

COMMITTEE REPORT

HOUSE

5/29/81

FURTHER:

(11)

Date: June 7, 1981

Mr. Speaker:

The Committee on FINANCE has had CSSE 141(Fin)

"An Act making a special appropriation to the Department of Revenue for loan guarantees for commercial fish purchasers; and providing for an effective date."

under consideration and reports it back as follows:

- do pass do not pass
 do pass with attached amendments(s)
 replace with CS for CSSE 141(Fin) same title
 new title
and recommends do pass
 AND attaches a "Letter of Intent" New Fiscal Note
 reports it back without recommendation
 referred to the _____ Committee

MEMBERS SIGNING
DO PASS

[Handwritten signatures]

MEMBERS HAVING
OTHER RECOMMENDATIONS:

[Handwritten signatures]

[Handwritten signature]
CHAIRMAN

Cook

Original sponsor: Rules/Governor

Funding Information

| | |
|--------------|---------------------|
| General Fund | \$40,000,000 |
| Other Funds | -0- |
| | <u>\$40,000,000</u> |

1 IN THE SENATE

BY THE FINANCE COMMITTEE

2 HOUSE CS FOR CS FOR SENATE BILL NO. 141 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act making a special appropriation to the Depart-
7 ment of Revenue for loan guarantees for commercial
8 fish purchasers; and providing for an effective date."

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

10 * Section 1. The sum of \$40,000,000 is appropriated from the general
11 fund to the Department of Revenue, 1981 fish processing loan guarantee
12 account, to provide guarantees for loans made to commercial fish purchasers.

13 * Sec. 2. The unexpended and unobligated portion of the appropriation
14 made by this Act lapses into the general fund June 30, 1982.

15 * Sec. 3. This Act takes effect on the effective date of a version of an
16 Act entitled "An Act relating to loans and loan guarantees for commercial
17 fish processors and purchasers and establishing a fishery product revolving
18 loan fund; and providing for an effective date."

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Original sponsor: Rules/Governor

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|---------------------|---------------------|
| Funding Information | |
| General Fund | \$40,000,000 |
| Other Funds | -0- |
| | <u>\$40,000,000</u> |

Offered: 5/1/81
Referred: Rules

1 IN THE SENATE

BY THE FINANCE COMMITTEE

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CS FOR SENATE BILL NO. 141 (Finance)

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IN THE LEGISLATURE OF THE STATE OF ALASKA

4

TWELFTH LEGISLATURE - FIRST SESSION

5

A BILL

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For an Act entitled: "An Act making a special appropriation to the Department of Revenue for loan guarantees for commercial fish purchasers; and providing for an effective date."

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

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* Section 1. The sum of \$40,000,000 is appropriated from the general fund to the Department of Revenue, fish processing loan guarantee account, (~~sec. 2(e), ch. 32, SLA 1980~~) to provide guarantees for loans made to commercial fish purchasers.

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* Sec. 2. The unexpended and unobligated portion of the appropriation made by this Act lapses into the general fund June 30, 1982.

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* Sec. 3. This Act takes effect on the effective date of a version of an Act entitled "An Act establishing a fishery product revolving loan fund and providing for loans and loan guarantees for commercial fish purchasers; and providing for an effective date."

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Original sponsor: Rules/Governor

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|----------------------------|---------------------|
| <u>Funding Information</u> | |
| General Fund | \$40,000,000 |
| Other Funds | -0- |
| | <u>\$40,000,000</u> |

Offered: 5/1/81
Referred: Rules

1 IN THE SENATE BY THE FINANCE COMMITTEE

2 CS FOR SENATE BILL NO. 141 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act making a special appropriation to the Depart-
7 ment of Revenue for loan guarantees for commercial
8 fish purchasers; and providing for an effective date."

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

10 * Section 1. The sum of \$40,000,000 is appropriated from the general
11 fund to the Department of Revenue, fish processing loan guarantee account,
12 (sec. 2(c), ch. 32, SLA 1980) to provide guarantees for loans made to commer-
13 cial fish purchasers.

14 * Sec. 2. The unexpended and unobligated portion of the appropriation
15 made by this Act lapses into the general fund June 30, 1982.

16 * Sec. 3. This Act takes effect on the effective date of a version of an
17 Act entitled "An Act establishing a fishery product revolving loan fund and
18 providing for loans and loan guarantees for commercial fish purchasers; and
19 providing for an effective date."
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Alaska State Legislature

Senate

JUNEAU, ALASKA

RESOURCES SUBCOMMITTEE ON FISHERIES

March 4, 1981

TO: Senator Bettye Fahrenkamp, Chairman
Senate Resources Committee

FROM: Senate Resources Subcommittee on Fisheries

SUBJ: SB 141 "An Act making a special appropriation to
the Fishery Product Revolving Loan Fund"

The subcommittee has taken testimony and reports SB 141 back to the committee as a whole with the following recommendations.

| Members. | Recommendation |
|-------------------------------------|----------------|
| Senator Mulcahy <u>Bob Mulcahy</u> | <u>No Pass</u> |
| Senator Eliason <u>Paul Eliason</u> | <u>u u</u> |
| Senator Gilman <u>Don Gilman</u> | <u>NO Pass</u> |

Funding information
General Fund \$100,000,000
Other Funds -0-
\$100,000,000

Introduced: 2/3/81
Referred: Resources and
Finance

1 IN THE SENATE

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

2 SENATE BILL NO. 141

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act making a special appropriation to the fishery
7 product revolving loan fund; and providing for an
8 effective date."

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

10 * Section 1. The sum of \$100,000,000 is appropriated from the general
11 fund to the Department of Revenue, fishery product revolving loan fund, for
12 the purposes of implementing AS 44.25.040 -- 44.25.065.

13 * Sec. 2. The appropriation made in sec. 1 of this Act is not a one-year
14 appropriation and does not lapse under AS 37.25.010.

15 * Sec. 3. This Act takes effect upon the effective date of a version of
16 a bill entitled, "An Act establishing a fishery product revolving loan fund;
17 and providing for an effective date."
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Alaska State Legislature

BETTYE FAHRENKAMP, CHAIRMAN
VIC FISCHER, VICE-CHAIRMAN
BRAD BRADLEY
DICK ELIASON
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POUCH V
STATE CAPITOL
JUNEAU, ALASKA 99811
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Senate

Committee on Resources

MEMORANDUM

TO: SENATE RESOURCE COMMITTEE MEMBERS

FROM: JIM PALMER
SENATE RESOURCES COMMITTEE STAFF

RE: CSSB 140 "AN ACT ESTABLISHING A FISHERY PRODUCT REVOLVING LOAN FUND."
SB 141 "AN ACT MAKING A SPECIAL APPROPRIATION TO THE FISHERY PRODUCT
REVOLVING LOAN FUND."
SCR 12 "A RESOLUTION RELATING TO HAND TROLLING."

DATE: MARCH 5, 1981

The Subcommittee on Fisheries, chaired by Senator Mulcahy, has passed out of subcommittee CSSB 140, SB 141 and SCR 12.

These three measures have been scheduled for full committee consideration on Friday, March 13.

Attached are some informational materials relative to these bills.

- (1) copy of subcommittee substitute for SB 140.
- (2) a February 27 letter to Senator Mulcahy from the Department of Revenue on SB 140 and 141.
- (3) a memorandum from Legislative Affairs Agency on the constitutionality of precluding fish processors who are 80% or more owned by foreign nationals from obtaining fishery product loans under SB140. This memorandum was dated March 3 and was directed to Senator Mulcahy.
- (4) a memorandum to Senator Mulcahy dated March 4 on the constitutionality of giving first priority in the award of fishery loans to Alaskans.
- (5) fiscal note prepared for SB 140 by the Dept. of Revenue.

I also understand that the subcommittee will be preparing a letter of intent to accompany CSSB 140.

STATE OF ALASKA
THE LEGISLATURE

FOUNDED 1906
ALASKA 1912
1958

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 4, 1981

SUBJECT: Constitutionality of giving first priority in the award of fishery loans to Alaskans. (CSSB 140)

TO: Senator Bob Mulcahy

THROUGH: Joseph A. Guthrie
Legislative Counsel

FROM: Bernie M. Tuggle
Legislative Legal Extern

You have asked whether first priority in the award of fishery loans under CSSB 140 could be given to companies which are owned 50 percent or more by Alaska residents. Your proposal would be subject to attack under the privileges and immunities clause by individuals and to equal protection attack by corporations.

The privileges and immunities clause, Article IV, section 2 says that:

The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

Corporations, however, are not protected under this clause, since they are not citizens. Lynden Transport, Inc. v. State, 532 P.2d 700 (Alaska 1975). Therefore, only individuals could pursue a privileges and immunities challenge against your proposal.

The purpose of the clause is:

To place the citizens of each state upon the same footing with citizens of other states, so far as the advantages resulting from citizenship in those states are concerned.

Paul v. Virginia, 19 L.Ed. 357 (1869). However the clause does not preclude disparity of treatment in situations where there are perfectly valid independent reasons for it. What the clause does bar is discrimination against citizens of other states where there is no substantial reason for the discrimination beyond the mere fact that they are citizens of other states. A substantial reason for the discrimination would not exist unless there is something to indicate that non-citizens constitute a "peculiar source of evil" at which the discriminatory statute is aimed. Tomer v. Witsell, 92 L.Ed. 1460, 1472 (1948). Moreover, even where the presence or activity of non-residents causes or exacerbates the problem the state seeks to remedy, there must be a "reasonable relationship" between the danger posed by noncitizens, as a class, and the discrimination practiced upon them. Id., at 1473. Therefore, the privileges and immunities clause demands a two-step analysis.

First, do non-residents constitute a peculiar source of evil at which your proposal is aimed? I believe that a reasonable and persuasive argument could be made that they do. Alaska has a strong interest in regulating and controlling those things it claims to "own" (the funds for which the fishery loans would derive). Yet while this interest is by no means absolute, Baldwin v. Montana Fish & Game Comm'n, 56 L.Ed.2d 354 (1978), Alaska's ownership of the funds is a crucial factor. Hicklin v. Orbeck, 57 L.Ed.2d 397, 405 (1978). In Hicklin, the Court found that Alaska had "little or no" proprietary interest in much of the activity swept within the ambit of Alaska Hire. Id. On the other hand, under your proposal Alaska does have a significant proprietary interest, e.g., management of loan funds, and development of the fishing industry. Given this state interest in the funds which would be the source of fishery loans, non-Alaskans could be a "peculiar source of evil" if the loan funds were limited, non-Alaskans flocked to the state to get the loans, etc.

Second, is there a reasonable relationship between your proposal and the class at which your proposal is aimed. Again, I would say "yes". Non-Alaskans are not absolutely barred from receiving a loan; they must simply wait in line. I would conclude that your proposal is constitutionally valid as applied to non-Alaskan individuals.

Senator Bob Mulcahy

Page 3

March 4, 1981

Corporations, meanwhile, could mount a Fourteenth Amendment equal protection attack. However your proposal seems valid since it involves no suspect classes and no fundamental rights. Instead, it is an example of the type of socio-economic legislation that warrants a low level rational basis test. Usually, such a test amounts to the judiciary deferring to the legislative judgment.

While the Alaska Supreme Court no longer applies a two-tiered approach to equal protection cases, State v. Erickson, 574 P.2d 1 (Alaska 1978), the result would be the same since there are no fundamental rights or suspect classes involved with your proposal.

In summary, your proposal seems constitutionally valid both in regards to individuals and to corporations.

BMT:JAG:ljb

Enclosures

STATE OF ALASKA
THE LEGISLATURE

POUCH - STATE CAPITOL
JULIAU, ALASKA 99511
907-465-3555

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 3, 1981

SUBJECT: Constitutionality of precluding fish processors
 who are 80 percent or more owned by foreign
 nationals from obtaining fishery product loans
 under SB 140.

TO: Senator Bob Mulcahy

FROM: Joseph A. Guthrie
 Legislative Counsel

JAG

Attached is a memorandum prepared by Bernie M. Tuggle, a
legal extern serving with the Division of Legal Services. I
have reviewed his memorandum and agree with the conclusions
and advice given in it.

JAG:ljb

Attachment

STATE OF ALASKA
THE LEGISLATURE

ALASKA STATE LEGISLATURE
LEGISLATIVE AGENCIES
1979-1981

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 3, 1981

SUBJECT: Constitutionality of precluding fish processors who are 80 percent or more owned by foreign nationals from obtaining fishery product loans under SB 140.

TO: Senator Bob Mulcahy

FROM: Bernie M. Tuggle ^{BT}
 Legislative Legal Extern

You have asked me to explore the constitutionality of precluding fish processors who are 80 percent or more owned by foreign nationals from obtaining loans from the fishery product revolving loan fund which would be created by SB 140. This issue raises Fourteenth Amendment equal protection problems because your proposal would discriminate against persons on the basis of alienage.

As a practical matter, many fish processors would be organized under the corporate form of business. This raises the initial question whether corporations are protected under the equal protection clause. The answer is an unequivocal "yes". Grosjean v. American Press Co., 80 L.Ed. 660 (1936). Therefore, corporations and other types of business organizations receive the same amount of equal protection as individuals.

Traditionally, classifications based on alienage, like those based on nationality, or race, are inherently suspect and subject to the highest judicial scrutiny. Graham v. Richardson, 29 L.Ed.2d 534 (1971). However it is unclear whether strict scrutiny applies to non-resident aliens as well as resident aliens. While the numerous cases which have struck down alienage classifications have all involved resident aliens, Truax v. Raich, 60 L.Ed. 131 (1951); Takahashi v. Fish and Game Comm'n., 92 L.Ed. 1478 (1948); Graham v. Richardson, supra; Sugarman v. Dougall, 37 L.Ed.2d

853 (1973); In re Griffiths, 37 L.Ed.2d 910 (1973); Hampton v. Mow Sun Wong, 48 L.Ed. 495 (1976); Examining Board v. Otero, 49 L.Ed.2d 63 (1977); Nyquist v. Mauclet, 53 L.Ed.2d 63 (1977); the Court has never directly addressed this issue. The lower courts, meanwhile, have split on whether strict scrutiny is the appropriate level of judicial review for laws which discriminate against non-resident aliens. Compare Moreno v. Toll, 489 F.Supp. 658 (D. Md. 1980) with United States v. Tsuda Maru, 429 F.Supp. 519 (D. Alaska 1979).

Matthews v. Diaz, 48 L.Ed.2d 478 (1976) suggests that classifications which discriminate against non-resident aliens are not as suspect as classifications discriminating against resident aliens.

Neither the overnight visitor, the unfriendly agent of a hostile foreign power, the resident diplomat, nor the illegal entrant, can advance even a colorable constitutional claim to a share in the bounty that a conscientious sovereign makes available to its own citizens and some of its guests. (Emphasis in original)

Id. at 490. This possible difference in levels of judicial scrutiny will prove important as discussed below.

Another factor as to whether your proposal would pass constitutional muster would be the characterization of the benefit sought. Here, that benefit would be a fishery product loan. As a general rule, the strict scrutiny approach is applicable to state classifications based on alienage, excepting those dealing with governmental functions, in which case the less stringent rational basis test will be applied. For example in Foley v. Connelie, 55 L.Ed.2d 287 (1978), the Court upheld a New York statute limiting appointment to the state police force to United States citizens by applying a rational basis, rather than a strict scrutiny test. The application of this less demanding standard, however, was clearly limited to alienage classifications in matters involving the state's historical power to exclude aliens from participation in its political institutions. As the Court stated:

The essence of our holdings to date is that although we extend to aliens the right to education and public wel-

fare, along with the ability to earn a livelihood and engage in licensed professions, the right to govern is reserved to citizens.

Id. at 293. Foley, then, stands for a limited exception to the general strict scrutiny standard, and this exception will apply only in cases involving state regulation of one of the basic functions of government.

In the closest case on point, Nyquist v. Mauclet, supra, the Court struck down a New York Statute which barred resident aliens from state financial assistance for higher education. While Nyquist was a 5 to 4 decision, I believe that it would be followed and your proposal as applied to resident aliens would be struck down. Even though Nyquist is factually distinguishable, its holding is on point. The New York statute indirectly barred a resident alien from seeking higher education, i.e., he could not secure a state loan to pursue his education. Similarly, your proposal would indirectly bar a resident alien from pursuing his livelihood, i.e., he could not obtain a state loan from the fishery product revolving loan fund. Moreover, loans to fishermen could hardly be characterized as a "basic governmental function" such as holding public office. Therefore, such loans would not fit within the one recognized exception to the general rule of strict scrutiny for classifications based on alienage.

Your proposal as applied to non-resident aliens would pass constitutional muster for two reasons. First, although this area of the law is unsettled, judicial review of classifications discriminating against non-resident aliens seems to be lower than strict scrutiny. Second, the Supreme Court's cases have often emphasized that resident aliens live in American communities, must obey our laws, pay taxes, serve in the armed forces, and have made significant contributions to our country. It is the burdens which resident aliens bear along with citizens that makes discriminations against resident aliens irrational. Resident aliens are in many respects just like citizens, and classifications which disadvantage them will usually be subjected to strict judicial scrutiny. However the philosophical and legal support for this doctrine is absent when a case involves a non-resident alien.

In summary then, if your proposal includes resident aliens, it probably would be struck down. If your proposal includes only non-resident aliens, then most likely it would survive an equal protection attack.

B:TT:ljb

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

POUCH 5
JUNEAU, ALASKA 99811
PHONE: (907) 465-2300

February 27, 1981

The Honorable Bob Mulcahy
Senate Resources Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Re: SB 140 and 141 (fish pack loans)

Dear Senator Mulcahy:

This is in response to the questions that came up during my testimony on these bills before your subcommittee.

1. Loans for inventory, not working capital. It is definitely the Governor's intent that these loans would be made to finance fish pack inventories and not to provide processors with working capital loans. As an artifact of being transformed to proper legal style, my draft references to "fish pack loans" were deleted and the present ambiguity as to intent resulted. To resotre clarity, I would suggest the following amendments to the version of the bill as introduced:

p. 1, lines 15-16: "located in Alaska and which are used to finance such processors' inventories of canned, frozen or processed [PROCESSING OF] fishery products from Alaskan fisheries."

2. When loans are to be made and funded. It is our intent to use the contractual power proposed in AS 44.25.050(3) to make commitments to participate in pack financings before the fish are bought and processed. However, since the financing would be to finance only the pack or inventory (see comment 1), the execution of such commitments and the actual funding would take place only after the inventory is in existence. Funds for starting up at the beginning of the season would be from a processor's working capital and, hence, could not be advanced under this loan program.

3. Term of the loans. The Committee expressed concern that if there is no clear statutory limit to the term of the loans, processors may attempt to sell last the inventory collateralizing the loan fund's participation in order to prolong or take advantage of the lower interest rate. This

concern will be taken care of by the fact that a participation in a loan will be purchased, rather than a separate loan be made from the loan fund. The fund will be a partner in a fish pack loan, together with the banks or other financial institutions that are participating in the loan. All participants in the loan would have pro-rata, undivided interests in the collateral, and therefore, it would not be possible for a processor to pay off his higher-interest bank participations in the loan while stretching out the State's lower-interest participation.

As I testified, rigidly limiting the term of a loan to one year is unrealistic. True, in good years all the processors can work down their inventories and pay off the loan within 12 months, but good years don't come every year and it is not uncommon for a processor to need more time than that to get squared away. Our leverage over the processor is not so much that we can declare him in default and jerk the loan out from under him, as it is that we can refuse to help finance the current year's pack for him until the last year's pack loan is all cleaned up. This is much more meaningful economic power than the threat of foreclosing on an inventory that the processor would probably have been having trouble with.

I therefore recommend that line 15 on page 2 of the original bill be deleted and the following subsections renumbered accordingly.

4. Collateral. The loans will be for fish pack and will be secured by the pack and the receivables arising from the pack. Fluctuations in the market price for fish products might suddenly lower the value of the pack so that the loan it secures then represents more than 75 percent of the pack's value. What happens then? Literally under the statute, the loan would no longer be one in which we could legally participate. We would be forced to declare a default and foreclose on the loan, thereby acquiring a lot of fish products in the middle of a bad market for fish product.

The large banks that will be originating and participating in many of these loans -- the Rainiers, the Sea Firsts and the like -- know all about this business and aren't about to let themselves lose a lot of money at it. It seems to me, then, that it would be wise to share ratably in the collateral that they themselves are willing to accept, instead of hoping to protect ourselves by a fixed loan-to-value ratio that may quickly become unrealistic as the market changes. Accordingly, I suggest the following amendment to the original bill:

p. 2 lines 16-18: "(3) the state participation must be ratably secured on at least an equal basis as the participations of all other participants in the loan, which must be secured by a pledge of the fish processor's inventory being financed by the loan or the accounts receivable arising from that inventory [OF THE FISH PROCESSOR] or by other collateral acceptable to all participants in the loan [AND MAY NOT EXCEED 75 PERCENT OF THE APPRAISED VALUE OF THE COLLATERAL TAKEN AS SECURITY];"

5. Definition of "facilities located in Alaska", which determines eligibility. The committee expressed concern about the meaning of this term, particularly whether floating processors in the three-mile limit would qualify. Certainly under the present wording of the bill they could be construed as being facilities located in Alaska, and we would adopt a regulation to that effect unless the Legislature shows an intent to the contrary. However, it would be a matter of administrative descretion, and the policy taken now could be reversed in the future. Thus, if you wish to ensure that floating processors will qualify for these fish pack loans, you might add the following definition to proposed AS 44.25.065 on page 3 of the bill:

"facilities located in Alaska" means facilities at which fisheries products are canned, frozen or otherwise processed for inventory and includes such facilities both onshore and offshore, provided that the floating facilities are registered with the State of Alaska or the U.S. Coast Guard and operate within the three-mile limit or within historic bays and inland waters of the State of Alaska.

Let me conclude this letter by assuring you that I do not intend to set up a poorly run loan program if this bill passes. Safeguarding the integrity of the program while meeting the public need is the goal. This will not mean that every processor gets financing under this program, but at the same time no processor with facilities in Alaska will automatically

be excluded. Decisions will be made on a case-by-case basis. The processor will first go to a financial institution or CFAB, which will originate and participate in the loan. The originator will be free to agree to commit to a participation or to decline it. If it agrees, the originator will invite us to participate, and we will in turn apply our independent judgment in deciding whether or not to make a commitment. The terms and conditions, the safeguards and protections, the duties and obligations will all be spelled out in great detail in the loan agreements, which we can and will insist on being to our satisfaction before we agree to participate. It is important that the statute preserve administrative flexibility to adapt, if appropriate, to the particular circumstances of the individual borrower. This bill, with the changes I have suggested, would provide a skeleton to support the program, and we will do our best to flesh it out into a healthy program.

Very truly yours,



Thomas K. Williams
Commissioner of Revenue

TKW:mll

cc: Senator Eliason
Senator Gilman