, Sackett, Stinson, Sturgulewski, Bennett and Kerttula,

SCR  
35

Directing the Legislative Council to conduct a feasibility study relating to educational television,

was read the first time and referred to the Health, Education and Social Services Committee.

INTRODUCTION AND REFERENCE OF SENATE BILLS

SB SENATE BILL NO. 273 by Senator Bradley, entitled:  
273

"An Act relating to the transporter law;  
and providing for an effective date "

was read the first time and referred to the Commerce  
Committee and the Resources Committee.

SB SENATE BILL NO. 274 by the Commerce Committee by request,  
274 entitled:

"An Act relating to the Motor Safety  
Responsibility Act; and providing for  
an effective date."

was read the first time and referred to the Commerce  
Committee.

SB SENATE BILL NO. 275 by the Commerce Committee by request,  
275 entitled:

"An Act relating to the payment of judg-  
ments or claims by insurance companies."

was read the first time and referred to the Commerce  
Committee and the Finance Committee.

SB SENATE BILL NO. 276 by the Health, Education and Social  
276 Services Committee by request, entitled:

"An Act providing for the award of visita-  
tion rights to grandparents."

was read the first time and referred to the Health,  
Education and Social Services Committee and the Judiciary  
Committee.

Senator Colletta moved and asked unanimous consent that  
the Senate recess to a call of the Chair. Without objec-  
tion, the Senate recessed at 10:16 a.m.

AFTER RECESS

The Senate reconvened at 10:32 a.m.

CONSIDERATION OF THE CALENDAR

SECOND READING OF HOUSE BILLS

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 19 amended (relating to agricultural and industrial fairs) was read the second time.

CS  
HB  
19  
am

Senator Ray moved and asked unanimous consent for the adoption of the Finance Committee amendment offered on pages 803-804. Without objection, amendment No. 1 was adopted.

CS  
HB  
19  
am  
5

Senator Colletta moved and asked unanimous consent that the Rules be suspended and COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 19 amended Senate be considered engrossed, advanced to third reading and placed on final passage. Without objection, it was so ordered.

COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 19 amended Senate was read the third time.

The question being: "Shall COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 19 amended Senate (relating to agricultural and industrial fairs) pass the Senate?" The roll was taken with the following result:

Yeas:	18	Bennett, Bradley, Colletta, Dankworth, Fahrenkamp, Ferguson, Hackney, Kelly, Kerttula, Meland, Mulcahy, Ray, Rodey, Stimson, Sturgulewski, Summer, Tillion, Ziegler
Nays:	0	
Absent:	2	Hohman, Sackett

and so, COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 19 amended Senate passed the Senate.

Senator Colletta moved and asked unanimous consent that the roll call on the passage of the above bill be considered the roll call on the effective date clause. Without objection, it was so ordered.

CSHB COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 19 amended Senate  
19 was referred to the Secretary for engrossment.

am  
3

CS Senator Colletta moved and asked unanimous consent that  
HB the next item of business on today's calendar, namely  
66 COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 66 (providing an  
exemption for senior citizens from payment for land leased  
for the state) be held on the Secretary's desk. Senator  
Ray objected Senator Colletta move and asked unanimous  
consent to withdraw his motion. Without objection, it  
was so ordered.

Senator Colletta moved and asked unanimous consent that  
COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 66 be placed at  
the bottom of today's calendar. Without objection, it  
was so ordered.

HB HOUSE BILL NO. 90 (supplemental appropriation to the Depart-  
90 ment of Community and Regional Affairs, Division of Local  
Government Assistance) was read the second time.

Senator Colletta moved and asked unanimous consent that  
the Rules be suspended and HOUSE BILL NO. 90 be advanced  
to third reading and placed on final passage. Without  
objection, it was so ordered.

HOUSE BILL NO. 90 was read the third time.

The question being: "Shall HOUSE BILL NO. 90 (supplemental  
appropriation to the Department of Community and Regional  
Affairs, Division of Local Government Assistance) pass the  
Senate?" The roll was taken with the following result:

Yeas:	17	Bennett, Bradley, Colletta, Dankworth, Fahrenkamp, Ferguson, Hackney, Honman, Kelly, Meland, Mulcahy, Ray, Rodey, Stinson, Sturgulewski, Tillion, Ziegler
Nays:	0	Hackney, Honman, Kelly, Mulcahy, Ray, Rodey, St
Absent:	3	Kerttula, Seckett, Sumner

and so, HOUSE BILL NO. 90 passed the Senate.

Senator Colletta moved and asked unanimous consent that the roll call on the passage of HOUSE BILL NO. 90 be considered the roll call on the effective date clause. Without objection, it was so ordered.

MS  
90

HOUSE BILL NO. 90 was signed by the President and Secretary and returned to the House.

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 307 (making transfers between appropriations made for the fiscal year ending June 30, 1979 to the Department of Natural Resources) was read the second time.

CS  
HB  
307

Senator Ray moved and asked unanimous consent for the adoption of the Finance Committee Senate Committee Substitute offered on page 848. Without objection, SENATE COMMITTEE SUBSTITUTE FOR COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 307 was adopted.

SCS  
CSHB  
307

SENATE COMMITTEE SUBSTITUTE FOR COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 307 (making transfers between appropriations made for the fiscal year ending June 30, 1979 to the Department of Natural Resources and extending an appropriation made to the Department of Natural Resources in ch. 146, SLA 1978) was read the second time.

Senator Colletta moved and asked unanimous consent that the Rules be suspended and SENATE COMMITTEE SUBSTITUTE FOR COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 307 be considered engrossed, advanced to third reading and placed on final passage. Without objection, it was so ordered.

SENATE COMMITTEE SUBSTITUTE FOR COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 307 was read the third time.

The question being: "Shall SENATE COMMITTEE SUBSTITUTE FOR COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 307 (making transfers between appropriations made for the fiscal year ending June 30, 1979 to the Department of Natural Resources and extending an appropriation made to the Department of Natural Resources in ch. 146, SLA 1978) pass the Senate?" The roll was taken with the following result:

CS SHB 307	Yeas: 19	Bennett, Bradley, Colletta, Dankworth, Fahrenkamp, Ferguson, Hackney, Hohman, Kelly, Kerttula, Meland, Mulcahy, Ray, Rodey, Stimson, Sturgulewski, Sumner, Tillion, Ziegler
	Nays: 0	
	Absent: 1	Sackett

and so, SENATE COMMITTEE SUBSTITUTE FOR COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 307 passed the Senate.

Senator Colletta moved and asked unanimous consent that the roll call on the passage of the above bill be considered the roll call on the effective date clause. Without objection, it was so ordered.

SENATE COMMITTEE SUBSTITUTE FOR COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 307 was referred to the Secretary for engrossment.

HB 308 HOUSE BILL NO. 308 (supplemental appropriation to the Department of Health and Social Services, Division of Public Health) was read the second time.

SCS  
HB  
308 Senator Ray moved and asked unanimous consent for the adoption of the Finance Senate Committee Substitute offered on page 822. Without objection, SENATE COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 308 was adopted.

SENATE COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 308 (making appropriations to the Department of Health and Social Services, and an amending condition on an appropriation made to the Department of Education in ch. 6, SLA 1979) was read the second time.

Senator Colletta moved and asked unanimous consent that the Rules be suspended and SENATE COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 308 be considered engrossed, advanced to third reading and placed on final passage. Without objection, it was so ordered.

SENATE COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 308 was read the third time.

The question being: "Shall SENATE COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 308 (making appropriations to the Department of Health and Social Services, and an amending condition on an appropriation made to the Department of Education in ch. 6, SLA 1979) pass the Senate?" The roll was taken with the following result

SCS  
HB  
308

Yeas:	15	Bennett, Bradley, Colletta, Fahrenkamp, Ferguson, Hackney, Kelly, Kerttula, Meland, Mulcahy, Ray, Rodey, Stimson, Tillion, Ziegler
Ways:	2	Dankworth, Sturgulewski
Absent:	3	Hohman, Sackett, Sumner

and so, SENATE COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 308 passed the Senate.

Senator Colletta moved and asked unanimous consent that the roll call on the passage of the above bill be considered the roll call on the effective date clause. Without objection, it was so ordered.

SENATE COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 308 was referred to the Secretary for engrossment.

SECOND READING OF SENATE RESOLUTIONS

SENATE CONCURRENT RESOLUTION NO. 16 (requesting the Governor to direct the Department of Transportation and Public Facilities to conduct a feasibility study for the construction of a runway at Barrow) was read the second time

SCR  
16

Senator Sackett moved and asked unanimous consent for the adoption of the Finance Committee amendment offered on page 863. Without objection, amendment No. 1 was adopted.

SCR  
16  
am

Senator Ray moved and asked unanimous consent that the Finance Committee letter of intent be adopted as the Senate letter of intent. Senator Kelly objected, then withdrew his objection. There being no further objection, the letter of intent was adopted.

SCR The Senate letter of intent on SENATE CONCURRENT RESOLUTION  
16 NO. 16 amended follows:

am

The feasibility study called for in SCR 16 will be conducted by the Department of Transportation and Public Facilities within the limit of funds budgeted to them for FY 79. Now that the fourth quarter supplemental for the Department of Transportation has passed there should be sufficient funds within the current year budget to cover this project.

Senator Colletta moved that the Senate adopt SENATE CONCURRENT RESOLUTION NO. 16 amended.

The question being: "Shall SENATE CONCURRENT RESOLUTION NO. 16 amended (requesting the Governor to direct the Department of Transportation and Public Facilities to conduct a feasibility study for the construction of a runway at Barrow) pass the Senate?" The roll was taken with the following result:

Yeas:	19	Bennett, Bradley, Colletta, Dankworth, Fahrenkamp, Ferguson, Hackney, Kelly, Kerstula, Meland, Mulcahy, Ray, Rodey, Sackett, Stinson, Sturgulewski, Sumner Tillion, Ziegler
Nays:	0	
Absent:	1	Hohman

and so, SENATE CONCURRENT RESOLUTION NO. 16 amended with a Senate letter of intent passed the Senate and was referred to the Secretary for engrossment.

#### SPECIAL ORDER OF BUSINESS

MJR Senator Colletta moved and asked unanimous consent that the  
32 Rules be suspended and HOUSE JOINT RESOLUTION NO. 32 amended  
am (requesting the establishment of an Arctic Circumpolar Cultural and Technical Interchange Center) be taken up as a Special Order of Business at this time. Without objection, it was so ordered.

SECOND READING OF HOUSE RESOLUTIONS

HOUSE JOINT RESOLUTION NO. 32 amended (requesting the establishment of an Arctic Circumpolar Cultural and Technical Interchange Center) was read the second time.

HJR  
32  
am

Senator Mulcahy moved and asked unanimous consent for the adoption of the State Affairs Committee amendment offered on page 709. Without objection, amendment No. 1 was adopted.

HJR  
32  
am  
S

Senator Kelly offered the following amendment No. 2:

Page 2, line 25: add the following: "FURTHER RESOLVED that Congress is urged to enter into a joint agreement with all other Arctic coastal nations to mutually share the expenses for establishing and operating the Arctic Circumpolar Cultural Technical Interchange Center."

Senator Kelly moved and asked unanimous consent to withdraw amendment No. 2. Without objection, amendment No. 2 was withdrawn.

Senator Kelly offered the following amendment No. 3:

Page 2, line 25: add the following: "FURTHER RESOLVED that Congress is urged to enter into a joint agreement with all other participating Arctic coastal nations to mutually share the expenses for establishing and operating the Arctic Circumpolar Cultural Technical Interchange Center."

Senator Kelly moved and asked unanimous consent for the adoption of amendment No. 3. Without objection, amendment No. 3 was adopted.

Senator Collecta moved and asked unanimous consent that Rules be suspended and HOUSE JOINT RESOLUTION NO. 32 amended Senate be considered engrossed, advanced to third reading and placed on final passage. Without objection, it was so ordered.

HJR HOUSE JOINT RESOLUTION NO. 32 amended Senate was read the  
32 third time.  
am  
S

The question being: "Shall HOUSE JOINT RESOLUTION NO. 32 amended Senate (requesting the establishment of an Arctic Circumpolar Cultural and Technical Interchange Center) pass the Senate?" The roll was taken with the following result:

Yeas:	15	Bradley, Colletta, Dankworth, Fahrenkamp, Ferguson, Hackney, Kelly, Kerttula, Meland, Mulcahy, Ray, Rodey, Stimson, Sturgulewski, Ziegler
Nays:	2	Bennett, Tillion
Absent:	3	Hohman, Sackett, Sumner

and so, HOUSE JOINT RESOLUTION NO. 32 amended Senate passed the Senate and was referred to the Secretary for engrossment.

CS Senator Colletta moved and asked unanimous consent that  
HB COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 66 (providing an  
66 exemption for senior citizens from payment for land leased from the state) which had been placed at the bottom of today's calendar (page 884) be held on the Secretary's desk. Without objection, it was so ordered.

#### SPECIAL ORDER OF BUSINESS

Senator Colletta moved and asked unanimous consent that the publication and notice requirement on the Citation Congratulating Greenland Home Rule Inauguration be waived. Without objection, it was so ordered.

Senator Colletta moved and asked unanimous consent that the Rules be suspended and the Citation Congratulating Greenland Home Rule Inauguration be taken up as a Special Order of Business at this time. Without objection, it was so ordered.

CITATIONS

Senator Colletta moved and asked unanimous consent that the Citation Congratulating Greenland Home Rule Inauguration by Representatives Buchholdt, Guy, Schaeffer, Rogers and Anderson, be approved. The Senate approved the Citation unanimously and it was returned to the House.

ENGROSSMENT

The following were engrossed, signed by the President and Secretary and transmitted to the House for consideration:

SENATE CONCURRENT RESOLUTION NO. 16 amended

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 19  
amended Senate

SENATE COMMITTEE SUBSTITUTE FOR COMMITTEE  
SUBSTITUTE FOR HOUSE BILL NO. 307

SENATE COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 308

HOUSE JOINT RESOLUTION NO. 32  
amended Senate

ANNOUNCEMENTS

FCC on the Budget	Gov. Conf. Rm 3rd Floor, Capitol	1:30 p.m., 4/23
State Affairs HB 75, HB 18 HCR 12	Beltz Room 209, Capitol	3:30 p.m., 4/23

ADJOURNMENT

Senator Colletta moved and asked unanimous consent that the Senate adjourn until 10:00 a.m., April 24. Without objection, the Senate adjourned at 11:09 a.m.

Peggy Mulligan  
Senate Secretary

April 1979

THE FOLLOWING PAGES WERE TREATED AS  
A UNIT IN THE ORIGINAL FILE.

SECTIONAL ANALYSIS - SSHB 30

"An Act relating to the Commercial Fishing and Agriculture Bank."

\* Section 1. AS 44.54.010 (a).

Section 1 is simply a technical amendment, adding the word Alaska to the Commercial Fishing and Agriculture Bank to be consistent with the rest of the statute.

\* Section 2. AS 44.54.020.

This section expands the board of directors from five members to seven members. It also requires that three of the members continue to be appointed by the governor until the bank has repurchased all of the non-voting preferred shares that were purchased by the state with start-up capital.

This change is necessary because the statute now provides that the board of directors be elected from amongst the borrowing members of the bank in the future. This could cause problems in the future as during the start-up phases the state will be the major shareholder. To provide continuity, it would be desirable to maintain some input by the state until the bank has bought out the state's share.

\* Section 3. AS 44.54.090.

These changes are necessitated by the expansion of the board from five to seven members.

\* Section 4. AS 44.54.210.

Section 4 adds an additional power to the bank to allow them to make loans for the purchase of limited entry permits.

See

(a) *Handwritten note: I am not sure why to add capital by the Commercial Fishing and Agriculture Bank.*

(b) *Handwritten notes: 1) add a power to the bank to make loans for the purchase of limited entry permits. 2) add a power to the bank to make loans for the purchase of limited entry permits. 3) add a power to the bank to make loans for the purchase of limited entry permits.*



\* Section 5. AS 44.54.230.

This section of the bill outlines how the loan making ability and default and foreclosure provisions will operate when the bank makes loans for limited entry permits. This language parallels the existing law that allows the state division of loans to make limited entry permit loans. This law was introduced last year by the governor and passed overwhelmingly by the last legislature. The purpose of this section is to expand the banks power to provide for limited entry permit loans to Alaskans. Since the bank provides for loans only to resident Alaskans this additional capital source will be an advantage to Alaskans who want to get into the fishery in the future. At least one-third of Alaska's salmon fishermen are still non-residents. Great benefits from taxes and other items can accrue to Alaska if these permits which are now held by non-residents become held by resident Alaskans in the future. This expansion of loan authority to the Commercial Fishing and Agriculture Bank will provide another source of capital to Alaskans who want to move into the salmon fisheries in the state.

MEMORANDUM

TO: Mr. Richard H. Eakins  
Director, Division of  
Economic Development  
DEPARTMENT OF COMMERCE  
& ECONOMIC DEVELOPMENT  
Pouch EE  
Juneau, Alaska 99811

FROM: Peter Argetsinger *Pa*  
WOHLFORTH & FLINT

DATE: April 6, 1979

RE: Commercial Fishing & Agriculture  
Bank/Comments On SSHB 30

On April 4, you requested our assistance in preparing a position paper as to SSHB 30 for submission to the Legislature next week. The comments on the subject bill which follow are submitted for your consideration. They are structured in such a way that you need only add introductory and concluding paragraphs and insert a discussion of policy matters as appropriate, particularly in the areas of composition of the Board of Directors (where I sensed a strong feeling at the April 4 meeting in favor of independence) and in the area of the business judgments to be made when considering loans for entry permits which are to be secured by those permits. (Although, perhaps nothing additional need be said on the latter subject.)

Section 1. Addition of the word "Alaska" to the name of the Bank is desirable and, in fact, reflected in the draft Articles of Incorporation and By-Laws of the Bank now under consideration by the Board of Directors.

Section 2. The Board of Directors of the Bank under the present law is composed of five members, initially appointed by the Governor, who serve staggered terms. Following expiration of the initial term, directors are then elected by the member/shareholders of the Bank which under AS 44.54 is organized as a cooperative corporation. AS 10.15.140, to which the Bank is subject, requires that the elected directors be members of the cooperative. Counsel to the Bank have examined the present method of constituting the Board of Directors of the Bank and have advised that,

in their opinion, under Section 103 of the Internal Revenue Code and the regulations thereunder the Bank may not issue tax exempt revenue bonds. In general, this is because in order to issue tax exempt bonds "on behalf of" the State, the Bank must be considered by the Internal Revenue Service to be a "constituted authority". To satisfy this requirement it is necessary that all members of the Bank Board of Directors be public officials of the State, be elected by the voters of the State or be appointed directly by the State. And, the requirement continues for the life of any bonds issued by the Bank.

We have also been advised by counsel that the proposed revision to AS 44.54.020 which would expand the Board of Directors to seven members, three of whom would be appointed by the Governor until such time as the Bank has repurchased all non-voting preferred shares held by the State does not satisfy the IRS criteria either. In order to issue tax exempt revenue bonds it would be necessary that the Board of Directors be composed in its entirety of gubernatorial appointees for the life of any outstanding bonds.

The present formulation of the Board, of course, is quite satisfactory to accomplish the primary purpose envisioned by the Legislature when it established the Bank, i.e., to leverage the bank's capital with the federal farm credit system banks in order to make loans to those engaged in commercial fishing and agriculture. In that regard, the federal banks require as a condition of eligibility for loans that associations such as the Commercial Fishing and Agriculture Bank be organized in such a way that not less than 80% of the voting control of the bank is held by fishermen or farmers. See, e.g., 12 USCA 2129 which sets out these requirements as they apply to the federal banks for cooperatives. At first blush, this would seem to preclude a Board of Directors where 3/7ths of the members are gubernatorial appointees rather than representatives of the membership. However, we have informally discussed the matter with representatives of the federal farm credit system in Spokane who have advised us that they do not believe that reconstituting the Bank's Board of Directors as envisioned by SSHB 30 would preclude them from working with the Commercial Fishing and Agriculture Bank. Rather, they interpret the Federal requirement to mean that the control of at least 80% of the votes which would elect the other four members of a reconstituted Board of Directors must be in fishermen and farmers.

It would appear that a change in the composition of the Board of Directors as proposed in SSHB 30 would accomplish one, or both, of two objectives. One, it would establish a mechanism through which Board members who otherwise would not be eligible for election by the members (e.g., bankers, economists, business consultants) could remain on or be appointed to the Board of Directors even though they are not actively engaged in commercial fishing or agriculture. Two, it would vest some modicum of control in the State through the power of the Governor to continue to appoint a minority of the Board during the early life of the Bank. While the first of these reasons is certainly desirable, perhaps some additional discussion of the need for State representation on the Board of Directors through gubernatorial appointees is necessary. At the outset, it should be noted that the Legislature will always retain its ability to influence the Bank through the appropriation process, particularly during the capital formation phase of the Bank, and through its ability to modify to a great extent the Bank's enabling legislation should that ever become necessary. However, a basic tenet of the federal farm credit system is that organizations such as the Bank should operate on a cooperative basis for the mutual benefit of the members.

(insert additional policy considerations re independence of the bank as desired)

One final comment on Section 2 of SSHB 30. The draft bill, as well as the present statute, states that Board member election shall be by the "shareholders". Generally speaking the privilege of the vote in a cooperative corporation belongs to the member or holder of membership stock. Most members will also hold shares of capital stock, but it is entirely possible for one to be a capital stockholder (thus, a shareholder) at the time of a membership meeting, yet for several reasons not currently eligible to vote as a member. Therefore, it is our recommendation that the word "shareholders" on line 22 of page 1 of SSHB 30 be replaced by the term "members" or the term "membership". "Member" is a defined term in AS 10.15.595(9) and would be the preferred term.

Section 3. The proposed amendments to AS 44.54.090 found in Section 3 of SSHB 30 are satisfactory and appear to solve the drafting problem in the present statute.

However, during the organization of the Board of Directors of the Bank two other concerns have surfaced which may be solved by adding language to AS 44.54.090. The first of these is the method to be used when determining

which members of the Board of Directors shall serve for the one, two and three year term. One way to resolve this problem is to provide that the terms be determined by lot, as the Legislature has provided in other instances. (See AS 18.26.030 where such a system is applied to the Board of Directors to the Alaska Medical Facility Authority.)

The second problem is insuring that the initial terms of the Board of Director members expire on the date of the cooperative annual meeting rather than on the anniversary date of the appointment by the Governor. As the Bank's draft By-Laws provide that the annual meeting be held in November of each year, we strongly urge that AS 44.54 provide that the initial one year Board of Governor terms extend until November 1980, and that the two and three year terms expire at the time of the following two annual meetings. Since the initial appointments to the Board of Directors were made on February 19, 1979, to provide that the one year terms expire in November 1979, would not be a prudent business decision as it would mean that the expertise and experience of the one year directors would be lost to the Bank even before it is in full operation.

These recommendations may be implemented by striking the period following the word "years" on line 5 of page 2 of SSHB 30, and inserting a comma and the following language;

, to be determined by lot. The initial terms shall expire at the annual meeting of the bank held in November 1980, 1981 and 1982 respectively.

Section 4. We are aware that the language of Sections 4 and 5 of SSHB 30 tracks in most respects the language of AS 16.10.300 et seq, the Commercial Fishing Loan Act, and agree that it is desirable that the Bank as well have the power to make loans to individual commercial fishermen to purchase entry permits. The Board of Directors of the Bank will, of course, at the appropriate time be faced with the necessity of determining its policies, from a business standpoint, when considering loans to be secured by entry permits. We are aware that there are presently on appeal to the Alaska Supreme Court two Superior Court decisions in cases which challenge the limited entry permit system and/or the method by which permits have been issued. The Supreme Court decision in those cases, or future cases, may result in the issuance of a sufficient number of additional entry permits so that the value of an entry permit held by the Bank as security is substantially lessened.

Future action by the Legislature could work to the same end and must also be taken into consideration by the Bank when making loans of this type.

As to the specific language of Section 4 of SSHB 30, we note that eligibility for a loan to purchase an entry permit is conditioned upon a five year durational residency requirement which, if challenged at some future time, could be held unconstitutional. We also note that the requirement for active participation in the fishery at some time during the past five years is vague enough so that it may cause problems in determining loan eligibility. E.g., would thirty days some time during the five year period be sufficient? would seven days?

Section 5. AS 44.54.230 would require that the executive director of the Bank be listed as the legal owner of a pledged permit and Section 5 at several places requires that the executive director of the Bank take certain actions in regard to a permit. While under AS 16.43 entry permits are held only by natural persons and while the Commercial Fishing Loan Act assigns the same duties to the Commissioner of Commerce and Economic Development, it is desirable in this situation that the legal ownership of an entry permit or directions for taking certain actions rest with the Bank itself, rather than with a specific individual so as to give the Bank maximum flexibility in managing its business. For that reason we recommend that the language "executive director of the" be eliminated where it appears in Section 5 of SSHB 30. But if it is determined that AS 16.43 requires that an individual be named, it nonetheless is desirable that the language "as trustee for the bank" be inserted directly following the designation of the executive director so that it is clear the capacity in which the director acts.

AS 44.54.250(b) would allow a debtor to nominate a person to assume his note under certain conditions and require that the person so nominated qualify under the requirements of AS 44.54.230(a) i.e., that the person nominated qualify as a transferee for an entry permit under AS 16.43. There appears, however, to be no requirement that the nominee to assume the note meet the requirements set up by proposed AS 44.54.210(20), specifically that he meet the five year durational residency requirement as did the original debtor. If this is considered desirable, the language "and AS 44.54.210(20)" should be inserted immediately following the end of the partial sentence on line 1, page 5 of SSHB 30.

### Recommended Additions

AS 16.43 provides that entry permits may not be pledged as security or transferred except under certain conditions, one of which is as provided in the Commercial Fishing Loan Act. Similarly, it would appear that additional amendments are necessary to at least sections AS 16.43.150(g) and AS 16.43.170, which language should refer specifically to the program proposed in SSHB 30.

As a matter of convenience and style in drafting it may be desirable to consider addition of a new section .260, Definitions, to AS 44.54. Such a section initially would define the word "bank" as the Alaska Commercial Fishing and Agriculture Bank which definition was not included in Chapter 159, SLA 1978, even though extensive use is made therein of the term "bank". In addition it would appear desirable to define the word "commission" as the Alaska Commercial Fisheries Entry Commission in order to avoid the problem now found throughout Section 5 of SSHB 30 where reference is sometimes made to the Alaska Commercial Fisheries Entry Commission, but more often is made simply to the "commission".

Finally we strongly recommend that the amendments to AS 44.54 include a specific provision insuring that the Bank has the necessary power to indemnify directors, officers and employees when negligence and misconduct is not involved. Such a provision is routinely included in the by-laws of private sector organization and is specifically included among the general powers given to a cooperative corporation organized in Alaska by AS 10.1 .010(13). Counsel has advised us that in its opinion the Bank does have the power to indemnify its directors, officers and employees by virtue of the fact that AS 44.54.010 subjects the Bank to the provisions of AS 10.15, except as otherwise provided in AS 44.54. Nonetheless, the fact that the specific powers of the Bank enumerated in AS 44.54.210 do not include a provision on indemnification means that it is not impossible that a court might hold that the Legislature intended the Bank not be allowed to indemnify directors, officers and employees under appropriate conditions. For that reason we recommend the addition of the same language now found in AS 10.15.010(13) as an additional paragraph numbered (21) to AS 44.54.210. Section 4 of SSHB 30 may be amended by changing the word "paragraph" on line 6 of page 2 to "paragraphs" and by inserting an additional paragraph at line 14 which reads:

(21) indemnify a director, officer or agent or former director, officer or agent, or a person who may have served at its request

as a director or officer of another domestic or foreign cooperative of which it is a member, against expenses necessarily incurred in defense of a proceeding in which he is a party because he served as a director, officer or agent, but this paragraph does not apply to proceedings in which the director, officer or agent is adjudged liable for negligence or misconduct in the performance of duty, and indemnification under this paragraph is not exclusive of other rights to which the director, officer or agent may be entitled.

cc: Mr. Frank M. Homan, Chairman,  
Commercial Fishing and Agriculture Bank

Mr. Frank Orth, Financial Consultant  
to Commercial Fishing and Agriculture Bank

Mr. Larry Butterfield, Spokane Bank For  
Cooperatives

Mr. R. M. Gorder, Federal Intermediate  
Credit Bank of Spokane

ments to eligible cooperative associations and to extend to them other technical and financial assistance, including but not limited to discounting notes and other obligations, guarantees, collateral custody, or participation with other banks for cooperatives and commercial banks or other financial institutions in loans to eligible cooperatives, under such terms and conditions as may be determined to be feasible by the board of directors of each bank for cooperatives under regulations of the Farm Credit Administration. Such regulations may include provisions for avoiding duplication between the Central Bank and district banks for cooperatives. Each bank may own and lease, or lease with option to purchase, to stockholders eligible to borrow from the bank equipment needed in the operations of the stockholder.

Pub.L. 92-181, Title III, § 3.7, Dec. 10, 1971, 85 Stat. 605.

#### § 2120. Eligibility

Any association of farmers, producers, or harvesters of aquatic products, or any federation of such associations, which is operated on a cooperative basis, and has the powers for processing, preparing for market, handling, or marketing farm or aquatic products; or for purchasing, testing, grading, processing, distributing, or furnishing farm or aquatic supplies or furnishing farm business services or services to eligible cooperatives and conforms to either of the two following requirements:

(a) no member of the association is allowed more than one vote because of the amount of stock or membership capital he may own therein; or

(b) does not pay dividends on stock or membership capital in excess of such per centum per annum as may be approved under regulations of the Farm Credit Administration; and in any case

(c) does not deal in farm products or aquatic products, or products processed therefrom, farm or aquatic supplies, or farm business services with or for nonmembers in an amount greater in value than the total amount of such business transacted by it with or for members, excluding from the total of member and nonmember business transactions with the United States or any agency or instrumentality thereof or services or supplies furnished as a public utility; and

(d) a percentage of the voting control of the association not less than 50 per centum (70 per centum in the case of rural electric, telephone, and public utility cooperatives), or such higher percentage as established by the district board is held by farmers, producers or harvesters of aquatic products, or eligible cooperative associations as defined herein;

shall be eligible to borrow from a bank for cooperatives.

Pub.L. 92-181, Title III, § 3.8, Dec. 10, 1971, 85 Stat. 605, amended Pub.L. 94-184, § 1(a), Dec. 31, 1975, 89 Stat. 1060.

1 So in original. A comma after "producers" was probably not intended.

1975 Amendment, Subsec. (d), to Legislative History. For legislative history and purpose of Pub.L. 94-184, see 1975 U.S. Code Cong. and Adm. News, p. 2148.

rural electric, telephone, and public utility cooperatives.

#### § 2130. Ownership of stock by borrowers

(a) Each borrower at the time a loan is made by a bank for cooperatives shall own at least one share of voting stock and shall be required by the bank with the approval of the Farm Credit Administration to invest in additional voting stock or nonvoting investment stock at that time, or from time to time, as the lending bank may determine, but the requirement for investment in stock at the time the loan is closed shall not exceed an amount equal to 10 per centum of the face amount of the loan. Such additional ownership requirements may be based on

ing any quarter thereof, or upon such other basis as the bank, with the approval of the Farm Credit Administration, determines will provide adequate capital for the operation of the bank and equitable ownership thereof among borrowers. In the case of a direct loan by the Central Bank, the borrower shall be required to own or invest in the necessary stock in a district bank or banks as may be approved by the Farm Credit Administration and such district bank shall be required to own a corresponding amount of stock in the Central Bank, but voting stock shall be in the one district bank designated by the Farm Credit Administration.

(b) Notwithstanding the provisions of subsection (a) of this section, the purchase of stock need not be required with respect to that part of any loan made by a bank for cooperatives which it sells to or makes in participation with financial institutions other than any of the banks for cooperatives. In such cases the distribution of earnings of the bank for cooperatives shall be on the basis of the interest in the loan retained by such bank.

Pub.L. 92-181, Title III, § 3.9, Dec. 10, 1971, 85 Stat. 605.

#### § 2131. Loans—Interest rates and charges

(a) Loans made by a bank for cooperatives shall bear interest at a rate or rates determined by the board of directors of the bank from time to time, with the approval of the Farm Credit Administration. In setting rates and charges, it shall be the objective to provide the types of credit needed by eligible borrowers at the lowest reasonable cost on a sound business basis, taking into account the net cost of money to the bank, necessary reserves and expenses of the bank, and services provided. The loan documents may provide for the interest rate or rates to vary from time to time during the repayment period of the loan, in accordance with the rate or rates currently being charged by the bank.

#### Security

(b) Loans shall be made upon such terms, conditions, and security, if any, as may be determined by the bank in accordance with regulations of the Farm Credit Administration.

#### Lien

(c) Each bank for cooperatives shall have a first lien on all stock or other equities in the bank as collateral for the payment of any indebtedness of the owner thereof to the bank. In the case of a direct loan to an eligible cooperative by the Central Bank, the Central Bank shall have a first lien on the stock and equities of the borrower in the district bank and the district bank shall have a lien thereon junior only to the lien of the Central Bank.

#### Cancellation of application on indebtedness

(d) In any case where the debt of a borrower is in default, or in any case of liquidation or dissolution of a present or former borrower from a bank for cooperatives, the bank may, but shall not be required to, retire and cancel all or a part of the stock, allocated surplus or contingency reserves, or any other equity in the bank owned by or allocated to such borrower, at the fair book value thereof not exceeding par, and, to the extent required in such cases, corresponding shares and allocations and other equity interests held by a district bank in another district bank on account of such indebtedness, shall be retired or equitably adjusted.

Pub.L. 92-181, Title III, § 3.10, Dec. 10, 1971, 85 Stat. 606.

§ 2132. Earnings and reserves, application of savings—Application of savings when bank has outstanding stock held by Governor

(a) Each bank for cooperatives, at the end of each fiscal year when said bank shall have stock outstanding held by the Governor of the Farm

THE PRECEDING PAGES WERE TREATED AS  
A UNIT IN THE ORIGINAL FILE.

MEMORANDUM

TO: Mr. Richard H. Eakins  
Director, Division of  
Economic Development  
DEPARTMENT OF COMMERCE  
& ECONOMIC DEVELOPMENT  
Pouch EE  
Juneau, Alaska 99811

FROM: Peter Argetsinger *Pa*  
WOHLFORTH & FLINT

DATE: April 6, 1979

RE: Commercial Fishing & Agriculture  
Bank/Comments On SSHB 30

On April 4, you requested our assistance in preparing a position paper as to SSHB 30 for submission to the Legislature next week. The comments on the subject bill which follow are submitted for your consideration. They are structured in such a way that you need only add introductory and concluding paragraphs and insert a discussion of policy matters as appropriate, particularly in the areas of composition of the Board of Directors (where I sensed a strong feeling at the April 4 meeting in favor of independence) and in the area of the business judgments to be made when considering loans for entry permits which are to be secured by those permits. (Although, perhaps nothing additional need be said on the latter subject.)

Section 1. Addition of the word "Alaska" to the name of the Bank is desirable and, in fact, reflected in the draft Articles of Incorporation and By-Laws of the Bank now under consideration by the Board of Directors.

Section 2. The Board of Directors of the Bank under the present law is composed of five members, initially appointed by the Governor, who serve staggered terms. Following expiration of the initial term, directors are then elected by the member/shareholders of the Bank which under AS 44.54 is organized as a cooperative corporation. AS 10.15.140, to which the Bank is subject, requires that the elected directors be members of the cooperative. Counsel to the Bank have examined the present method of constituting the Board of Directors of the Bank and have advised that,

in their opinion, under Section 103 of the Internal Revenue Code and the regulations thereunder the Bank may not issue tax exempt revenue bonds. In general, this is because in order to issue tax exempt bonds "on behalf of" the State, the Bank must be considered by the Internal Revenue Service to be a "constituted authority". To satisfy this requirement it is necessary that all members of the Bank Board of Directors be public officials of the State, be elected by the voters of the State or be appointed directly by the State. And, the requirement continues for the life of any bonds issued by the Bank.

We have also been advised by counsel that the proposed revision to AS 44.54.020 which would expand the Board of Directors to seven members, three of whom would be appointed by the Governor until such time as the Bank has repurchased all non-voting preferred shares held by the State does not satisfy the IRS criteria either. In order to issue tax exempt revenue bonds it would be necessary that the Board of Directors be composed in its entirety of gubernatorial appointees for the life of any outstanding bonds.

The present formulation of the Board, of course, is quite satisfactory to accomplish the primary purpose envisioned by the Legislature when it established the Bank, i e., to leverage the bank's capital with the federal farm credit system banks in order to make loans to those engaged in commercial fishing and agriculture. In that regard, the federal banks require as a condition of eligibility for loans that associations such as the Commercial Fishing and Agriculture Bank be organized in such a way that not less than 80% of the voting control of the bank is held by fishermen or farmers. See, e.g., 12 USCA 2129 which sets out these requirements as they apply to the federal banks for cooperatives. At first blush, this would seem to preclude a Board of Directors where 3/7ths of the members are gubernatorial appointees rather than representatives of the membership. However, we have informally discussed the matter with representatives of the federal farm credit system in Spokane who have advised us that they do not believe that reconstituting the Bank's Board of Directors as envisioned by SSHB 30 would preclude them from working with the Commercial Fishing and Agriculture Bank. Rather, they interpret the Federal requirement to mean that the control of at least 80% of the votes which would elect the other four members of a reconstituted Board of Directors must be in fishermen and farmers.

It would appear that a change in the composition of the Board of Directors as proposed in SSHB 30 would accomplish one, or both, of two objectives. One, it would establish a mechanism through which Board members who otherwise would not be eligible for election by the members (e.g., bankers, economists, business consultants) could remain on or be appointed to the Board of Directors even though they are not actively engaged in commercial fishing or agriculture. Two, it would vest some modicum of control in the State through the power of the Governor to continue to appoint a minority of the Board during the early life of the Bank. While the first of these reasons is certainly desirable, perhaps some additional discussion of the need for State representation on the Board of Directors through gubernatorial appointees is necessary. At the outset, it should be noted that the Legislature will always retain its ability to influence the Bank through the appropriation process, particularly during the capital formation phase of the Bank, and through its ability to modify to a great extent the Bank's enabling legislation should that ever become necessary. However, a basic tenet of the federal farm credit system is that organizations such as the Bank should operate on a cooperative basis for the mutual benefit of the members.

(insert additional policy considerations re independence of the bank as desired)

One final comment on Section 2 of SSHB 30. The draft bill, as well as the present statute, states that Board member election shall be by the "shareholders". Generally speaking the privilege of the vote in a cooperative corporation belongs to the member or holder of membership stock. Most members will also hold shares of capital stock, but it is entirely possible for one to be a capital stockholder (thus, a shareholder) at the time of a membership meeting, yet for several reasons not currently eligible to vote as a member. Therefore, it is our recommendation that the word "shareholders" on line 22 of page 1 of SSHB 30 be replaced by the term "members" or the term "membership". "Member" is a defined term in AS 10.15.595(9) and would be the preferred term.

Section 3. The proposed amendments to AS 44.54.090 found in Section 3 of SSHB 30 are satisfactory and appear to solve the drafting problem in the present statute.

However, during the organization of the Board of Directors of the Bank two other concerns have surfaced which may be solved by adding language to AS 44.54.090. The first of these is the method to be used when determining

which members of the Board of Directors shall serve for the one, two and three year term. One way to resolve this problem is to provide that the terms be determined by lot, as the Legislature has provided in other instances. (See AS 18.26.030 where such a system is applied to the Board of Directors to the Alaska Medical Facility Authority.)

The second problem is insuring that the initial terms of the Board of Director members expire on the date of the cooperative annual meeting rather than on the anniversary date of the appointment by the Governor. As the Bank's draft By-Laws provide that the annual meeting be held in November of each year, we strongly urge that AS 44.54 provide that the initial one year Board of Governor terms extend until November 1980, and that the two and three year terms expire at the time of the following two annual meetings. Since the initial appointments to the Board of Directors were made on February 19, 1979, to provide that the one year terms expire in November 1979, would not be a prudent business decision as it would mean that the expertise and experience of the one year directors would be lost to the Bank even before it is in full operation.

These recommendations may be implemented by striking the period following the word "years" on line 5 of page 2 of SSHB 30, and inserting a comma and the following language;

, to be determined by lot. The initial terms shall expire at the annual meeting of the bank held in November 1980, 1981 and 1982 respectively.

Section 4. We are aware that the language of Sections 4 and 5 of SSHB 30 tracks in most respects the language of AS 16.10.300 et seq, the Commercial Fishing Loan Act, and agree that it is desirable that the Bank as well have the power to make loans to individual commercial fishermen to purchase entry permits. The Board of Directors of the Bank will, of course, at the appropriate time be faced with the necessity of determining its policies, from a business standpoint, when considering loans to be secured by entry permits. We are aware that there are presently on appeal to the Alaska Supreme Court two Superior Court decisions in cases which challenge the limited entry permit system and/or the method by which permits have been issued. The Supreme Court decision in those cases, or future cases, may result in the issuance of a sufficient number of additional entry permits so that the value of an entry permit held by the Bank as security is substantially lessened.

Future action by the Legislature could work to the same end and must also be taken into consideration by the Bank when making loans of this type.

As to the specific language of Section 4 of SSHB 30, we note that eligibility for a loan to purchase an entry permit is conditioned upon a five year durational residency requirement which, if challenged at some future time, could be held unconstitutional. We also note that the requirement for active participation in the fishery at some time during the past five years is vague enough so that it may cause problems in determining loan eligibility. E.g., would thirty days some time during the five year period be sufficient?, would seven days?

Section 5. AS 44.54.230 would require that the executive director of the Bank be listed as the legal owner of a pledged permit and Section 5 at several places requires that the executive director of the Bank take certain actions in regard to a permit. While under AS 16.43 entry permits are held only by natural persons and while the Commercial Fishing Loan Act assigns the same duties to the Commissioner of Commerce and Economic Development, it is desirable in this situation that the legal ownership of an entry permit or directions for taking certain actions rest with the Bank itself, rather than with a specific individual so as to give the Bank maximum flexibility in managing its business. For that reason we recommend that the language "executive director of the" be eliminated where it appears in Section 5 of SSHB 30. But if it is determined that AS 16.43 requires that an individual be named, it nonetheless is desirable that the language "as trustee for the bank" be inserted directly following the designation of the executive director so that it is clear the capacity in which the director acts.

AS 44.54.230(b) would allow a debtor to nominate a person to assume his note under certain conditions and require that the person so nominated qualify under the requirements of AS 44.54.230(a) i.e., that the person nominated qualify as a transferee for an entry permit under AS 16.43. There appears, however, to be no requirement that the nominee to assume the note meet the requirements set up by proposed AS 44.54.210(20), specifically that he meet the five year durational residency requirement as did the original debtor. If this is considered desirable, the language "and AS 44.54.210(20)" should be inserted immediately following the end of the partial sentence on line 1, page 5 of SSHB 30.

### Recommended Additions

AS 16.43 provides that entry permits may not be pledged as security or transferred except under certain conditions, one of which is as provided in the Commercial Fishing Loan Act. Similarly, it would appear that additional amendments are necessary to at least sections AS 16.43.150(g) and AS 16.43.170, which language should refer specifically to the program proposed in SSHB 30.

As a matter of convenience and style in drafting it may be desirable to consider addition of a new section .260, Definitions, to AS 44.54. Such a section initially would define the word "bank" as the Alaska Commercial Fishing and Agriculture Bank which definition was not included in Chapter 159, SLA 1978, even though extensive use is made therein of the term "bank". In addition it would appear desirable to define the word "commission" as the Alaska Commercial Fisheries Entry Commission in order to avoid the problem now found throughout Section 5 of SSHB 30 where reference is sometimes made to the Alaska Commercial Fisheries Entry Commission, but more often is made simply to the "commission".

Finally we strongly recommend that the amendments to AS 44.54 include a specific provision insuring that the Bank has the necessary power to indemnify directors, officers and employees when negligence and misconduct is not involved. Such a provision is routinely included in the by-laws of private sector organization and is specifically included among the general powers given to a cooperative corporation organized in Alaska by AS 10.15.010(13). Counsel has advised us that in its opinion the Bank does have the power to indemnify its directors, officers and employees by virtue of the fact that AS 44.54.010 subjects the Bank to the provisions of AS 10.15, except as otherwise provided in AS 44.54. Nonetheless, the fact that the specific powers of the Bank enumerated in AS 44.54.210 do not include a provision on indemnification means that it is not impossible that a court might hold that the Legislature intended the Bank not be allowed to indemnify directors, officers and employees under appropriate conditions. For that reason we recommend the addition of the same language now found in AS 10.15.010(13) as an additional paragraph numbered (21) to AS 44.54.210. Section 4 of SSHB 30 may be amended by changing the word "paragraph" on line 6 of page 2 to "paragraphs" and by inserting an additional paragraph at line 14 which reads:

(21) indemnify a director, officer or agent or former director, officer or agent, or a person who may have served at its request

as a director or officer of another domestic or foreign cooperative of which it is a member, against expenses necessarily incurred in defense of a proceeding in which he is a party because he served as a director, officer or agent, but this paragraph does not apply to proceedings in which the director, officer or agent is adjudged liable for negligence or misconduct in the performance of duty, and indemnification under this paragraph is not exclusive of other rights to which the director, officer or agent may be entitled.

cc: Mr. Frank M. Homan, Chairman,  
Commercial Fishing and Agriculture Bank

Mr. Frank Orth, Financial Consultant  
to Commercial Fishing and Agriculture Bank

Mr. Larry Butterfield, Spokane Bank For  
Cooperatives

Mr. R. M. Gorder, Federal Intermediate  
Credit Bank of Spokane

The banks for cooperatives are authorized to make loans and commitments to eligible cooperative associations and to extend to them other technical and financial assistance, including but not limited to discounting notes and other obligations, guarantees, collateral custody, or participation with other banks for cooperatives and commercial banks or other financial institutions in loans to eligible cooperatives, under such terms and conditions as may be determined to be feasible by the board of directors of each bank for cooperatives under regulations of the Farm Credit Administration. Such regulations may include provisions for avoiding duplication between the Central Bank and district banks for cooperatives. Each bank may own and lease, or lease with option to purchase, to stockholders eligible to borrow from the bank equipment needed in the operations of the stockholder.

Pub.L. 92-181, Title III, § 3.7, Dec. 10, 1971, 85 Stat. 605.

#### § 2129. Eligibility

Any association of farmers, producers, or harvesters of aquatic products, or any federation of such associations, which is operated on a cooperative basis, and has the powers for processing, preparing for market, handling, or marketing farm or aquatic products; or for purchasing, testing, grading, processing, distributing, or furnishing farm or aquatic supplies or furnishing farm business services or services to eligible cooperatives and conforms to either of the two following requirements:

(a) no member of the association is allowed more than one vote because of the amount of stock or membership capital he may own therein; or

(b) does not pay dividends on stock or membership capital in excess of such per centum per annum as may be approved under regulations of the Farm Credit Administration; and in any case

(c) does not deal in farm products or aquatic products, or products processed therefrom, farm or aquatic supplies, or farm business services with or for nonmembers in an amount greater in value than the total amount of such business transacted by it with or for members, excluding from the total of member and nonmember business transactions with the United States or any agency or instrumentality thereof or services or supplies furnished as a public utility; and

(d) a percentage of the voting control of the association not less than 50 per centum (70 per centum in the case of rural electric, telephone, and public utility cooperatives), or such higher percentage as established by the district board is held by farmers, producers or harvesters of aquatic products, or eligible cooperative associations as defined herein;

shall be eligible to borrow from a bank for cooperatives.

Pub.L. 92-181, Title III, § 3.8, Dec. 10, 1971, 85 Stat. 605, amended Pub.L. 94-184, § 1(a), Dec. 31, 1975, 89 Stat. 1060.

180 in original. A comma after "producers" was probably not intended. 1975 Amendment: Subsec. (d) legislative history and purpose of Pub.L. 94-184, are centum of voting control in the case of rural electric, telephone, and public utility cooperatives. 2118.

#### § 2130. Ownership of stock by borrowers

(a) Each borrower at the time a loan is made by a bank for cooperatives shall own at least one share of voting stock and shall be required by the bank with the approval of the Farm Credit Administration to invest in additional voting stock or nonvoting investment stock at that time, or from time to time, as the lending bank may determine, but the requirement for investment in stock at the time the loan is closed shall not exceed an amount equal to 10 per centum of the face amount of the loan. Such additional ownership requirements may be based on

percentage of the interest payable by the borrower during any year or during any quarter thereof, or upon such other basis as the bank, with the approval of the Farm Credit Administration, determines will provide adequate capital for the operation of the bank and equitable ownership thereof among borrowers. In the case of a direct loan by the Central Bank, the borrower shall be required to own or invest in the necessary stock in a district bank or banks as may be approved by the Farm Credit Administration and such district bank shall be required to own a corresponding amount of stock in the Central Bank, but voting stock shall be in the one district bank designated by the Farm Credit Administration.

(b) Notwithstanding the provisions of subsection (a) of this section, the purchase of stock need not be required with respect to that part of any loan made by a bank for cooperatives which it sells to or makes in participation with financial institutions other than any of the banks for cooperatives. In such cases the distribution of earnings of the bank for cooperatives shall be on the basis of the interest in the loan retained by such bank.

Pub.L. 92-181, Title III, § 3.9, Dec. 10, 1971, 85 Stat. 605.

#### § 2131. Loans—Interest rates and charges

(a) Loans made by a bank for cooperatives shall bear interest at a rate or rates determined by the board of directors of the bank from time to time, with the approval of the Farm Credit Administration. In setting rates and charges, it shall be the objective to provide the types of credit needed by eligible borrowers at the lowest reasonable cost on a sound business basis, taking into account the net cost of money to the bank, necessary reserves and expenses of the bank, and services provided. The loan documents may provide for the interest rate or rates to vary from time to time during the repayment period of the loan, in accordance with the rate or rates currently being charged by the bank.

#### Security

(b) Loans shall be made upon such terms, conditions, and security, if any, as may be determined by the bank in accordance with regulations of the Farm Credit Administration.

#### Lien

(c) Each bank for cooperatives shall have a first lien on all stock or other equities in the bank as collateral for the payment of any indebtedness of the owner thereof to the bank. In the case of a direct loan to an eligible cooperative by the Central Bank, the Central Bank shall have a first lien on the stock and equities of the borrower in the district bank and the district bank shall have a lien thereon junior only to the lien of the Central Bank.

#### Cancellation; application on indebtedness

(d) In any case where the debt of a borrower is in default, or in any case of liquidation or dissolution of a present or former borrower from a bank for cooperatives, the bank may, but shall not be required to, retire and cancel all or a part of the stock, allocated surplus or contingency reserves, or any other equity in the bank owned by or allocated to such borrower, at the fair book value thereof not exceeding par, and, to the extent required in such cases, corresponding shares and allocations and other equity interests held by a district bank in another district bank on account of such indebtedness, shall be retired or equitably adjusted.

Pub.L. 92-181, Title III, § 3.10, Dec. 10, 1971, 85 Stat. 606.

#### § 2132. Earnings and reserves; application of savings—Application of savings when bank has outstanding stock held by Governor

(a) Each bank for cooperatives, at the end of each fiscal year when said bank shall have stock outstanding held by the Governor of the Farm

# GEOPHYSICAL INSTITUTE

C. T. ELVEY BUILDING  
UNIVERSITY OF ALASKA  
FAIRBANKS, ALASKA 99701

March 8, 1979

Representative Brian Rogers  
Pouch V  
Juneau, AK 99811

Dear Brian:

Following a conversation with Vice Chancellor Keith B. Mather who asked my opinion on HB 12, I am submitting the following comments. This letter also amplifies statements I made in response to your telephone call of yesterday. I appreciate your having called on the matter.

I think the general idea of HB 12 is excellent; there is no doubt that Alaskans are highly interested in it. Furthermore, a successful program of this type creates the image of a helpful and responsive State government. But I think it crucial to make sure the program is handled well. Several specific comments follow:

1. I see no reason to establish a new staff anywhere to distribute this money and monitor its use. I suggest that no more than 20-30 percent of the appropriated funds need be spent on administrative costs. To do that requires use of an existing office such as that of the Alaska Council on Science and Technology or the Renewable Resources Corporation and some effective procedures of idea solicitation, proposal review and monitoring of projects funded.

2. The program will fail if there is too much paperwork involved in proposal preparation or reporting. Many of the people who are likely to contribute innovative approaches through this program are not comfortable with writing. Proposers should be allowed to propose verbally on a cassette recorder or in writing on a very few sheets of paper.

3. The Alaska Council on Science and Technology is already working on steps oriented to establishing review procedures, as it is required to do by statute. Why not take advantage of this ongoing effort? With the advice of the Council members, the Council's existing staff can handle at least the proposal review process at comparatively low cost.

4. Reviewers in the University of Alaska system, in private industry and in State agencies can be relied upon to help. These people also could be asked to act as project advisors to the individuals actually receiving the funds and thereby assist the innovators. This can also be a mechanism to help the shy innovator deal with the bureaucracy, and a mechanism whereby the innovator gets additional moral and perhaps even facilities support from his "advisor-sponsor." The educational benefit, both to the innovator and the "advisor-sponsor" could be of significant value.

Representative Brian Rogers

-2-

March 8, 1979

5. A real problem is how to inexpensively monitor and obtain responsible reporting on the results of funded work. There may be interesting legalistic problems such as can a recipient of State funds buy equipment, etc., without going to the lowest bidder? Who owns any resulting patents? What is to stop a grant recipient from using the money to vacation in Hawaii? In essence, if the backyard inventor is going to have to comply with the same rules that Alaska enforces upon its organized activities of similar nature, the poor inventor is unlikely to have much time or energy left for inventing. But if we don't put some constraints on the grantee, how can we prevent gross misuse of funds? I think this can be worked out, but it will take a little doing to achieve a proper balance. One idea I had was to require either a written report at the end of the project or the option of attending the annual Alaska Science Conference to give a report on the work to a specially organized section; part of the grant would pay for the grantee's attendance. Use of the "sponsor-advisor" concept also should help limit the need for extensive reporting.

I want to emphasize that in no way should this letter be construed as an official pronouncement of the Alaska Council on Science and Technology. Because of the possibility that the Council may become involved in this matter, I am sending copies of this letter to the Executive Director and to the members of the Council.

Sincerely,



T. Neil Davis  
Professor of Geophysics

TND/fp

cc: Keith B. Mather, Vice Chancellor  
Al Belon, Associate Director  
Chris Noah, Executive Director  
Council members:  
Mim Dixon  
Gregg K. Erickson  
David M. Hickok  
Richard Holden *0.07*  
Ronald O. Skoeg *0.07*  
Richard R. Straty

Sec. 44.54.20. BOARD OF DIRECTORS.

The bank shall be managed by a board of directors consisting of seven members. Initial appointments to the board shall be made by the Governor. Thereafter five of the board members shall be elected by the shareholders and two shall be appointed by the Governor until the repurchase of all non-voting, preferred shares initially issued by the bank and purchased by agencies of the State. The board members shall annually elect a chairman from among themselves. The purpose of the board is to manage the assets of the bank. The initial board shall be composed of five members and the remaining two members shall be appointed by the Governor at the time of the first annual membership meeting.

Sec. 44.54.0911. TERM OF OFFICE.

The members of the board shall serve for three years, and they may serve successive terms. Terms shall be staggered. Initial terms shall be two members serving for one year, two members serving for two years, and one member serving for three years, to be determined by lot. The initial terms shall expire at the first, second and third annual membership meeting of the bank, respectively.

HJR 12

Relating to the tax exemption granted to federal employees in Alaska and in other locations outside the contiguous 48 states.

Randolph, etc.

SUMMARY

This resolution directs the Alaska delegation in congress to introduce and urge passage of legislation that would exempt from federal income tax a percentage of the wages and salaries paid to residents in Alaska and other locations that is equal to the tax free cost-of-living allowance paid to federal workers in Alaska and other locations. This constitutes discrimination as non-federal employees in Alaska are subject to the same high cost-of-living but do not receive a tax relief to offset its effects.

SUPPORTING INFORMATION

~~Nothing from Randolph (prime sponsor) or House State Affairs. Randolph did testify at the House Committee Meeting but I would have to listen to the tapes to find out what he said. The committee passed it out with all members signing DO PASS. This bill is sponsored by 37 of the 40 house members.~~

See attached salary comparison

FISCAL NOTE: None

RELATED LEGISLATION: None

INTERESTED PARTIES: Department of Administration  
~~BY RANDOLPH, ANDERSON, BARNES, BEIRNE,  
BETTISWORTH, BRANSON, BROWN, CARNEY,  
COTTEN, DUNCAN, ELIASON, FREEMAN, FULLER,  
GARDINER, GUY, HALFORD, HAUGEN, HAYES,  
HURLBERT, MCKINNON, MALONE, MARTIN,  
MEEKINS, METCALFE, MILES, MILLER,  
MONTGOMERY, MOSS, MUNSON, O'CONNELL  
OSTERBACK, PARKER, PARR, PHILLIPS,  
ROGERS, SMITH AND ZHAROFF~~

VOTING: House vote

~~32-yes, 1-no.~~

FLOOR REPORT

CSSB 182 By the State Affairs Committee

~~HB 220~~ <sup>CSSB 182 By the State Affairs</sup>  
Committee simply does two things. It abolishes the salary  
commission and maintains the salaries at their current level.

The original sponsors and the majority of the committee feel  
that the salary commission has not solved the problem they set out  
to do. The Commission was created to stay void from politics and  
public pressure while making <sup>salary</sup> salary judgements. It seems when the  
public applies pressure the Commission backs down from its re-  
commendations. Regardless of who makes the salary recommendations  
it is the Legislative Body that takes the final <sup>heat</sup> heat from the public,  
so the sponsor and majority of the committee feels that the legislature  
should be involved in the salary setting process from beginning to end.

The committee also <sup>felt</sup> felt adjusting the salaries could <sup>will be</sup> be adressed  
in HB 220 rather than in this legislation.

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Official Business

# Alaska State Legislature

Senate

Committee on State Affairs

Pouch V  
State Capitol  
Juneau, Alaska 99811

April 26, 1979

The Honorable Clem Tillion  
President of the Senate  
Alaska State Legislature  
Juneau, Alaska 99811

Dear Mr. President:

While it is doubtful that this legislation will have excessive fiscal impact, the committee is unable to determine its extent.

  
Senator Bob Mulcahy, Chairman  
Senate State Affairs

In the Division of Insurance numerous records are kept, many of which are currently public documents and many of which, though the degree to which public access is authorized may be in doubt, ought to be available to the public and this measure will clarify those rules.

By the same token there are numerous records maintained by the Division of Insurance public access to which serves no purpose and in fact could jeopardize the rights of individuals and seriously impair the availability of important regulatory information.

We have several areas where we are concerned with confidentiality. These areas are as follows:

- TAKEN CARE OF*
- A. The current Alaska Insurance Code requires that the Alaska Insurance Guarantee Association and the Director of Insurance exchange information concerning the potential insolvency of insurance carriers. Because this information is often based on rumor or speculation and sometimes inaccurate and often incomplete data, to permit public access and potential publication of these records could prove seriously detrimental to the subject insurance carrier yet it is important that the Director and the Board of Directors of the Alaska Insurance Guarantee Association engage in this exchange.

*PAGE 1  
LINE 8*

We believe that the public should have information concerning a carrier which is not financially suited to provide insurance in this State but that information should be made available only after there has been a proper determination that the carrier is in fact not financially able to meet its obligations.

We would propose an amendment that would exempt from public access the exchange of information between the Director and the Board of Directors of the Guarantee Association concerning these potential and unsubstantiated financially impaired carriers.

- SOME INFORMATION ENOUGH IN*
- B. The Division of Insurance is required by law to perform an extremely extensive examination of insurance carriers no less often than every three years and has in its discretion authority to examine more often. These examinations probe intensively into the underwriting, claim handling, marketing, investment and management policies of the carriers. It explores their reinsurance and all of their accounting and bookkeeping records. It is extremely important that the regulator have access to this information and that it accumulate this information in appropriate records in the Division of Insurance. By the same token it would be very unfair to the insurance carrier to have this kind of information available for public view. Reinsurance information and the information about advertising, marketing, underwriting and its other contractual obligations is and ought to remain proprietary information to the carrier. It would be seriously destructive to competition if other carriers could have access to that kind of data.

We would propose an amendment that would exempt from public access, the reports of examination and related records. This would not exempt and thus would allow public continual access to the financial statement of all insurance companies filed annually by the carriers, their applications for license, holding company reports, and all other information which the Division maintains as part of the Certificate of Authority file. In our opinion this information is appropriately a publicly accessible record.

ALMOST  
NEVER  
INSURANCE  
C.  
LLAS  
IN 1910  
BIA  
1915

C. All applicants for a license to act as an agent, broker, or adjustor must submit an application which probes into personal history, potential criminal record and other data, all of which is and ought to remain, personal and confidential to the applicant. There is no purpose served in giving the public access to the record of the personal lives of Alaska citizens simply because that citizen seeks to apply for a license to do a special business in this State. Our general records concerning who has a license is currently and ought to remain a public record. That is, the public may know who has a license and what that license authorizes that individual to do. It does not seem appropriate, however, that all personal information which we must have in order to make a judgement about the person's qualifications for a license should be available to anyone else.

We would propose an amendment which makes the license application files confidential and not available for public access except that the individual applicant or licensee may review his own file. This, of course, does not give the applicant access to his examination, examination answers, or test score.

The committee should be aware that there are already certain other matters which are currently exempted from public view and I believe ought to remain confidential.

The Director has authority to keep confidential any investigation of an agent, broker, adjustor, or other licensee. This is important because an investigation may reveal information of an incriminating nature which ought not to be made public until there has been a hearing and an official determination of the validity of charges brought against such a person. An investigation which has not been culminated in a hearing, an official determination ought not be made public record.

Rate filings remain confidential until the filing is approved. Once the filing is approved, the filing may be reviewed by any member of the public and it is appropriate that the public and competitors see the justification for a change of rates or for a new policy form. Until it is approved, however, it creates a competitive disadvantage for one carrier to have advanced notice of what another carrier may have filed for approval before that first carrier has had an opportunity to have its rate approved and marketed.

EXHIBIT

Add Sec. 21.80.175 Confidentiality of Information

A.

- a) All reports; recommendations, requests for information and records, made, transmitted or retained pursuant to Sec. 110 of this chapter except the report on causes of insolvency required by Section 110(i) shall be a confidential record not available for public access.
- b) All files of the association concerning claims against the association shall be a confidential record not available for public access.

Amend Sec. 21.80.110(b) by deleting: (LAST SENTENCE)

"The request for an examination shall be kept on file by the Commissioner but it shall not be open to public inspection before the release of the examination report to the public."

and deleting (d) (LAST SENTENCE)

"These reports and recommendations shall not be considered public documents."

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Add to 21.05.120

B.

- (d) All interim and final reports of examinations and all records made, transmitted or retained in connection with an examination shall be confidential records and not available to public access.

Add to 21.06.120

- (c) All interim and final reports of examinations and all records made, transmitted or retained in connection with an examination shall be confidential records and not available to public access.

Add to 21.04.370

- (e) All interim and final reports of examinations and all records made, transmitted or retained in connection with an examination shall be confidential records and not available to public access.
- 

Add to 21.27.040

C.

- (d) An application and all records furnished to, or made or retained by the Director in connection with an application for a license is a confidential record and not available to public access except that an applicant for a license or licensee shall have the right to review his own file and all records a part thereof except examinations, examination answers or scores.

Add to 21.33.150

- (c) An application and all records furnished to, or made or retained by the Director in connection with an application for a license is a confidential record and not available to public access except that an applicant for a license or licensee shall have the right to review his own file and all records a part thereof except examinations, examination answers or scores.

## Chapter 43. Regulation of Entry into Alaska Commercial Fisheries.

### Article

1. Creation of the Alaska Commercial Fisheries Entry Commission (§§ 16.43.010 — 16.43.080)
2. Powers and Duties of the Commission (§§ 16.43.100 — 16.43.120)
3. Requirements for Entry Permits (§§ 16.43.140 — 16.43.182)
4. Initial Issuance of Entry Permits (§§ 16.43.200 — 16.43.270)
5. Reduction to Optimum Number of Entry Permits (§§ 16.43.290 — 16.43.330)
6. General Provisions. §§ 16.43.350 — 16.43.380)

Legislative committee report. — For am S), see 1973 House Journal, p. 503; 1973 report on ch. 79, SLA 1973 (SCS CSHB 126 Senate Journal Supplement No. 15.

### Article 1. Creation of the Alaska Commercial Fisheries Entry Commission.

#### Section

10. Purpose and findings of fact
20. Alaska Commercial Fisheries Entry Commission
30. Term of office; vacancy
40. Quorum
50. Qualifications

#### Section

60. Compensation of members of the Alaska Commercial Fisheries Entry Commission
70. Legal counsel
80. Employment of personnel

**Sec. 16.43.010. Purpose and findings of fact.** (a) It is the purpose of this chapter to promote the conservation and the sustained yield management of Alaska's fishery resource and the economic health and stability of commercial fishing in Alaska by regulating and controlling entry into the commercial fisheries in the public interest and without unjust discrimination.

(b) The legislature finds that commercial fishing for fishery resources has reached levels of participation, on both a statewide and an area basis, that have impaired or threaten to impair the economic welfare of the fisheries of the state, the overall efficiency of the harvest, and the sustained yield management of the fishery resource. (§ 1 ch 79 SLA 1973)

Applied in *Isakson v. Rickey*, Sup. Ct. Op. No. 1267 (File No. 2550), 550 P 2d 359 (1976).

#### **Sec. 16.43.020. Alaska Commercial Fisheries Entry Commission.**

(a) There is established the Alaska Commercial Fisheries Entry Commission as a regulatory and quasi-judicial agency of the state. The commission consists of three members appointed by the governor and confirmed by the legislature in joint session.

(b) The governor shall designate one member of the commission as chairman of the commission. The member designated shall serve as chairman for a term of two years, and may be designated chairman for successive two-year terms. (§ 1 ch 79 SLA 1973)

**Sec. 16.43.030. Term of office; vacancy.** (a) The members of the commission shall be appointed for terms of four years. Initial appointments shall be as follows: one member for two years, one member for three years, and one member for four years. The governor may remove a commissioner from office for cause including but not limited to incompetence, neglect of duty, or misconduct in office. A commissioner, to be removed for cause, shall be given a copy of the charges against him and afforded an opportunity to be publicly heard in person or by counsel in his own defense upon not less than 10 days notice. If a commissioner is removed for cause, the governor shall file with the lieutenant governor a complete statement of all charges made against the commissioner and his findings based on the charges, together with a complete record of the proceedings.

(b) A vacancy on the commission shall be filled by appointment by the governor and the appointment shall be confirmed by the legislature in joint session. A member selected to fill a vacancy shall hold office for the balance of the full term for which his predecessor on the commission was appointed.

(c) A vacancy on the commission does not impair the authority of a quorum of commissioners to exercise all the powers and perform all the duties of the commission. (§ 1 ch 79 SLA 1973)

**Sec. 16.43.040. Quorum.** Two members of the commission constitute a quorum for the transaction of business, for the performance of a duty or for the exercise of a power of the commission. (§ 1 ch 79 SLA 1973)

**Sec. 16.43.050. Qualifications.** The commission shall consist of three members with a broad range of professional experience, none of whom has a vested economic interest in an interim-use permit, entry permit, commercial fishing vessel or gear, or in any fishery resource processing or marketing business. (§ 1 ch 79 SLA 1973)

**Sec. 16.43.060. Compensation of members of the Alaska Commercial Fisheries Entry Commission.** Members of the commission are in the exempt service and shall receive an annual salary as established under AS 39.23. (§ 1 ch 79 SLA 1973; am § 5 ch 47 SLA 1974; am § 1 ch 148 SLA 1976; am § 2 ch 263 SLA 1976)

**Effect of amendments.** — The 1974 amendment rewrote this section.

The first 1976 amendment deleted "payable in equal monthly installments" from the end of the section.

The second 1976 amendment substituted "as established under AS 39.23" for "equal to that of a district court judge payable in equal monthly installments."

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members of the years. Initial two years, one The governor including but not et in office. A a copy of the publicly heard s than 10 days ernor shall file charges made the charges,

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consist of three, none of whom, entry permit, urce processing

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ndment substituted S 39 23" for "equal rt judge payable in ents."

Sec. 16.43.070. Legal counsel. The attorney general is the legal counsel for the commission. He shall advise the commission in legal matters arising in the discharge of its duties and represent the commission in suits to which it is a party. However, the commission may retain additional legal counsel as appropriate. (§ 1 ch 79 SLA 1973)

Sec. 16.43.080. Employment of personnel. (a) The commission may employ those persons necessary to carry out the purposes of this chapter. Employees of the commission are in the exempt service under AS 3' 5.110.

(b) In addition to its staff of regular employees, the commission may contract for and engage the services of consultants, experts and hearing officers as necessary. (§ 1 ch 79 SLA 1973)

Article 2. Powers and Duties of the Commission.

Section	Section		
100. General powers	120. Application of	Administrative	
110. Regulations and hearing procedures	Procedure Act		

Sec. 16.43.100. General powers. (a) To accomplish the purposes set out in § 10 of this chapter the commission shall:

(1) regulate entry into the commercial fisheries for all fishery resources in the state;

(2) establish priorities for the application of he provisions of this chapter to the various commercial fisheries of the state;

(3) establish administrative areas suitable for regulating and controlling entry into the commercial fisheries;

(4) establish, for all types of gear, the maximum number of entry permits for each administrative area;

(5) designate, when necessary to accomplish the purposes of this chapter, particular species for which separate interim-use permits or entry permits will be issued;

(6) establish qualifications for the issuance of entry permits;

(7) issue entry permits to qualified applicants;

(8) issue interim-use permits as provided in §§ 210 — 220 of this chapter;

(9) establish, for all types of gear, the optimum number of entry permits for each administrative area;

(10) administer the buy-back program provided for in §§ 310 — 320 of this chapter to reduce the number of outstanding entry permits to the optimum number of entry permits;

(11) provide for the transfer and reissuance of entry permits to qualified transferees;

(12) provide for the transfer and reissuance of entry permits for alternative types of legal gear, in a manner consistent with the purposes of this chapter;

(13) administer the collection of the annual fees provided for in § 160 of this chapter.

(b) The commission may do all things necessary to the exercise of its powers under this chapter, whether or not specifically designated in this chapter. (§ 1 ch 79 SLA 1973)

Editor's note. — Section 14, ch. 105, SLA 1977, effective January 1, 1978, added paragraph (14) to subsection (a). Paragraph (14) reads "(14) administer the issuance of commercial fishing vessel licenses under AS 16.05.490."

**Sec. 16.43.110. Regulations and hearing procedures.** (a) The commission may adopt regulations, consistent with law, necessary or proper in the exercise of its powers or for the performance of its duties under this chapter.

(b) The commission shall adopt regulations, consistent with due process of law, which govern practice and procedure and the conduct of all investigations, hearings and proceedings which it holds.

(c) Common-law rules of evidence apply to investigations, hearings and proceedings before the commission, except when the commission determines that their application is not required in order to assure fair treatment of all parties and that the evidence is relevant and of the sort on which responsible persons are accustomed to rely in the conduct of serious matters.

(d) The commission, each commissioner or an employee authorized by the commission may administer oaths, certify to all official acts, and issue subpoenas and other process to compel the attendance of witnesses and the production of testimony, records, papers, accounts and documents in an inquiry, investigation, hearing, or proceeding before the commission in any part of the state. The commission may petition a court to enforce its subpoenas or other process. (§ 1 ch 79 SLA 1973)

**Sec. 16.43.120. Application of Administrative Procedure Act.** (a) The administrative adjudication procedures of the Administrative Procedure Act (AS 44.62) do not apply to adjudicatory proceedings of the commission except that final administrative determinations by the commission are subject to judicial review as provided in AS 44.62.560 — 44.62.570.

(b) AS 44.62.010 — 44.62.320 and 44.62.640 apply to regulations adopted by the commission. (§ 1 ch 79 SLA 1973)

### Article 3. Requirements for Entry Permits.

Section	Section
140. Permit required	170. Transfer of entry permits
150. Terms and conditions of entry permit; annual renewal	180. Emergency transfers
160. Fees	182. Entry permit deductible as business expense

**Sec. 16.43.140. Permit required.** (a) After January 1, 1974, no person may operate gear in the commercial taking of fishery resources without a valid entry permit or a valid interim-use permit issued by the commission.

(b) A permit is not required of a crewman or other person assisting in the operation of a unit of gear engaged in the commercial taking of fishery resources as long as the holder of the entry permit or the interim-use permit for that particular unit of gear is at all times present and actively engaged in the operation of the gear.

(c) A person may hold more than one interim-use or entry permit issued or transferred under this chapter only for the following purposes:

- (1) fishing more than one type of gear;
- (2) fishing in more than one administrative area;
- (3) harvesting particular species for which separate interim-use or entry permits are issued. (§ 1 ch 79 SLA 1973)

Applied in *Isakson v. Rickey*, Sup. Ct. Op. No. 1267 (File No. 2550), 550 P.2d 359 (1976).

**Sec. 16.43.150. Terms and conditions of entry permit; annual renewal.** (a) Each entry permit authorizes the permittee to operate a unit of gear within a specified administrative area.

(b) The holder of an entry permit shall have the permit in his possession at all times when engaged in the operation of gear for which it was issued.

(c) Each entry permit is issued for a term of one year and is renewable annually.

(d) Failure to renew an entry permit for a period of two years from the date of last renewal results in a forfeiture of the entry permit to the commission, except as waived by the commission for good cause.

(e) An entry permit constitutes a use privilege which may be modified or revoked by the legislature without compensation.

(f) An entry permit survives the death of the holder.

(g) An entry permit may not be:

- (1) pledged, mortgaged, leased, or encumbered in any way;
- (2) transferred with any retained right of repossession or foreclosure, or
- (3) attached, distrained, or sold on execution of judgment or under any other process or order of any court.

(h) Upon the death of an entry permit holder, the permanent permit shall be transferred by the commission directly to the surviving spouse by right of survivorship unless a contrary intent is manifested. When no spouse survives, the rights of the decedent pass as part of his estate. (§ 1 ch 79 SLA 1973; am §§ 1, 2 ch 73 SLA 1977)

Effect of amendment. — The 1977 amendment inserted "leased" in paragraph (1) of subsection (g) and added subsection (h).

**Sec. 16.43.160. Fees.** (a) The commission shall establish annual fees for the issuance and annual renewal of entry permits or interim-use permits to reflect the cost of administering this chapter. Fees collected under this section shall be paid into the general fund.

(b) Annual fees established under this section shall be no less than \$10 and no more than \$100 and shall reasonably reflect the different rates of economic return for different fisheries.

(c) The holder of an entry permit or interim-use permit who has a net family income falling within the Federal Social Security Administration poverty guidelines, adjusted by the commission to reflect appropriate cost-of-living differentials, is subject to a maximum annual fee of \$5. (§ 1 ch 79 SLA 1973)

**Editor's note.** — Section 15, ch. 105, SLA 1977, effective January 1, 1978, amended this section to read as follows: (a) The commission shall establish annual fees for the issuance and annual renewal of entry permits or interim-use permits. Fees collected under this section shall be paid into the general fund, except for an amount equal to 60 per cent of the fee each permit holder would otherwise be obligated to pay for a crewmember license under § 480 of this chapter which shall be paid into the fishermen's fund under AS 23.35.060.

(b) Annual fees established under this section shall be no less than \$10 and no more than \$750 and shall reasonably reflect the different rates of economic return for different fisheries.

(c) The resident holder of an entry permit or interim-use permit who has a net family income falling within the Federal Community Services Administration poverty guidelines, adjusted by the commission to reflect appropriate cost-of-living differentials, is subject to a maximum annual fee of \$15.

**Sec. 16.43.170. Transfer of entry permits.** (a) Entry permits and interim-use permits are transferable only through the commission as provided in this section and § 30 of this chapter and under regulations adopted by the commission.

(b) Except as provided in (c) of this section, the holder of an entry permit may transfer his permit to another person or to the commission upon 60 days notice of intent to transfer under regulations adopted by the commission. No sooner than 60 days nor later than 12 months from the date of notice to the commission, the holder of an entry permit may transfer his permit. If the proposed transferee, other than the commission, can establish present ability to participate actively in the fishery, the commission shall approve the transfer and reissue the entry permit to the transferee.

(c) If the number of outstanding entry permits for a fishery is greater than the optimum number of entry permits established under §§ 290 — 300 of this chapter, the holder of an entry permit who qualified for that entry permit in a priority classification designated under § 250(c) of this chapter may transfer his permit only to the commission. The transfer to the commission shall be made under the buy-back provisions of §§ 310 — 320 of this chapter.

(d) Repealed by § 9 ch 73 SLA 1977. (§ 1 ch 79 SLA 1973; am § 1 ch 126 SLA 1974; am §§ 3, 4, 9 ch 73 SLA 1977)

**Effect of amendments.** — The 1974 amendment, in subsection (b), substituted "60 days" for "six months" in the first and second sentences and "12 months" for "eighteen months" in the second sentence. The 1977 amendment substituted "Entry permits and interim-use permits are" for "an entry permit is" at the beginning of subsection (a), deleted and (d)" following "Except as provided in (c)" near the

beginning of the first sentence of subsection (b), and repealed subsection (d), which provided for a five-year prohibition on transfer of entry permit if an applicant eligible for such permit under AS 16.43.260 so elected.

Cited in *Isakson v. Rickey*, Sup. Ct. Op. No. 1267 (File No. 2550), 550 P.2d 359 (1976).

**Sec. 16.43.180. Emergency transfers.** (a) The commission shall adopt regulations providing for the temporary transfer of entry permits and interim-use permits to alleviate hardship caused by illness, disability, or death of a permit holder so that another person may operate the transferor's vessel and gear, or another vessel and other gear if the transferor's has been destroyed or seriously damaged, for the remainder of the season, or in the case of illness or disability, for the duration of the illness or disability if that is shorter than the remainder of the season. Interim-use permits are otherwise nontransferable.

(b) The commission shall adopt regulations providing for the temporary transfer of an entry permit upon the death of the permittee pending final disposition of the permit as a part of the permittee's estate. (§ 1 ch 79 SLA 1973; am § 5 ch 73 SLA 1977)

**Effect of amendment.** — The 1977 amendment substituted the language beginning "entry permits and interim-use permits" for "an entry permit when sickness, injury, or other unavoidable

hardship prevents the permittee from participating in the fishery" in the first sentence of subsection (a) and added the second sentence of that subsection.

**Sec. 16.43.182. Entry permit deductible as business expense.** An entry permit purchased under this chapter is deductible as a business expense as provided in AS 43.20.031(h). (§ 6 ch 73 SLA 1977)

#### Article 4. Initial Issuance of Entry Permits.

Section	Section
200 Administrative areas	250 Standards for initial issue of entry permits
210 Interim-use permit, qualifications	260 Application for initial issue of entry permits
220 Terms and conditions of interim-use permits	270 Initial issuance of entry permits
230 Designation of distressed fisheries	
240 Determination of the maximum number of entry permits for initial issue	

**Sec. 16.43.200. Administrative areas.** (a) The commission shall establish administrative areas suitable for regulating and controlling

entry into the commercial fisheries. The commission shall make the administrative areas reasonably compatible with the geographic areas for which specific commercial fishing regulations are adopted by the Board of Fisheries.

(b) The commission may modify or change the boundaries of administrative areas when necessary and consistent with the purposes of this chapter. (§ 1 ch 79 SLA 1973; am § 30 ch 206 SLA 1975)

*Effect of amendment.* — The 1975 amendment substituted "Board of Fisheries" for "Board of Fish and Game" at the end of the second sentence of subsection (a).

**Sec. 16.43.210. Interim-use permit; qualifications.** (a) Pending the establishment of the maximum number of entry permits under § 240 of this chapter and the issuance of entry permits under § 270 of this chapter, the commission shall issue interim-use permits under regulations promulgated by the commission for each fishery, to all applicants who can establish their present ability to participate actively in the fishery for which they are making application, except as provided under (e) of this section.

(b) Before the issuance of the maximum number of entry permits for a given fishery, the commission may issue an interim-use permit to an applicant who may later become eligible for an entry permit under § 270 of this chapter.

(c) To the extent that the commissioner of fish and game authorizes it under AS 16.05.050(11), the commission may grant an interim-use permit to a person to engage in the commercial taking from a fishery on an experimental basis.

(d) The sustained yield management and economic health of the following fisheries is severely impaired as a result, among other factors, of too many units of gear participating in the commercial harvest:

- (1) Bristol Bay registration area — drift gillnet fishery;
- (2) Cook Inlet registration area — drift gillnet fishery;
- (3) Prince William Sound registration area — drift gillnet fishery.

(e) For a fishery specified under (d) of this section, an interim-use permit may be issued for 1974 only to an applicant who has harvested the fishery resource commercially while holding a gear license issued under AS 16.05.536 — 16.05.670, before January 1, 1973. (§ 1 ch 79 SLA 1973)

*Editor's note.* — Alaska Statutes 16.05.536 and 16.05.620, referred to in subsection (e), were repealed by § 12, ch. 71, SLA 1972, and § 2, ch. 159, SLA 1968, respectively. Alaska Statutes 16.05.540 — 16.05.650 and 16.05.670, referred to in subsection (e), were repealed by § 19, ch. 105, SLA 1977, effective January 1, 1978.

**Sec. 16.43.220. Terms and conditions of interim-use permits.** (a) The commission shall adopt regulations specifying the dates and places of application, the procedures to be followed in renewal of the

interim-use permit including the time, place of its renewal, and for any other purpose incident to the administration of interim-use permits for that fishery. An interim-use permit shall expire upon the final determination of the holder's eligibility for an entry permit.

(b) Repealed by § 9 ch 73 SLA 1977.

(c) The holder of an interim-use permit must have the permit in his possession at all times when engaged in the operation of the gear for which it was issued. (§ 1 ch 79 SLA 1973; am § 2 ch 126 SLA 1974; am § 9 ch 73 SLA 1977)

Effect of amendments. — The 1974 amendment, in subsection (b), deleted from the end of the first sentence provisions relating to causes of hardship and to the duration of a temporary transfer of an interim-use permit.

The 1977 amendment repealed subsection (b), which read "The commission shall adopt regulations for the temporary transfer of interim-use permits to alleviate hardship. Interim-use permits are otherwise nontransferable."

**Sec. 16.43.230. Designation of distressed fisheries.** Pending the determination of maximum numbers of entry permits under § 240 of this chapter and before the initial issue of entry permits under § 270 of this chapter, the commission shall designate as distressed fisheries those for which it estimates that the optimum number of entry permits will be less than the highest number of units of gear fished in that fishery during any one of the four years immediately preceding January 1, 1973. (§ 1 ch 79 SLA 1973)

**Sec. 16.43.240. Determination of the maximum number of entry permits for initial issue.** (a) Except as provided in § 270(a) of this chapter, the maximum number of entry permits for a distressed fishery designated under § 230 of this chapter shall be the highest number of units of gear fished in that fishery during any one of the four years immediately preceding January 1, 1973.

(b) When the commission finds that a fishery not designated as a distressed fishery under § 230 of this chapter has reached levels of participation which require the limitation of entry in order to achieve the purposes of this chapter, the commission shall establish the maximum number of entry permits for that fishery. (§ 1 ch 79 SLA 1973)

**Sec. 16.43.250. Standards for initial issue of entry permits.** (a) Following the establishment of the maximum number of units of gear for a particular fishery under § 240 of this chapter, the commission shall adopt regulations establishing qualifications for ranking applicants for entry permits according to the degree of hardship which they would suffer by exclusion from the fishery. The regulations shall define priority classifications of similarly situated applicants based upon a reasonable balance of the following hardship standards:

(1) degree of economic dependence upon the fishery, including but not limited to percentage of income derived from the fishery, reliance on

alternative occupations, availability of alternative occupations, investment in vessels and gear;

(2) extent of past participation in the fishery, including but not limited to the number of years participation in the fishery, and the consistency of participation during each year.

(b) The commission shall designate in the regulations those priority classifications of applicants who would suffer significant economic hardship by exclusion from the fishery.

(c) The commission shall designate in the regulations those priority classifications of applicants who would suffer only minor economic hardship by exclusion from the fishery. (§ 1 ch 79 SLA 1973)

**Determinative factor in allocation of initial permits.** — The legislative history rather clearly demonstrates that from the outset the framers of this legislation intended "hardship" to be the

determinative factor in the allocation of the initial free limited entry permits. *Isakson v. Rickey*, Sup. Ct. Op. No. 1267 (File No. 2550), 550 P.2d 359 (1976).

**Sec. 16.43.260. Application for initial issue of entry permits.** (a) The commission shall accept applications for entry permits only from applicants who have harvested fishery resources commercially while participating in the fishery as holders of gear licenses issued under AS 16.05.536 — 16.05.670 before the qualification date established in (d) or (e) of this section.

(b) The commission shall establish the opening and closing dates, places and form of application for entry permits for each fishery. The commission may require the submission of specific verified evidence establishing the applicant's qualifications under the regulations adopted under § 250 of this chapter.

(c) When an applicant is unable to establish his qualifications for an entry permit by submitting the specific verified evidence required in the application by the commission, he may request and obtain an administrative adjudication of his application according to the procedures established in § 110(b) of this chapter. At the hearing he may present alternative evidence of his qualifications for an entry permit.

(d) Except as provided in (e) of this section, an applicant shall be assigned to a priority classification based solely upon his qualifications as of January 1, 1973.

(e) When the commission establishes the maximum number of entry permits for a particular fishery under § 240 of this chapter after January 1, 1975, an applicant shall be assigned to a priority classification based solely upon his qualifications as of January 1 of the year during which the commission establishes the maximum number of entry permits for the fishery for which application is made. (§ 1 ch 79 SLA 1973; am § 3 ch 126 SLA 1974)

**Editor's note.** — Alaska Statutes were repealed by § 12, ch. 7 SLA 1972, 16.05.536 and 16.05.620, referred to above, and § 2, ch. 169, SLA 1968, respectively.

Alaska Statutes 16.05.540 through 16.05.650 and 16.05.670, referred to above, were repealed by § 19, ch. 105, SLA 1977, effective January 1, 1978.

**Effect of amendment.** — The 1974 amendment substituted "the qualification date established in (d) or (e) of this section" for "January 1, 1973" at the end of subsection (a).

**Subsection (a) is unconstitutional.** — Subsection (a), which limits applications for entry permits to persons holding gear licenses prior to January 1, 1973, violates the equal protection rights, guaranteed by the state and federal constitutions, of commercial fishermen who obtained gear licenses after January 1, 1973. *Isakson v. Rickey*, Sup. Ct. Op. No. 1267 (File No. 2550), 550 P.2d 359 (1976).

Holding a gear license before January 1, 1973, does not bear a fair and substantial relation to the purpose of the legislation, which is the segregation of hardship and nonhardship cases. *Isakson v. Rickey*, Sup. Ct. Op. No. 1267 (File No. 2550), 550 P.2d 359 (1976).

Because persons are automatically excluded from the class eligible to apply for permits, in spite of active participation and economic dependence upon the fishery, the January 1, 1973 classification is under-inclusive with respect to persons allowed to apply for permits. Because persons who have long since retired and have no economic dependence upon the

fishery as of the cutoff date are allowed to apply for entry permits, the classification is overbroad with respect to those allowed to apply. *Isakson v. Rickey*, Sup. Ct. Op. No. 1267 (File No. 2550), 550 P.2d 359 (1976).

**Purpose of provision in subsection (a) limiting applications.** — In essence, the purpose of the provision in subsection (a) limiting applications for entry permits to those holding gear licenses prior to January 1, 1973, was to segregate hardship and nonhardship cases at the application phase of the permit issuance process. *Isakson v. Rickey*, Sup. Ct. Op. No. 1267 (File No. 2550), 550 P.2d 359 (1976).

Subsection (a) was not intended to modify the allocation policy of the legislation, but rather was adopted to further that policy by simplifying the ranking process. *Isakson v. Rickey*, Sup. Ct. Op. No. 1267 (File No. 2550), 550 P.2d 359 (1976).

When the act is viewed as a whole, it becomes apparent that the contested provision in subsection (a) was inserted because it was assumed that those persons who obtained gear licenses after January 1, 1973, would be unable to demonstrate the requisite hardship for an entry permit. Hence, for the sake of administrative convenience, it was decided that they need not even submit applications to the commission. *Isakson v. Rickey*, Sup. Ct. Op. No. 1267 (File No. 2550), 550 P.2d 359 (1976).

**Sec. 16.43.270. Initial issuance of entry permits.** (a) The commission shall issue entry permits, for each fishery, first to all qualified applicants in the priority classifications designated under § 250(b) of this chapter and then to qualified applicants in order of descending priority classification, until the number of entry permits issued equals the maximum number of entry permits established under §§ 230 — 240 of this chapter for each fishery, except that no person within a priority classification specified under § 250(b) of this chapter may be denied an entry permit.

(b) If, within the lowest priority classification of qualified applicants to which some entry permits may be issued, there are more applicants than there are entry permits to be issued, then the allocation of entry permits within that priority classification shall be by lottery.

(c) If, at the time entry permits are issued, some applicants are still appealing the findings of an administrative adjudication under § 260 of this chapter, a sufficient number of permits shall be reserved out of the permits to be issued to protect the rights of those applicants, assuming all the appeals will be resolved in favor of the applicants. In the event that all appeals are not resolved in favor of the applicants, the remaining

entry permits shall be allocated to the next most qualified applicants as provided in (a) and (b) of this section. (§ 1 ch 79 SLA 1973)

**Article 5. Reduction to Optimum Number of Entry Permits.**

<p><b>Section</b>                  290. Optimum number of entry permits                  300. Revisions of optimum number of entry permits                  310. Establishment of buy-back funds</p>	<p><b>Section</b>                  320. Administration of the buy-back program                  330. Issuance of new entry permits</p>
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**Sec. 16.43.290. Optimum number of entry permits.** Following the issuance of entry permits under § 270 of this chapter, the commission shall establish the optimum number of entry permits for each fishery based upon a reasonable balance of the following general standards:

(1) the number of entry permits sufficient to maintain an economically healthy fishery that will result in a reasonable average rate of economic return to the fishermen participating in that fishery, considering time fished and necessary investments in vessels and gear;

(2) the number of entry permits necessary to harvest the allowable commercial take of the fishery resource during all years in an orderly, efficient manner, and consistent with sound fishery management techniques;

(3) the number of entry permits sufficient to avoid serious economic hardship to those currently engaged in the fishery, considering other economic opportunities reasonably available to them. (§ 1 ch 79 SLA 1973)

**Sec. 16.43.300. Revisions of optimum number of entry permits.** (a) The commission may increase or decrease the optimum number of entry permits for a fishery when one or more of the following conditions makes a change desirable considering the purposes of this chapter:

(1) an established long-term change in the biological condition of the fishery has occurred which substantially alters the optimum number of entry permits permissible applying the standards set out in § 290 of this chapter;

(2) an established long-term change in market conditions has occurred, directly affecting the fishery, which substantially alters the optimum number of entry permits permissible under the standards set out in § 290 of this chapter.

(b) If the commission decreases the optimum number of entry permits for a fishery, the number of entry permits may be reduced only under the voluntary buy-back provisions set out in §§ 310 — 320 of this chapter. (§ 1 ch 79 SLA 1973)

**Sec. 16.43.310. Establishment of buy-back funds.** (a) When the optimum number of entry permits is less than the number of entry

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permits outstanding in a fishery, the commission shall establish and administer a buy-back fund for that fishery for the purpose of reducing the number of entry permits to the optimum number within no more than 10 years, at a rate to be established by the commission.

(b) For each buy-back fund, the commission shall adopt regulations establishing annual assessments on holders of entry permits of not more than seven per cent of the gross value of the total annual catch attributable to a holder's entry permit, except that the holder of a permit who has made no commercial landings in a given year will be assessed the average assessed all other holders of the same type of permit in that year. Assessments will be paid into the specific buy-back fund for which they are collected.

(c) Assessments need not equal annual buy-back fund expenditures within a particular fishery but shall be continued until the buy-back fund for that fishery has been reimbursed. (§ 1 ch 79 SLA 1973)

**Sec. 16.43.320. Administration of the buy-back program.** (a) The commission shall adopt regulations providing for the purchase of entry permits, vessels, and gear at fair market value with money accumulated in the buy-back fund for each fishery. The buy-back program for a fishery shall terminate when the number of entry permits is reduced to the optimum and the buy-back fund has been reimbursed.

(b) When entry permits subject to the restrictions in § 250(c) of this chapter and the vessels and gear related to those permits are offered for sale to the commission, the commission shall purchase the permits and related vessels and gear at fair market value, if sufficient funds are available in the appropriate buy-back fund. (§ 1 ch 79 SLA 1973)

**Sec. 16.43.330. Issuance of new entry permits.** (a) When the number of outstanding entry permits for a fishery is less than the optimum number established under § 290 of this chapter, the commission shall issue new entry permits to applicants who are presently able to engage actively in the fishery until the optimum number is reached.

(b) The commission shall determine equitable methods of issuance, as appropriate, under (a) of this section that assure the receipt of fair market value for the permits issued. (§ 1 ch 79 SLA 1973)

**Article 6. General Provisions.**

Section	Section
350 Applications of regulations of Board of Fisheries	370 Recommendations to the legislature
360 Penalties	40 Definitions

**Sec. 16.43.350. Applications of regulations of Board of Fisheries.** Nothing in this chapter limits the powers of the Board of Fisheries, including the power to determine legal types of gear and the power to establish size limitations or other uniform restrictions applying to a

certain type of gear. Holders of interim-use permits or entry permits issued under this chapter are subject to all regulations adopted by the Board of Fisheries. (§ 1 ch 79 SLA 1973; am § 31 ch 206 SLA 1975)

**Effect of amendment.** — The 1975 Fisheries" for "Board of Fish and Game" amendment substituted "Board of in the first and second sentences.

**Sec. 16.43.360. Penalties.** (a) A person who violates a provision of this chapter or a regulation promulgated under this chapter, upon conviction, is guilty of a misdemeanor and is punishable by a fine of not more than \$5,000 for a first conviction; a fine of not more than \$10,000 for a second conviction; and, for a third conviction, a fine of not more than \$10,000 as well as forfeiture of all interim-use permits and entry permits held by him and permanent loss of eligibility for interim-use permits or for entry permits.

(b) A person who makes a false statement of a material fact in the application for an interim-use permit or an entry permit or in the application for a transfer under §§ 170 — 180 of this chapter, or a person who assists another by making a false statement of a material fact in support of the other person's application for issuance of an interim-use permit or an entry permit or transfer of an entry permit, upon conviction, is guilty of a misdemeanor and shall forfeit all interim-use permits and entry permits held by him and shall lose eligibility for interim-use permits and for entry permits for a period of five years.

(c) If a permit holder is convicted of a violation of AS 43.20.335 and the violation relates to income derived from commercial fishing under this title, he shall forfeit all interim-use permits and entry permits held by him and shall lose eligibility for interim-use permits and for entry permits for a period of five years.

(d) If a permit holder is charged by the state with violating a provision of this chapter or a regulation adopted under this chapter, he may not transfer, under § 170 of this chapter, any interim-use or entry permit he may hold, until after the final adjudication or dismissal of the charges. (§ 1 ch 79 SLA 1973; am § 7 ch 73 SLA 1977)

**Effect of amendment.** — The 1977 amendment added subsection (d).

**Sec. 16.43.370. Recommendations to the legislature.** (a) The commission shall submit an annual report to the legislature. The report shall include but not be limited to the following:

(1) a progress report on the reduction of entry permits to optimum levels;

(2) recommendations for additional legislation relating to the regulation of entry into Alaska commercial fisheries.

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(b) The commission shall study alternative methods of permit transferability and report its findings and recommendations to the legislature before January 15, 1975. (§ 1 ch 79 SLA 1973)

**Sec. 16.43.380. Definitions.** In this chapter

(1) "commission" means the Alaska Commercial Fisheries Entry Commission;

(2) "economically healthy fishery" means a fishery that yields a sufficient rate of economic return to the fishermen participating in it to provide for, among other things, the following:

(A) maintenance of vessels and gear in satisfactory and safe operating condition; and

(B) ability and opportunity to improve vessels, gear and fishing techniques, including, when permissible, experimentation with new vessels, new gear, and new techniques;

(3) "fishery" means the commercial taking of a specific fishery resource in a specific administrative area with a specific type of gear;

(4) "gear" means the specific apparatus used in the commercial harvest of a species, including but not limited to purse seines, drift gill nets, set gill nets, and troll gear;

(5) "person" means a natural person and does not include a corporation, company, partnership, firm, association, organization, business trust, or society;

(6) "present ability to actively participate" means the person applying for a permit is physically able to harvest fish in the fishery and has reasonable access to commercial fishing gear of the type utilized in that fishery;

(7) "priority classification" means the allocation of potential permit applicants into reasonable groupings of similarly situated applicants and the priority ranking of those groupings according to the extent to which they satisfy the standards of preference;

(8) "type of gear" means a customary and identifiable classification of gear and shall include:

(A) those classifications for which separate regulations are adopted by the Board of Fisheries and for which separate gear licenses are required by AS 16.05.550 — 16.05.630; and

(B) distinct subclassifications of gear such as "power" troll gear and "hand" troll gear;

(9) "unit of gear" means the maximum amount of a specific type of gear which can be fished under a single gear license subject to regulations established by the Board of Fisheries defining the legal requirements for that type of gear. (§ 1 ch 79 SLA 1973; am §§ 32, 33 ch 206 SLA 1975)

**Effect of amendment.** — The 1975 amendment substituted "Board of Fisheries" for "Board of Fish and Game" in paragraphs (B)(A) and (9).

**Editor's note.** — Alaska Statutes 16.05.550 — 16.05.630, referred to in paragraph (B)(A), were repealed by § 19, ch. 105, SLA 1977, effective January 1,

THE FOLLOWING PAGES WERE TREATED AS  
A UNIT IN THE ORIGINAL FILE.

CODE OF BY-LAWS

OF

ALASKA COMMERCIAL FISHING AND AGRICULTURE BANK

ARTICLE I

Offices and Registered Agent

Section 1. Business Offices. The principal business office of the Alaska Commercial Fishing and Agriculture Bank (hereinafter referred to as the "Cooperative") shall be at the Alaska Department of Commerce & Economic Development, 9th Floor, New State Office Building, 333 Willoughby Avenue, Juneau, Alaska or at such other location in the State of Alaska as the Board of Directors may designate by resolution. The Cooperative may have such other business offices, either within or without the State of Alaska, as the Board of Directors may designate or as the business of the Cooperative may require from time to time.

Section 2. Registered Office And Agent. The registered office of the Cooperative required by the Alaska Cooperative Corporation Act (the "Act") to be maintained in the State of Alaska may be, but need not be, identical with the principal business office. The address of the registered office and the designation of the Cooperative's registered agent may be changed from time to time by the Board of Directors by resolution and upon filing a notice of such change with the Department of Commerce and Economic Development as required by law.

ARTICLE II

Members and Shareholders

Section 1. Annual Meeting. The annual meeting of the members shall be held on the second Tuesday after the first Monday in the month of November in each year, beginning with the year 1979, at the hour of 10:00 o'clock A.M., for the purpose of electing directors and for the transaction of such other business as may come before the meeting. If the day fixed for the annual meeting shall be a legal holiday in the State of Alaska, such meeting shall be held on the next succeeding business day. If the election of directors shall not be held on the day designated herein or any annual meeting of the members, or at any adjournment thereof, the Board of Directors shall cause the election to be held at a special meeting of the members as soon thereafter as it conveniently may be held.

Section 2. Special Meetings. Special meetings of the members, for any stated purpose or purposes, unless otherwise prescribed by statute, may be called by the President or by the Board of Directors, and shall be called by the Secretary upon the filing of a petition by not less than 10 percent (10%) of the members of the Cooperative entitled to vote at the meeting, which petition shall state the business to be brought before the meeting.

Section 3. Place of Meeting. The Board of Directors may designate any place, either within or without the State of Alaska, as the place of meeting for any annual meeting or for any special meeting called by the Board of Directors. A waiver of notice signed by all members entitled to vote at a meeting may designate any place, either within or without the State of Alaska, as the place for the holding of such meeting. If no designation is made, or if a special meeting be otherwise called, the place of meeting shall be the principal business office of the Cooperative in the State of Alaska.

Section 4. Notice of Meetings To Members. Written notice stating the place, day and hour of the meeting, and in case of a special meeting, the purpose or purposes for which the meeting is called, shall, unless otherwise prescribed by statute, be delivered not less than seven, nor more than thirty days before the date of the meeting, either personally or by mail, by or at the direction of the President, or the Secretary, or the persons calling the meeting, to each member or to each shareholder entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, addressed to the member or shareholder at his address as it appears on the records of the Cooperative, with postage thereon prepaid.

Section 5. Public Notice of Meetings. Not more than two weeks and not less than five days before each meeting, the Cooperative will give public notice of the time, place, and subject of the meeting. Notice will be given by advertisement in a newspaper of general circulation.

Section 6. Closing of Transfer Books or Fixing of Record Date. For the purpose of determining members or shareholders entitled to notice of or to vote at any meeting or any adjournment thereof, or shareholders entitled to receive payment of any dividend, or in order to make a determination of members or shareholders for any other proper purpose, the record date for any such determination of members or stockholders shall be thirty (30) days prior to the date on which the particular action requiring such determination

of members or shareholders is to be taken. When a determination of members or shareholders entitled to vote at any meeting has been made as provided in this section, such determination shall apply to any adjournment thereof.

Section 7. Voting Lists. The officer or agent having charge of the stock transfer books for shares of the Cooperative shall make a complete list of the members or shareholders entitled to vote at each meeting or any adjournment thereof, arranged in alphabetical order, with the address of and the number of shares of each class held by each. Such list shall be produced and kept open at the time and place of the meeting and shall be subject to the inspection of any member or shareholder during the whole time of the meeting for the purposes thereof.

Section 8. Quorum. Ten (10) percent of the members of the Cooperative entitled to vote, represented in person, shall constitute a quorum at an annual or special meeting. If less than a quorum is present at a meeting, a majority of the members present may adjourn the meeting from time to time without further notice. At such adjourned meeting at which a quorum shall be present, any business may be transacted which might have been transacted at the meeting as originally noticed. The members present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough members to leave less than a quorum.

Section 9. Proxies. Members may not vote by proxy. However, a member that is a corporation, partnership or joint venture may designate a representative to cast its vote. In the absence of written notice that a person has been designated to represent a member which is other than a natural person, the member may be represented by any of its principal officers.

Section 10. Voting Restrictions. No member shall be entitled to more than one vote upon each matter submitted to a vote at an annual or special meeting, regardless of the number of shares of stock in this Cooperative which such member may own, except as specifically provided in the Act and the Cooperative's Articles of Incorporation. At each election for directors, every member entitled to vote at such election shall have the right to one vote for each director position then being voted upon, but he shall not be entitled to cumulate his votes.

Section 11. Voter Qualifications. In order to vote, a member must at the time of such vote be engaged in

the commercial fishing or farming industry and be a current bonafide producer, harvester, processor, or marketer of agricultural or aquatic products within the State of Alaska, and in addition thereto, must be a current patron of this Cooperative and a borrower from the Cooperative during the calendar year. In the event that a member shall fail to qualify as a current producer, harvester, processor, or marketer and patron as herein required, such member shall, during such non-qualifying period, have no rights in the management of affairs of the Cooperative other than the right to participate, in accordance with the law, in case of an amendment of the Articles of Incorporation affecting Preferred Shareholders (Class B), or dissolution, or sale or other disposition of entire assets and to receive the par value of his stock in the event of a sale or transfer of such stock as provided in the Articles of Incorporation.

Section 12. Shareholder Warranty. By subscribing or applying for, or becoming a holder and owner of record of Membership Stock (Class A) of this Cooperative, each subscriber, applicant or owner or holder of record or acceptor expressly warrants that he is, or will at once become and continue to be eligible to be a member of this Cooperative, and expressly agrees that if and when the Board of Directors finds him to be ineligible as a member, that during the period of such ineligibility he shall have no voice or right in the management of the affairs of this Cooperative and all such management shall be determined and conducted as though such subscription or application for, or issuance of, such stock has never been made.

Section 13. Voting By Mail. The Board of Directors may submit by mail ballot any question to be voted on at a member meeting, including the election of directors. In this event the Secretary shall mail to each member, along with the notice of the meeting, the ballot on each question and a voting envelope. The ballot shall be cast in a sealed envelope authenticated by the member's signature. A vote cast by mail shall be counted as if the member were present and voting in person.

Section 14. Copies of Articles and By-Laws. Every member shall be provided a copy of the Cooperative's Articles and By-Laws upon first becoming a member. Copies of all amendments to the Articles of Incorporation and By-Laws shall be distributed to all members upon the adoption of such amendments.

## ARTICLE III

### Board of Directors

Section 1. General Powers. The assets, including the business and affairs of the Cooperative shall be managed by its Board of Directors.

Section 2. Number and Tenure. The management of this Cooperative shall be vested in a board of five (5) directors, who shall initially be appointed by the Governor of Alaska pursuant to AS 44.55.010 and AS 44.55.090.

Initial terms shall be two members serving for one (1) year, two members serving for two (2) years, and one member serving for three (3) years. Thereafter directors shall be elected by the members at the annual meeting and shall hold office for three (3) years and until a successor shall have been elected and qualified.

Section 3. Director Qualifications. Each director, except those directors initially appointed pursuant to AS 44.55.010, shall be a member of this Cooperative or the authorized representative of a corporation, partnership or joint venture which is a member of this Cooperative. All directors at the time of their election and at all times during the term of their office shall, either individually or through the entity which they represent, meet the voting restrictions and voting qualifications and stock ownership requirements imposed upon the members of this Cooperative pursuant to its Articles of Incorporation and By-Laws.

Section 4. Regular Meetings. A regular meeting of the Board of Directors shall be held without other notice than this By-Law immediately after, and at the same place as, the annual meeting of members. The Board of Directors may provide, by resolution, the time and place, either within or without the State of Alaska, for the holding of additional regular meetings without other notice than such resolution.

Section 5. Special Meetings. Special meetings of the Board of Directors may be called by or at the request of the President or any two directors. The person or persons authorized to call special meetings of the Board of Directors may fix any place, either within or without the State of Alaska, as the place for holding any special meeting of the Board of Directors called by them.

Section 6. Notice To Directors. Notice of any special meeting or of any regular meeting except as provided in Article III, Section 4, of these By-Laws shall be given at least five days previously thereto by written notice delivered personally or mailed to each Director at his business address, or by telegram. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, so addressed, with postage thereon prepaid. If notice be given by telegram, such notice shall be deemed to be delivered when the telegram is delivered to the telegraph company. Any director may waive notice of any meeting. The attendance of a director shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board of Directors need be specified in the notice or waiver of notice of such meeting.

Section 7. Public Notice of Meetings. Notwithstanding any other provisions of these By-Laws, not more than two weeks and not less than five days before each meeting, the Cooperative will give public notice of the time, place, and subject of the meeting. Notice will be given by advertisement in a newspaper of general circulation.

Section 8. Quorum. A majority of the number of Directors fixed by Section 2, of this Article III, shall constitute a quorum for the transaction of business at any meeting of the Board of Directors, but if less than such majority is present at a meeting, a majority of the directors present may adjourn the meeting from time to time without further notice.

Section 9. Manner of Acting. The act of the majority of the Directors present at a meeting at which a quorum is present shall be the act of the Board of Directors.

Section 10. Vacancies. Any vacancy occurring in the Board of Directors may be filled by the affirmative vote of a majority of the remaining directors, except that in the case of directors appointed by the Governor of Alaska pursuant to AS 44.55.010 and AS 44.55.090, any unexpired term shall be filled by a new director appointed by the Governor.

Section 11. Executive Director And Employees. The Board of Directors shall have the power to hire and determine the salary of an Executive Director. The Executive Director

shall be responsible for the ordinary business of the Cooperative. The Executive Director, with the approval of the Board of Directors, may hire and determine the salary of employees reasonably necessary for the efficient performance of the duties of the Cooperative.

Section 12. Compensation of Board Members. Members of the Board of Directors shall receive compensation at a rate determined by the Board for each day the Board meets if they attend the meeting. Directors are also entitled to per diem and travel allowances as provided by law for members of State of Alaska boards and commissions.

Section 13. Indemnification. The Cooperative shall indemnify each director, officer and employee (and his heirs, executors and administrator) against all liabilities and related expenses incurred by him in connection with or arising out of any action, suit, or proceeding brought against him by reason of any act or omission in the performance of his official duties as such director, officer or employee of the Cooperative (whether or not he continues to be a director, officer or employee at the time of incurring such expenses or liabilities). Such expenses and liabilities shall include, but not be limited to, court costs and attorney's fees, judgments and the cost of reasonable settlements. The Cooperative shall not, however, indemnify such director, officer or employee against either expenses or liabilities with respect to matters as to which he shall be determined by the Board of Directors or at final adjudication to be liable for negligence or misconduct in the performance of his official duties. Indemnification in the event of a settlement or compromise shall, as to directors, be subject to the prior approval of the members at a duly called annual or special meeting and, as to officers and employees, be subject to prior approval by the Board of Directors. The foregoing right of indemnification shall not be exclusive of other rights to which any director, officer or employee may be entitled as a matter of law.

## ARTICLE V

### Officers

Section 1. Number. The officers of the Cooperative shall be a President (who is also the Chairman of the Board of Directors), a Vice-President, a Secretary, and a Treasurer, each of whom shall be elected by the Board of Directors. Such other officers and assistant officers as may be deemed necessary may be elected or appointed by the Board of Directors. The Secretary

and the Treasurer need not be directors of the Cooperative and the offices may be combined in one person.

Section 2. Election and Term of Office. The officers of the Cooperative to be elected by the Board of Directors shall be elected annually by the Board of Directors at the first meeting of the Board of Directors held after each annual meeting of the members. If the election of officers shall not be held at such meeting, such election shall be held as soon thereafter as it conveniently may be held. Each officer shall hold office until his successor shall have been duly elected and shall have qualified or until his death or until he shall resign or shall have been removed in the manner hereinafter provided.

Section 3. Removal. Any officer, employee or agent may be removed by the Board of Directors whenever in its judgment, the best interests of the Cooperative will be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. Election or appointment of an officer, employee or agent shall not of itself create contract rights.

Section 4. Vacancies. A vacancy in any office because of death, resignation, removal, disqualification or otherwise, may be filled by the Board of Directors for a term of office continuing only until the next election of directors by members.

Section 5. Bond. The directors may, at their discretion, require any or all officers and employees of the Cooperative to furnish such fidelity bond or bonds as the directors may determine; the Cooperative to pay all premium charges on such bonds furnished.

Section 6. The President. The President shall be the principal executive officer of the Cooperative. He shall, when present, preside at all meetings of the members and of the Board of Directors. He may sign, with the Secretary or any other proper officer of the Cooperative thereunto authorized by the Board of Directors, certificates for shares of the Cooperative, any deeds, mortgages, bonds, contracts, or other instruments which the Board of Directors has authorized to be executed, except in cases where the signing and execution thereof shall be expressly delegated by the Board of Directors or by these By-Laws to some other officer or agent of the Cooperative, or shall be required by law to be otherwise signed or executed; and in general shall perform all duties incident to the office of President and such other duties as may be prescribed by the Board of Directors from time to time.

Section 7. The Vice President. In the absence of the President or in the event of his death, inability or refusal to act, the Vice President shall perform the duties of the President and when so acting, shall have all the powers of and be subject to all the restrictions upon the President. The Vice President may sign, with the Secretary or an Assistant Secretary, certificates for shares of the Cooperative; and shall perform such other duties as from time to time may be assigned to him by the President or by the Board of Directors.

Section 8. The Secretary. The Secretary shall: (a) keep the minutes of the proceedings of the members and of the Board of Directors in one or more books provided for that purpose; (b) see that all notices are duly given in accordance with the provisions of these By-Laws or as required by law; (c) be custodian of the Cooperative records and of the seal of the Cooperative and see that the seal of the Cooperative is affixed to all documents the execution of which on behalf of the Cooperative under its seal is duly authorized; (d) keep a register of the post office address of each member and shareholder; (e) sign with the President or Vice President certificates for shares of the Cooperative, the issuance of which shall have been authorized by resolution of the Board of Directors; (f) have general charge of the stock transfer books of the Cooperative; and (g) in general perform all duties incident to the office of Secretary and such other duties as from time to time may be assigned to him by the President or by the Board of Directors.

Section 9. The Treasurer. The Treasurer shall: (a) have charge of and be responsible for all funds and securities of the Cooperative; (b) receive and give receipts for monies due and payable to the Cooperative from any source whatsoever, and deposit all such monies in the name of the Cooperative in such banks, trust companies or other depositories as shall be selected in accordance with the provisions of Article X of these By-Laws; and (c) in general perform all of the duties incident to the office of Treasurer and such other duties as from time to time may be assigned to him by the President or by the Board of Directors.

Section 10. Assistant Secretaries and Assistant Treasurers. The Assistant Secretaries, when authorized by the Board of Directors, may sign with the President or Vice President certificates for shares of the Cooperative the issuance of which shall have been authorized by a resolution of the Board of Directors. The Assistant Treasurers

shall, if required by the Board of Directors, give bonds for the faithful discharge of their duties in such sums and with such sureties as the Board of Directors shall determine. The Assistant Secretaries and Assistant Treasurers, in general, shall perform such duties as shall be assigned to them by the Secretary or the Treasurer, respectively, or by the President or the Board of Directors.

Section 11. The Executive Director. The Executive Director shall be the chief administrative officer of the Cooperative in control of all administrative functions and in general charge of all of the ordinary business of the Cooperative. His powers shall include the right and authority to make and deliver receipts for the payment of any indebtedness owing and paid to the Cooperative and to execute valid releases of any and all security instruments or mortgage liens given to the Cooperative as security for such indebtedness.

## ARTICLE VI

### Loans To Members

Each borrower at the time a loan is advanced shall own one share of Membership Stock (Class A) and shall be required to invest in Preferred Stock (Class B) at the time the loan is closed or from time to time, but the amount of Class B Stock required to be purchased when the loan is closed shall not exceed 10 percent of the face amount of the loan. The additional stock requirements may be based on the face amount of the loan, the outstanding loan balance, or on a percentage of interest payable by the borrower during any year or any quarter thereof, not in excess of 25 percent of such interest, or on such other basis as may be determined by the Board of Directors but shall, in any event, be in accordance with the schedule of maximum amounts adopted by the Board of Directors based upon proportional ownership of shares. Stock requirements shall provide adequate capital for the operation of the Cooperative and equitable ownership among borrowers. All stock purchased under this paragraph, whatever formula is employed to determine the required amount, is conclusively presumed for the purposes of the Cooperative to be an investment in the capital of the Cooperative and not earnings. Each borrower may also be required from time to time by the Board of Directors to make payments into the Reserve Fund established by Article VIII of these By-Laws.

## ARTICLE VII

### Savings

Section 1. Allocation of Savings. The Cooperative is hereby obligated to allocate to the members who patronize

it the net patronage savings as defined in Section 4 of this Article for each fiscal year on a patronage basis, which allocation shall be paid in whole or in part in cash, or in whole or in part in credits, as hereinafter stated. The amount allocated to each patron member of the Cooperative and not paid in cash shall be credited to Retained Patronage Earnings in the name of such patron member on the books of the Cooperative. All amounts so credited to any patron member of the Cooperative shall have the same status as though the amount so credited had been paid in cash to the patron member and the patron member had then furnished a corresponding amount of capital to the Cooperative. As soon as practicable after the close of each fiscal year, a statement shall be issued to each patron member showing the amount of Retained Patronage Earnings that said patron member has been credited with by the Cooperative in that fiscal year.

Section 2. Refunding of Excess Retained Patronage Earnings. In order to further the cooperative character of this corporation, it shall refund its Retained Patronage Earnings at such time as the Board of Directors finds that the financial condition of the Cooperative will so permit. The Board of Directors of the Cooperative shall annually determine the capital requirements of the Cooperative and after so doing shall review the capital made available by each patron to the Cooperative. If the Board of Directors determines that a patron has contributed capital in excess of his proportionate share of the total capital requirement of the Cooperative, said excess may be refunded to the patron as funds are available. In so doing, the Board of Directors may establish priorities, based upon the percentage of excess capital, for payments to patrons who the Board determine have contributed capital in excess of their proportionate share.

Section 3. Allocation Of Losses. Whenever a net patronage loss occurs, said loss shall be borne, insofar as possible, by patrons in the year of said loss in accordance with their respective patronage with the Cooperative during the year of said loss and shall be charged to said patron member's capital accounts in the following manner and order:

- (1) Against the Retained Patronage Earnings standing to the credit of said patron member or to which he may be entitled, until such loss is satisfied in full or the Retained Patronage Earnings or other amounts to which he may be entitled, have been fully depleted.

- (2) After fully depleting the Retained Patronage Earnings, the balance of the loss shall next be applied against the Reserve Fund standing to the credit of said patron member or to which he may be entitled, as provided in Article VIII, Section 1 of these By-Laws.
- (3) If the applications set out in subsections (1) and (2) above are not sufficient to fully satisfy the loss so allocated to any patron member, the balance of the loss remaining shall be borne by the patron member to whom said loss has been allocated and/or all patron members of the Cooperative on as equitable a basis as the Board of Directors in its sole discretion finds practicable.

The principle on which this section is based is that the Cooperative is operating at cost and that any charge made against the Retained Patronage Earnings or any other capital funds constitutes an additional assessment to the patron members to cover said deficiencies. Whenever a net non-patronage loss occurs, the Cooperative shall first apply said loss, to the extent allowable, in accordance with the carry back and carry forward provisions of the applicable income tax codes and regulations. Any balance remaining may be charged to the members Retained Patronage Earnings or Reserve Fund as determined by the Board of Directors.

Section 4. Definitions. As used in these By-Laws the term:

- (a) "Net Patronage Savings" means the excess of income directly related to loans made to borrowers, less applicable expenses as provided by the income tax codes and regulations, less any amount which the Board of Directors, in its sole discretion, may determine should be applied to the repurchase of Class C stock from the State of Alaska pursuant to AS 44.55.010, less any dividends paid upon Class B stock.
- (b) "Net Patronage Losses" means the excess of expenses over income directly related to loans made to borrowers as provided by the income tax codes and regulations.
- (c) "Net Non-Patronage Income" means the excess of income from sources not related to loans made to borrowers less applicable expenses as provided by the income tax codes and regulations.

- (d) "Net Non-Patronage Losses" means the excess of expenses over income not related to loans made to borrowers as provided by the income tax codes and regulations.

Section 5. Tax Reporting. Each person, corporation, partnership or joint venture who becomes a member in this Cooperative, shall by such act alone, consent that the amount of any distributions with respect to any patronage which are made in written notices of allocation with respect to such distributions (as defined in 26 U.S.C. 1388) and which are received by said member from the Cooperative, will be taken into account by said member at their stated dollar amounts in the manner provided in 26 U.S.C. 1385 (a) in the taxable year in which such written notices of allocation with respect to such distributions is received by said member.

Section 6. Lien. The Retained Patronage Earnings standing to the credit of the borrower are the property of the borrower, subject to a first lien to this Cooperative for any indebtedness owed by the holder thereof to the Cooperative and to the dissolution provisions all as provided herein.

Section 7. Consent And Authorization. By becoming a member of the Cooperative a member agrees to be bound by the Savings provisions set forth in this article.

## ARTICLE VIII

### Reserve Fund

Section 1. Reserve Fund. The Board of Directors may establish and maintain a "Reserve Fund" to be used for bad debts and for losses as set forth herein in Article VII, Section 3. The funds collected may be used as collateral for borrowing or may be loaned by the Cooperative to its members, all at the discretion of the Board of Directors. Each patron member may be required to pay into said fund an amount equal to a percentage, as established from time to time by the Board of Directors, of interest charges on loans made to him by the Cooperative. The funds collected shall be credited in full to a separate capital account known as the Reserve Fund maintained in the name of each patron.

Section 2. Revolving Of Reserve Fund. The Reserve Funds remaining after reduction for losses as provided in Article VII, Section 3 hereof, may be revolved to patron members at the discretion of the Board of Directors. Upon

revolving said fund, the oldest outstanding Reserve Funds by years shall be revolved first.

Section 3. Lien On Reserve Fund. The Reserve Fund standing to the credit of the borrower is the property of said borrower, subject to a first lien to this Cooperative for any indebtedness owed by the holder thereof to the Cooperative, dissolution provisions, bad debts and net patronage losses, all as provided herein.

Section 4. Accounting. The Cooperative shall account to its patrons for the funds collected for the Reserve Fund during the Cooperative's fiscal year. Such accounting shall be made within six months from the close of the fiscal year.

Section 5. Consent And Authorization. By becoming a member of the Cooperative a member agrees to be bound by the Reserve Fund provisions set forth herein.

## ARTICLE IX

### Dissolution

Section 1. Upon dissolution the assets of this Cooperative shall be distributed as follows:

- (1) To pay the cost of dissolution.
- (2) To pay any liabilities.
- (3) To pay the par value of the outstanding Special Preferred Stock (Class C).
- (4) To pay the par value of Preferred Stock (Class B) and any other form of equity certificate outstanding.
- (5) To pay the par value of the outstanding Membership Stock (Class A).
- (6) To pay the Reserve Fund book entry holders, if and to the extent a Reserve Fund is established pursuant to the By-Laws, in full or pro-rata without priority the face amount of their book entry as shown on the books of the Cooperative.
- (7) The balance of all Cooperative assets shall then be distributed, without priority, to the holders of Retained Patronage Earnings, as this term may be defined in the By-Laws, in proportion to their respective credits thereof as shown on the books of the Cooperative.

Section 2. In the case of a vote on a resolution which would dissolve the Cooperative, the holder of Class B

Stock may cast one vote, in addition to any vote to which he may be entitled as a member, regardless of the dollar amount of Class B Stock held by him. Passage of such a resolution for dissolution requires a majority of the authorized Class B shareholder votes cast, as well as the affirmative vote of two-thirds of the member votes cast. Dissolution may also occur in any event pursuant to the provisions of AS 44.55.010.

## ARTICLE X

### Contracts, Loans, Checks And Deposits

Section 1. Contracts. The Board of Directors may authorize any officer or officers, agent or agents, employee or employees, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Cooperative, and such authority may be general or confined to specific instances.

Section 2. Loans. No loans shall be contracted on behalf of the Cooperative and no evidences of indebtedness shall be issued in its name unless authorized by a resolution of the Board of Directors. Such authority may be general or confined to specific instances.

Section 3. Checks, Drafts, Etc. All checks, drafts or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the Cooperative, shall be signed by such officer or officers, agent or agents, employee or employees, of the Cooperative and in such manner as shall from time to time be determined by resolution of the Board of Directors.

Section 4. Deposits. All funds of the Cooperative not otherwise employed shall be deposited from time to time to the credit of the Cooperative in such banks, trust companies or other depositories as the Board of Directors may select.

## ARTICLE XI

### Certificates For Shares And Their Transfer

Section 1. Certificates For Shares. Certificates representing shares of the Cooperative shall be in such form as shall be determined by the Board of Directors. Such certificates shall be signed by the President or Vice President and by the Secretary or an Assistant Secretary and sealed with the corporate seal or a facsimile thereof. All certificates for shares shall be consecutively numbered or otherwise identified.

The name and address of the person to whom the shares represented thereby are issued, with the number of shares and date of issue, shall be entered on the stock transfer books of the Cooperative. All certificates surrendered to the Cooperative for transfer shall be cancelled and no new certificate shall be issued until the former certificate for a like number of shares shall have been surrendered and cancelled; except that in case of a lost, destroyed or mutilated certificate a new one may be issued therefor upon such terms and indemnity to the Cooperative as the Board of Directors may prescribe.

Section 2. Transfer of Shares. No shares shall be transferred without the prior approval of the Board of Directors. Transfer of shares of the Cooperative shall be made only on the stock transfer books of the Cooperative by the holder of record thereof or by his legal representative, who shall furnish proper evidence of authority to transfer, or by his attorney thereunto authorized by power of attorney duly executed and filed with the Secretary of the Cooperative, and on surrender for cancellation of the certificate for such shares. The person in whose name shares stand on the books of the Cooperative shall be deemed by the Cooperative to be the owner thereof for all purposes.

## ARTICLE XII

### Miscellaneous Provisions

Section 1. Fiscal Year. The fiscal year of the Cooperative shall begin on the first day of July and end on the thirtieth day of June in each year.

Section 2. Corporate Seal. The Board of Directors shall provide a corporate seal which shall be circular in form and shall have inscribed thereon the name of the Cooperative, the year of incorporation, the words "State of Alaska" and the words, "Corporate Seal".

Section 3. Waiver Of Notice. Whenever any notice is required to be given to any member or director of the Cooperative under the provisions of these By-Laws or under the provisions of the Articles of Incorporation or under the provisions of the Act, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

## ARTICLE XIII

### Amendments

These By-Laws may be altered, amended or repealed and new By-Laws may be adopted by the Board of Directors at any

regular or special meeting of the Board.

Certification

STATE OF ALASKA     )  
                                  ) ss.  
\_\_\_\_\_ DISTRICT )

\_\_\_\_\_ and \_\_\_\_\_,  
being first duly sworn, upon oath, deposes and say: We are the  
President and Secretary respectively of THE ALASKA COMMERCIAL  
FISHING AND AGRICULTURE BANK, an Alaska Cooperative. In our  
capacity as such officers of the Cooperative, we have reviewed  
the foregoing By-Laws of the Alaska Commercial Fishing And  
Agriculture Bank and hereby certify that they correctly set  
forth the text of the By-Laws of said Cooperative as adopted  
by the Board of Directors on \_\_\_\_\_, 1978.

\_\_\_\_\_  
President

\_\_\_\_\_  
Secretary

SUBSCRIBED AND SWORN to before me this \_\_\_\_ day of  
\_\_\_\_\_, 1978.

\_\_\_\_\_  
Notary Public in and for Alaska  
My Commission Expires: \_\_\_\_\_

Sec. 4 - AS 44.54.210 POWERS OF THE BANK

This section adds a new paragraph (20) to allow the bank to make loans to qualified commercial fishermen for purchase of limited entry permits.

Sec. 5 - AS 44-54 COMMERCIAL FISHING AND AGRICULTURE BANK

The bill amends this chapter by addition of three new sections:

AS 44.54.230 LOANS FOR PURCHASE OF ALASKA LIMITED ENTRY PERMITS

- (a) Provides that loans may be made only to those persons certified by the Limited Entry Commission as qualified.
- (b) Provides permits to be used as security for loan under certain conditions and sets out conditions.
- (c) Provides for the executive director of bank to certify to Limited Entry Commission when note has been satisfied by debtor.
- (d) Provides that Commission list debtor as legal owner of permit upon certification as provided in (c).

AS 44.54.240 DEFAULT AND FORECLOSURE OF LOANS FOR LIMITED ENTRY PERMITS

- (a) Provides for notice of default to be sent to debtor by executive director of bank if debtor defaults on a note for which a permit has been pledged as security and outlines what must be included in the notice of default.
- (b) Provides for termination of debtor's equitable interest if he fails to reinstate or satisfy note within time specified in (a). Provides for immediate cancellation of any permit cards issued to debtor under the permit when the Commission receives a certificate of termination containing a copy of the notice of default.

AS 44.54.250 DEFICIENCIES AND TRANSFER OF ENTRY PERMITS  
AFTER FORECLOSURE

- (a) Provides that upon foreclosure of an entry permit the executive director of the bank shall offer the Limited Entry Commission a right of first refusal if the permit is subject to a buy-back program (AS 16.43.200 - .330) at a price equal to the amount outstanding on the note plus any costs incurred by the bank in administering the loan.
- (b) Provides that bank promptly notify debtor if the Commission does not exercise the right of first refusal within 30 days, or if the permit is not subject to a buy-back program. The debtor then has 30 days to name a qualified person to assume the note. The qualified person may assume all rights and liabilities of the original debtor.
- (c) Provides that if debtor cannot name a qualified person to assume the note, the permit must be made available to a qualified person chosen by lottery from a list of qualified persons provided to the bank from the Entry Commission. The executive director of bank shall allow the first applicant meeting all qualifications to assume the note.
- (d) Provides that nothing in this section affects the right of the executive director to institute legal action for a deficiency resulting from a default on a note. In addition to any deficiency, the debtor is liable for the costs of administering the note and for costs and attorney fees.

MEMORANDUM

TO: Mr. Richard H. Eakins  
Director, Division of  
Economic Development  
DEPARTMENT OF COMMERCE  
& ECONOMIC DEVELOPMENT  
Pouch EE  
Juneau, Alaska 99811

FROM: Peter Argetsinger *Pa*  
WOHLFORTH & FLINT

DATE: April 6, 1979

RE: Commercial Fishing & Agriculture  
Bank/Comments On SSHB 30

On April 4, you requested our assistance in preparing a position paper as to SSHB 30 for submission to the Legislature next week. The comments on the subject bill which follow are submitted for your consideration. They are structured in such a way that you need only add introductory and concluding paragraphs and insert a discussion of policy matters as appropriate, particularly in the areas of composition of the Board of Directors (where I sensed a strong feeling at the April 4 meeting in favor of independence) and in the area of the business judgments to be made when considering loans for entry permits which are to be secured by those permits. (Although, perhaps nothing additional need be said on the latter subject.)

Section 1. Addition of the word "Alaska" to the name of the Bank is desirable and, in fact, reflected in the draft Articles of Incorporation and By-Laws of the Bank now under consideration by the Board of Directors.

Section 2. The Board of Directors of the Bank under the present law is composed of five members, initially appointed by the Governor, to serve staggered terms. Following expiration of the initial term, directors are then elected by the member/shareholders of the Bank which under AS 44.54 is organized as a cooperative corporation. AS 10.15.140, to which the Bank is subject, requires that the elected directors be members of the cooperative. Counsel to the Bank have examined the present method of constituting the Board of Directors of the Bank and have advised that,

in their opinion, under Section 103 of the Internal Revenue Code and the regulations thereunder the Bank may not issue tax exempt revenue bonds. In general, this is because in order to issue tax exempt bonds "on behalf of" the State, the Bank must be considered by the Internal Revenue Service to be a "constituted authority". To satisfy this requirement it is necessary that all members of the Bank Board of Directors be public officials of the State, be elected by the voters of the State or be appointed directly by the State. And, the requirement continues for the life of any bonds issued by the Bank.

We have also been advised by counsel that the proposed revision to AS 44.54.020 which would expand the Board of Directors to seven members, three of whom would be appointed by the Governor until such time as the Bank had repurchased all non-voting preferred shares held by the State does not satisfy the IRS criteria either. In order to issue tax exempt revenue bonds it would be necessary that the Board of Directors be composed in its entirety of gubernatorial appointees for the life of any outstanding bonds.

The present formulation of the Board, of course, is quite satisfactory to accomplish the primary purpose envisioned by the Legislature when it established the Bank, i.e., to leverage the bank's capital with the federal farm credit system banks in order to make loans to those engaged in commercial fishing and agriculture. In that regard, the federal banks require as a condition of eligibility for loans that associations such as the Commercial Fishing and Agriculture Bank be organized in such a way that not less than 80% of the voting control of the bank is held by fishermen or farmers. See, e.g., 12 USCA 2129 which sets out these requirements as they apply to the federal banks for cooperatives. At first blush, this would seem to preclude a Board of Directors where 3/7ths of the members are gubernatorial appointees rather than representatives of the membership. However, we have informally discussed the matter with representatives of the federal farm credit system in Spokane who have advised us that they do not believe that reconstituting the Bank's Board of Directors as envisioned by SSB 30 would preclude them from working with the Commercial Fishing and Agriculture Bank. Rather, they interpret the Federal requirement to mean that the control of at least 80% of the votes which would elect the other four members of a reconstituted Board of Directors must be in fishermen and farmers.

It would appear that a change in the composition of the Board of Directors as proposed in SSIB 30 would accomplish one, or both, of two objectives. One, it would establish a mechanism through which Board members who otherwise would not be eligible for election by the members (e.g., bankers, economists, business consultants) could remain on or be appointed to the Board of Directors even though they are not actively engaged in commercial fishing or agriculture. Two, it would vest some modicum of control in the State through the power of the Governor to continue to appoint a minority of the Board during the early life of the Bank. While the first of these reasons is certainly desirable, perhaps some additional discussion of the need for State representation on the Board of Directors through gubernatorial appointees is necessary. At the outset, it should be noted that the Legislature will always retain its ability to influence the Bank through the appropriation process, particularly during the capital formation phase of the Bank, and through its ability to modify to a great extent the Bank's enabling legislation should that ever become necessary. However, a basic tenet of the federal farm credit system is that organizations such as the Bank should operate on a cooperative basis for the mutual benefit of the members.

(insert additional policy considerations re independence of the bank as desired)

One final comment on Section 2 of SSIB 30. The draft bill, as well as the present statute, states that Board member election shall be by the "shareholders". Generally speaking the privilege of the vote in a cooperative corporation belongs to the member or holder of membership stock. Most members will also hold shares of capital stock, but it is entirely possible for one to be a capital stockholder (thus, a shareholder) at the time of a membership meeting, yet for several reasons not currently eligible to vote as a member. Therefore, it is our recommendation that the word "shareholders" on line 22 of page 1 of SSIB 30 be replaced by the term "members" or the term "membership". "Member" is a defined term in AS 10.15.595(9) and would be the preferred term.

Section 3. The proposed amendments to AS 44.54.090 found in Section 3 of SSIB 30 are satisfactory and appear to solve the drafting problem in the present statute.

However, during the organization of the Board of Directors of the Bank two other concerns have surfaced which may be solved by adding language to AS 44.54.090. The first of these is the method to be used when determining

which members of the Board of Directors shall serve for the one, two and three year term. One way to resolve this problem is to provide that the terms be determined by lot, as the Legislature has provided in other instances. (See AS 18.26.030 where such a system is applied to the Board of Directors to the Alaska Medical Facility Authority.)

The second problem is insuring that the initial terms of the Board of Director members expire on the date of the cooperative annual meeting rather than on the anniversary date of the appointment by the Governor. As the Bank's draft By-Laws provide that the annual meeting be held in November of each year, we strongly urge that AS 44.54 provide that the initial one year Board of Governor terms extend until November 1980, and that the two and three year terms expire at the time of the following two annual meetings. Since the initial appointments to the Board of Directors were made on February 19, 1979, to provide that the one year terms expire in November 1979, would not be a prudent business decision as it would mean that the expertise and experience of the one year directors would be lost to the Bank even before it is in full operation.

These recommendations may be implemented by striking the period following the word "years" on line 5 of page 2 of SSMB 30, and inserting a comma and the following language:

, to be determined by lot. The initial terms shall expire at the annual meeting of the bank held in November 1980, 1981 and 1982 respectively.

Section 4. We are aware that the language of Sections 4 and 5 of SSMB 30 tracks in most respects the language of AS 16.10.300 et seq, the Commercial Fishing Loan Act, and agree that it is desirable that the Bank as well have the power to make loans to individual commercial fishermen to purchase entry permits. The Board of Directors of the Bank will, of course, at the appropriate time be faced with the necessity of determining its policies, from a business standpoint when considering loans to be secured by entry permits. We are aware that there are presently on appeal to the Alaska Supreme Court two Superior Court decisions in cases which challenge the limited entry permit system and/or the method by which permits have been issued. The Supreme Court decision in those cases, or future cases, may result in the issuance of a sufficient number of additional entry permits so that the value of an entry permit held by the Bank as security is substantially lessened.

Future action by the Legislature could work to the same end and must also be taken into consideration by the Bank when making loans of this type.

As to the specific language of Section 4 of SSHB 30, we note that eligibility for a loan to purchase an entry permit is conditioned upon a five year durational residency requirement which, if challenged at some future time, could be held unconstitutional. We also note that the requirement for active participation in the fishery at some time during the past five years is vague enough so that it may cause problems in determining loan eligibility. E.g., would thirty days some time during the five year period be sufficient? would seven days?

Section 5. AS 44.54.230 would require that the executive director of the Bank be listed as the legal owner of a pledged permit and Section 5 at several places requires that the executive director of the Bank take certain actions in regard to a permit. While under AS 16.43 entry permits are held only by natural persons and while the Commercial Fishing Loan Act assigns the same duties to the Commissioner of Commerce and Economic Development, it is desirable in this situation that the legal ownership of an entry permit or directions for taking certain actions rest with the Bank itself, rather than with a specific individual so as to give the Bank maximum flexibility in managing its business. For that reason we recommend that the language "executive director of the" be eliminated where it appears in Section 5 of SSHB 30. But if it is determined that AS 16.43 requires that an individual be named, it nonetheless is desirable that the language "as trustee for the bank" be inserted directly following the designation of the executive director so that it is clear the capacity in which the director acts.

AS 44.54.250(b) would allow a debtor to nominate a person to assume his note under certain conditions and require that the person so nominated qualify under the requirements of AS 44.54.230(a) i.e., that the person nominated qualify as a transferee for an entry permit under AS 16.43. There appears, however, to be no requirement that the nominee to assume the note meet the requirements set up by proposed AS 44.54.210(20), specifically that he meet the five year durational residency requirement as did the original debtor. If this is considered desirable, the language "and AS 44.54.210(20)" should be inserted immediately following the end of the partial sentence on line 1, page 5 of SSHB 30.

### Recommended Additions

AS 16.43 provides that entry permits may not be pledged as security or transferred except under certain conditions, one of which is as provided in the Commercial Fishing Loan Act. Similarly, it would appear that additional amendments are necessary to at least sections AS 16.43.150(g) and AS 16.43.170, which language should refer specifically to the program proposed in SSHB 30.

As a matter of convenience and style in drafting it may be desirable to consider addition of a new section .260, Definitions, to AS 44.54. Such a section initially would define the word "bank" as the Alaska Commercial Fishing and Agriculture Bank which definition was not included in Chapter 159, SLA 1978, even though extensive use is made therein of the term "bank". In addition it would appear desirable to define the word "commission" as the Alaska Commercial Fisheries Entry Commission in order to avoid the problem now found throughout Section 5 of SSHB 30 where reference is sometimes made to the Alaska Commercial Fisheries Entry Commission, but more often is made simply to the "commission".

Finally we strongly recommend that the amendments to AS 44.54 include a specific provision insuring that the Bank has the necessary power to indemnify directors, officers and employees when negligence and misconduct is not involved. Such a provision is routinely included in the by-laws of private sector organization and is specifically included among the general powers given to a cooperative corporation organized in Alaska by AS 10.15.010(13). Counsel has advised us that in its opinion the Bank does have the power to indemnify its directors, officers and employees by virtue of the fact that AS 44.54.010 subjects the Bank to the provisions of AS 10.15, except as otherwise provided in AS 44.54. Nonetheless, the fact that the specific powers of the Bank enumerated in AS 44.54.210 do not include a provision on indemnification means that it is not impossible that a court might hold that the Legislature intended the Bank not be allowed to indemnify directors, officers and employees under appropriate conditions. For that reason we recommend the addition of the same language now found in AS 10.15.010(13) as an additional paragraph numbered (21) to AS 44.54.210. Section 4 of SSHB 30 may be amended by changing the word "paragraph" on line 6 of page 2 to "paragraphs" and by inserting an additional paragraph at line 14 which reads:

(21) indemnify a director, officer or agent or former director, officer or agent, or a person who may have served at its request

as a director or officer of another domestic or foreign cooperative of which it is a member, against expenses necessarily incurred in defense of a proceeding in which he is a party because he served as a director, officer or agent, but this paragraph does not apply to proceedings in which the director, officer or agent is adjudged liable for negligence or misconduct in the performance of duty, and indemnification under this paragraph is not exclusive of other rights to which the director, officer or agent may be entitled.

cc: Mr. Frank M. Homan, Chairman,  
Commercial Fishing and Agriculture Bank

Mr. Frank Orth, Financial Consultant  
to Commercial Fishing and Agriculture Bank

Mr. Larry Butterfield, Spokane Bank For  
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Mr. R. M. Gorde, Federal Intermediate  
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ments to eligible cooperative associations and to extend to them other technical and financial assistance, including but not limited to discounting notes and other obligations, guarantees collateral custody, or participation with other banks for cooperatives and commercial banks or other financial institutions in loans to eligible cooperatives, under such terms and conditions as may be determined to be feasible by the board of directors of each bank for cooperatives under regulations of the Farm Credit Administration. Such regulations may include provisions for avoiding duplication between the Central Bank and district banks for cooperatives. Each bank may own and lease, or lease with option to purchase, to stockholders eligible to borrow from the bank equipment needed in the operations of the stockholder.

Pub.L. 92-181, Title III, § 3.7, Dec. 10, 1971, 85 Stat. 605.

#### § 2129. Eligibility

Any association of farmers, producers, or harvesters of aquatic products, or any federation of such associations, which is operated on a cooperative basis, and has the powers for processing, preparing for market, handling, or marketing farm or aquatic products; or for purchasing, testing, grading, processing distributing, or furnishing farm or aquatic supplies or furnishing farm business services or services to eligible cooperatives and conforms to either of the two following requirements:

(a) no member of the association is allowed more than one vote because of the amount of stock or membership capital he may own therein; or

(b) does not pay dividends on stock or membership capital in excess of such per centum per annum as may be approved under regulations of the Farm Credit Administration; and in any case

(c) does not deal in farm products or aquatic products, or products processed therefrom, farm or aquatic supplies, or farm business services with or for nonmembers in an amount greater in value than the total amount of such business transacted by it with or for members, excluding from the total of member and nonmember business transactions with the United States or any agency or instrumentality thereof or services or supplies furnished as a public utility; and

(d) a percentage of the voting control of the association not less than 50 per centum (70 per centum, in the case of rural electric, telephone, and public utility cooperatives), or such higher percentage as established by the district board is held by farmers, producers or harvesters of aquatic products, or eligible cooperative associations as defined herein;

shall be eligible to borrow from a bank for cooperatives.

Pub.L. 92-181, Title III, § 3.5, Dec. 10, 1971, 85 Stat. 605, amended Pub. L. 94-184, § 1(a), Dec. 31, 1975, 89 Stat. 1060.

180 in original. A comma after "producers" was probably not intended. 1973 Amendment, Subsec. (d), 19 cooperative history. For legislative history and purpose of Pub.L. 94-184, see 1973 U.S. Code Cong. and Adm. News, p. 2118. 1973 U.S. Code Cong. and Adm. News, p. 2118. 1973 U.S. Code Cong. and Adm. News, p. 2118. 1973 U.S. Code Cong. and Adm. News, p. 2118.

#### § 2130. Ownership of stock by borrowers

(a) Each borrower at the time a loan is made by a bank for cooperatives shall own at least one share of voting stock and shall be required by the bank with the approval of the Farm Credit Administration to invest in additional voting stock or nonvoting investment stock at that time, or from time to time, as the lending bank may determine, but the requirement for investment in stock at the time the loan is closed shall not exceed an amount equal to 10 per centum of the face amount of the loan. Such additional ownership requirements may be based on

ing any quarter thereof, or upon such other basis as the bank, with the approval of the Farm Credit Administration, determines will provide adequate capital for the operation of the bank and equitable ownership thereof among borrowers. In the case of a direct loan by the Central Bank, the borrower shall be required to own or invest in the necessary stock in a district bank or banks as may be approved by the Farm Credit Administration and such district bank shall be required to own a corresponding amount of stock in the Central Bank, but voting stock shall be in the one district bank designated by the Farm Credit Administration.

(b) Notwithstanding the provisions of subsection (a) of this section, the purchase of stock need not be required with respect to that part of any loan made by a bank for cooperatives which it sells to or makes in participation with financial institutions other than any of the banks for cooperatives. In such cases the distribution of earnings of the bank for cooperatives shall be on the basis of the interest in the loan retained by such bank.

Pub.L. 92-181, Title III, § 3.9, Dec. 10, 1971, 85 Stat. 605.

#### § 2131. Loans—Interest rates and charges

(a) Loans made by a bank for cooperatives shall bear interest at a rate or rates determined by the board of directors of the bank from time to time, with the approval of the Farm Credit Administration. In setting rates and charges, it shall be the objective to provide the types of credit needed by eligible borrowers at the lowest reasonable cost on a sound business basis, taking into account the net cost of money to the bank, necessary reserves and expenses of the bank, and services provided. The loan documents may provide for the interest rate or rates to vary from time to time during the repayment period of the loan, in accordance with the rate or rates currently being charged by the bank.

#### Security

(b) Loans shall be made upon such terms, conditions, and security, if any, as may be determined by the bank in accordance with regulations of the Farm Credit Administration.

#### Lien

(c) Each bank for cooperatives shall have a first lien on all stock or other equities in the bank as collateral for the payment of any indebtedness of the owner thereof to the bank. In the case of a direct loan to an eligible cooperative by the Central Bank, the Central Bank shall have a first lien on the stock and equities of the borrower in the district bank and the district bank shall have a lien thereon junior only to the lien of the Central Bank.

#### Cancellation; application on indebtedness

(d) In any case where the debt of a borrower is in default, or in any case of liquidation or dissolution of a present or former borrower from a bank for cooperatives, the bank may, but shall not be required to, retire and cancel all or a part of the stock, allocated surplus or contingency reserves, or any other equity in the bank owned by or allocated to such borrower, at the fair book value thereof not exceeding par, and, to the extent required in such cases, corresponding shares and allocations and other equity interests held by a district bank in another district bank on account of such indebtedness, shall be retired or equitably adjusted.

Pub.L. 92-181, Title III, § 3.10, Dec. 10, 1971, 85 Stat. 606.

§ 2132. Earnings and reserves; application of savings—Application of savings when bank has outstanding stock held by Governor

(a) Each bank for cooperatives, at the end of each fiscal year when said bank shall have stock outstanding held by the Governor of the Farm

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