SB

280

COMMITTEE REPORT

HOUSE

3/10/81

(5)

FURTHER:

Date: _____

Mr. Speaker:

The Committee on STATE AFFAIRS has had SB 2(Sen

'An Act relative to credit unions.

under consideration and reports it back as follows:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for _____ [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

_____

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_____

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MEMBERS HAVING
OTHER RECOMMENDATIONS:

_____

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_____

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_____

CHAIRMAN

H 60 (Rev. 3/81)

SEN. PATRICK RODEY
CHAIRMAN
(907) 465-3717

SEN. BOB MULCAHY
SEN. JALMAR KERTTULA
MEMBERS

ALASKA STATE LEGISLATURE
SENATE BANKING COMMITTEE
POUCH V, JUNEAU 99811

SB 280: "An Act relating to credit unions."

Section 1: Declares the policy of the state regarding state-chartered credit unions. In addition, allows the division of banking to authorize for state-chartered credit unions, the same powers authorized by state-chartered institutions in other states, provided the division determines the powers serve a public purpose.

Section 2: Provides for state-chartered credit unions to fall under the "wild card" statute, AS 06.01.020. That statute allows the division of banking to authorize for state-chartered credit unions, the same powers authorized for federally-chartered credit unions, provided the division determines the powers serve a public purpose.

Section 3: Provides that the interest rate ceiling for state-chartered credit unions shall be the greater of 15 percent or the percent established under the state usury law, AS 45.45.010. This is the most important section of the bill, as it would allow state-chartered credit unions parity with federally-chartered credit unions. There are no state-chartered credit unions at this time, primarily because of this lack of parity. Once this act becomes law, it is expected there will be a number of conversions to state charter.

Sections 4-6: Make technical changes in the credit union act; in the case of sections 4-5 for clarity, and in section 6 to comply with federal regulations.

Section 7: Provides that state-chartered credit unions may, with the approval of the division of banking, seek insurance from other than the NCUA (National Credit Union Administration).

June 21, 1981
submitted by Senator Rodey

SEN. PATRICK RODEY
CHAIRMAN
(907) 465-3717

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MEMBERS

ALASKA STATE LEGISLATURE
SENATE BANKING COMMITTEE
POUCH V, JUNEAU 99811

SECTIONAL ANALYSIS: SB 278 "An Act relating to savings associations."

This bill proposes changes in chapter 30 of title 6 of the Alaska Statutes, the Alaska Savings Association Act. The changes are intended to provide parity for state-chartered savings associations.

* Section 1: Adds a declaration of policy which provides that the division of banking may, under certain conditions, allow our state-chartered savings associations the same powers possessed by state-chartered savings associations in other states.

* Section 2: Adds two powers to the list of general powers of savings associations: (1) conversion from a mutual to a stock association; and (2) conversion from a stock association to a commercial bank. The language is patterned after the language contained in AS 06.15.350 (9) and AS 06.45.240. For analogous provisions, see AS 06.05.162, AS 06.15.300-310 and AS 06.30.760-775. Although quite simple in form, the language leaves wide latitude for an association and the division of banking to work out the details of an appropriate conversion.

* Section 3: Accomplishes two changes: (1) removes dollar limits on residential loans thus providing parity with the federals; and (2) amends the loans-to-one-borrower-limitation; the language comes from the Model Savings Association Act.

* Section 4: Accomplishes three changes: (1) increases the loan-to-value limit from 80 percent to 90 percent on one-to-four family residences (parity with the federals); (2) extends the loan term to 40 years (parity with the federals); and (3) simplifies the insurance provisions to recognize the expanded role played in Alaska by AHFC.

* Section 5: Deletes reference to a loan term limit of 30 years, and specifies that loans for one-to-four family residences must be for units located within Alaska.

* Section 6: Adds a new section which specifies that an association may make loans for multi-family and commercial real estate with a loan-to-value limit up to 90 percent and a maturity not to exceed 40 years (parity with federals).

* Section 7: Expands the loaning capability of state-chartered associations by allowing them to make "other loans" in excess of 30 percent of assets provided there is a commitment for take-out by a secondary investor. This change will continue to assure the safety of the depositors while allowing the associations the opportunity to take advantage of unique Alaskan institutions like AIDA. This section also deletes reference to dollar limits, and increases allowable percentage investment in mobile home mortgages.

* Section 8: Adds a section defining lending standards. The language comes from the Model Savings Association Act.

* Section 9: Expands the associations' lending capabilities in the area of property improvement and consumer loans. Deletes reference to dollar limits. The changes are intended to provide parity with the federals.

* Section 10: Simplifies language regarding servicing (parity with the federals).

* Section 11: Technical amendment

* Section 12: Rewrites the section on investment in service corporations to provide parity with the federals.

* Section 13: Makes changes in the definition section of the chapter; increases the loan term limit to 40 years, and lengthens the time allowed for payback of the principal on an interim construction loan.

* Section 14: Adds two new definitions in keeping with changes proposed in this bill.

* Section 15: Repeals unduly restrictive and redundant sections of the chapter, at the direction of the division of banking.

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MEMBERS

ALASKA STATE LEGISLATURE
SENATE BANKING COMMITTEE
POUCH V, JUNEAU 99811

SB 19: "An Act relating to rates of interest; and providing for an effective date."

The primary purpose of this bill is to amend the usury statute, AS 45.45.010, (1) to reduce the number of loans on which the interest rate is set by law rather than by free market forces; and (2) to adjust the procedure by which the legal rate of interest is set, by making it more timely.

Section 1: Deletes language in the small loans act to provide for an interest rate ceiling on loans between $5,000 and $25,000 of the greater of 18 percent or eight points above the discount rate on a daily basis. It is important to note that under the terms of "most favored lender" provisions of the national bank act, this ceiling on interest rates is actually the one which applies to all financial institutions in Alaska on loans between $5,000 and $25,000.

Sections 2-3: Inserted at the request of the small loan companies, and with the approval of the division of banking, these sections provide that small loan companies will not be unfairly penalized if they make a mistake in computing the legal rate of interest, provided they correct the mistake within 30 days.

Section 4: Corrects an existing inequity in the law relating to Alaskan landowners whose land is taken from them by the state through eminent domain proceedings. Provides that the judgement shall include lawful interest - a rate substantially higher than the presently-allowable six percent. This section was included at the suggestion of the Supreme Court for the State of Alaska.

Sections 5-6: Amends usury statute to reduce from $100,000 to $25,000 the limits on loans subject to an interest rate ceiling, and provides for a daily rather than a quarterly computation of that ceiling.

Sections 7-8: Override the federal preemptions of state usury ceilings.

Once this bill becomes law, interest rate ceilings will be as follow:

* loans up to $5,000	AS 45.45.010
* loans from $5,000 - $25,000	AS 06.20.230
* loans over $25,000	set by competition

Introduced: 3/31/81
Referred: Labor & Commerce

IN THE SENATE BY RODEY AND STIMSON

SENATE BILL NO. 280 am

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWELFTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to credit unions."

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

* Section 1. AS 06.45 is amended by adding a new section to read:

Sec. 06.45.005. DECLARATION OF POLICY. In providing authority for the establishment of credit unions, it is the intent of the legislature to make available the benefits of credit unions which are cooperative, nonprofit corporations, encouraging thrift, creating a source of credit at fair and reasonable rates of interest, and providing an opportunity for their members to use and control their own organization on a democratic basis in order to improve their economic and social condition. For these purposes, the legislature intends by this chapter to vest in the Department of Commerce and Economic Development, in addition to other regulatory authority, the authority to allow by regulation those powers possessed by state-chartered credit unions in other states which the department determines have demonstrated will aid in the accomplishment of this declaration of policy.

* Sec. 2. AS 06.45.010(b) is amended to read:

(b) The commissioner may by regulation define the powers of state-chartered credit unions and adopt regulations to carry out the purposes of credit unions consistent with [FOR THE ADMINISTRATION OF] this chapter and AS 06.01.020.

* Sec. 3. AS 06.45.060(5)(A)(vi) is amended to read:

(vi) the rate of interest may not exceed the greater of 15 percent a year or the rate specified in AS 45.45.010(b);

[ONE PERCENT A MONTH ON THE UNPAID BALANCE INCLUSIVE OF ALL SERVICE CHARGES];

* Sec. 4. AS 06.45.060(5)(A)(x) is amended to read:

(x) the total dollar amount of real estate loans and mobile home loans outstanding may not exceed 25 percent of the assets [PAID-IN AND UNIMPAIRED CAPITAL AND SURPLUS] of the credit union without the written approval of the commissioner;

* Sec. 5. AS 06.45.060(5)(A)(xi) is amended to read:

(xi) a credit union with assets [A PAID-IN AND UNIMPAIRED CAPITAL AND SURPLUS] of less than $3,000,000 may make real estate loans with maturities in excess of 15 years only with the approval of the commissioner;

* Sec. 6. AS 06.45.060(6) is amended to read:

(6) receive from its members and from others payments on shares which may be issued at varying dividend rates, and payments on share certificates which may be issued at varying dividend rates and maturities, and establish share draft accounts, subject to terms, rates, and conditions as may be established by the board of directors of the credit union, within limitations prescribed by the commissioner;

* Sec. 7. AS 06.45.250 is amended to read:

Sec. 06.45.250. INSURANCE OF MEMBER ACCOUNTS. A credit union organized under this chapter shall, under regulations adopted by the commissioner, participate in insurance of member accounts under programs offered by the National Credit Union Administration Board or a program of comparable insurance approved by the commissioner.

- will is Kirkpatrick: State Banks Director (in favor)

"wildcard" bill covers: Banks S&L's credit union

Introduced: 3/13/81
Referred: Labor & Commerce and Judiciary

IN THE SENATE BY RODEY

SENATE BILL NO. 279

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWELFTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the general powers of the Department of Commerce and Economic Development."

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

* Section 1. AS 06.01.020 is amended to read:

Sec. 06.01.020. GENERAL POWERS OF DEPARTMENT. (a) Notwithstanding other provisions of this title, the [THE] commissioner may by regulation authorize financial institutions, except licensees subject to AS 06.20 or AS 06.40, to exercise any of the powers conferred or to be subject to any of the limitations imposed upon a federally chartered bank, trust company, savings association, federally chartered credit union, or other federally chartered institution doing business in this state which is subject to the regulations of the United States Comptroller of the Currency, the Federal Reserve Board, the Federal Home Loan Bank Board, the Federal Deposit Insurance Corporation, the National Credit Union Administrator, or the successor or successors of them, if the commissioner finds that the exercise of the power or imposition of the limitation both

(1) serves the public convenience and advantage; and

(2) equalizes and maintains the quality of competition between state-chartered financial institutions and corresponding federally chartered financial institutions.

(b) The authority granted to the commissioner by this section may not be limited by law unless that law expressly refers to this section.

* Sec. 2. AS 06.01.020(b) enacted in sec. 1 of this Act applies only to

statutes enacted after the effective date of this Act.

Introduced: 3/13/81
Referred: Labor & Commerce
and Finance

IN THE SENATE BY RODEY

SENATE BILL NO. 278

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWELFTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to savings associations."

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

* Section 1. AS 06.30 is amended by adding a new section to read:

Sec. 06.30.003. DECLARATION OF POLICY. In providing authority for the establishment and regulation of state-chartered associations, it is the intent of the legislature to make available the benefits of savings and loan associations, promote a sound and competitive association system, and encourage the practice of thrift, savings, investment, home financing, and the security of depositors in these associations. For the accomplishment of these purposes, the legislature intends by this chapter to vest in the department, in addition to other regulatory authority, the authority to allow by regulation those powers possessed by state-chartered associations in other states which the department determines have demonstrated will aid in the accomplishment of this declaration of policy.

* Sec. 2. AS 06.30.280(a) is amended by adding new paragraphs to read:

(20) convert from a mutual association to a stock association under a plan approved by the department in accordance with this chapter;

(21) convert from a stock association to a commercial bank under a plan approved by the department in accordance with AS 06.05.

* Sec. 3. AS 06.30.500(1) is amended to read:

(1) No investment in mortgages executed by any one mortgagor may exceed in the aggregate the net worth of the association or an amount equal to 10 percent of the savings liabilities of the associa-

tion, whichever is less, except that a mortgage investment in the aggregate amount of $100,000 or less may be made notwithstanding the provisions of this paragraph [TWO PERCENT OF THE ASSETS OF THE ASSOCIATION AT THE TIME THE INVESTMENT IS MADE, OR $90,000 ON A SINGLE-FAMILY DWELLING OR $90,000 PER UNIT ON A MULTIPLE-FAMILY DWELLING OR OTHER IMPROVED REALTY, WHICHEVER IS GREATER, OR OTHER MAXIMA ESTABLISHED BY THE COMMISSIONER BY REGULATION].

* Sec. 4. AS 06.30.500(2) is amended to read:

(2) No investment in any one mortgage may exceed 90 [TWO PERCENT OF THE ASSETS OF THE ASSOCIATION AT THE TIME THE INVESTMENT IS MADE, OR AS SPECIFIED IN (1) OF THIS SECTION, WHICHEVER IS GREATER, OR MORE THAN 80] percent of the appraised value of a one-to-four family residence securing a conventional loan; however, an association may make 95 percent of appraised value loans if the term of the loan does not exceed 40 [30] years, and the loan is secured by an amortized mortgage, deed of trust, or other instrument under the terms of which the installment payments are sufficient to amortize the entire principal of the loan within the period ending on the date of its maturity and, in addition, the loan is either

(A) insured by a mortgage insurer authorized to do business in Alaska with coverage in an amount acceptable to the department [INSURANCE IN AN AMOUNT EQUAL TO 20 PERCENT OF THE LOAN ISSUED BY A MORTGAGE INSURER AUTHORIZED TO DO BUSINESS IN ALASKA]; or

(B) secured in addition to the amortized mortgage by a savings account held by the lending institution in an amount equal to 15 [10] percent of the loan or other collateral acceptable to the department.

* Sec. 5. AS 06.30.500(3) is amended to read:

(3) No [EXCEPT AS PROVIDED IN (1) OF THIS SECTION, NO] investment may be made in a conventional loan secured by a mortgage on a one-to-four family residence unless the mortgaged property is located inside the state [AND THE MORTGAGE HAS A MATURITY NOT EXCEEDING 30 YEARS FROM THE DATE THE LOAN IS MADE].

* Sec. 6. AS 06.30.500 is amended by adding a new paragraph to read:

(7) No investment may be made in a conventional loan secured by a mortgage on a multiple-family dwelling or improved real estate if the loan exceeds 90 percent of the appraised value of the property or has a maturity exceeding 40 years from the date the loan is made.

* Sec. 7. AS 06.30.505 is amended to read:

Sec. 06.30.505. OTHER LOANS. (a) An association may use for loans other than those specified in AS 06.30.500 an aggregate amount not exceeding 30 percent of the assets at the time of use, or a larger amount if a loan made after 30 percent of the assets of the association have been used is made with a written commitment by a secondary investor to purchase the loan within a reasonable time and with the approval of the commissioner as follows:

(1) home loans, whether direct-reduction or not, which exceed 90 percent of the appraised value of [$90,000 EACH, REGARDLESS OF WHERE] the home property securing the loan [IS SITUATED];

(2) [deleted]

(3) home loans of any amount, which are not direct-reduction home loans, regardless of where the home property securing the loan is situated;

(4) other real estate loans, whether amortized or unamortized, regardless of amount or location of real estate securing the loan.

(b) [THE POWER REFERRED TO IN (a) OF THIS SECTION IS REFERRED TO

AS THE "30 PERCENT OF ASSETS LENDING POWER."] A subsequent reduction of savings liability does not affect outstanding loans made under this section [THE 30 PERCENT OF ASSETS LENDING POWER].

(c) An association may, subject to regulations adopted by the commissioner, invest not to exceed 20 [10] percent of its assets in loans secured by mobile homes.

(d) The loans referred to in (a) of this section may not exceed 90 [80] percent of appraised value of the property securing the loans except as provided in AS 06.30.500 and 06.30.510.

* Sec. 8. AS 06.30 is amended by adding a new section to read:

Sec. 06.30.507. LENDING STANDARDS. An association may not make a loan unless it has determined that the type, amount, purpose, and repayment provisions of the loan in relation to the resources and credit standing of the borrower support the reasonable belief that the loan is financially sound, will be repaid according to its terms, and is lawful.

* Sec. 9. AS 06.30.520 is amended to read:

Sec. 06.30.520. PROPERTY IMPROVEMENT AND CONSUMER [SMALL] LOANS. An association may make property improvement loans to property owners for maintenance, repair, modernization, improvement, and equipment of their properties. In addition, an association may make consumer loans. A property improvement or consumer loan may be made with or without security [, EXCEPT THAT A LOAN WITHOUT SECURITY MAY NOT EXCEED $4,500]. An association may not make property improvement loans exceeding 25 percent of its assets [. AN ASSOCIATION MAY MAKE SMALL LOANS TO MEMBERS WITH OR WITHOUT SECURITY NOT EXCEEDING $2,500. HOWEVER, AN ASSOCIATION MAY NOT MAKE] or consumer [SMALL] loans exceeding 40 [15] percent of its assets. [THE TOTAL AMOUNT OF LOANS MADE UNDER THIS SECTION MAY NOT EXCEED 25 PERCENT OF THE ASSETS OF THE ASSOCIATION.]

* Sec. 10. AS 06.30.540 is amended to read:

Sec. 06.30.540. SERVICING LOANS. An association may service loans [MORTGAGES AND TRUST DEEDS MADE BY THE ASSOCIATION AND LATER SOLD SUBJECT TO REGULATIONS AND RESTRICTIONS PRESCRIBED BY THE COMMISSIONER. THE MAXIMUM PRINCIPAL AMOUNT OF MORTGAGES AND TRUST DEEDS SERVICED BY AN ASSOCIATION AT ANY ONE TIME SHALL NOT EXCEED TWO-THIRDS OF THE AMOUNT OF THE SAVINGS LIABILITY OF THE ASSOCIATION].

* Sec. 11. AS 06.30.555(b)(2) is amended to read:

(2) the total of the balance of the loan secured by the first lien and the loan secured by the second lien does not exceed the maximum percentage of appraised value permitted under AS 06.30.500(2) [AS 06.30.505(d)];

* Sec. 12. AS 06.30.616 is repealed and reenacted to read:

Sec. 06.30.616. INVESTMENT IN SERVICE CORPORATIONS. An association may, subject to the approval of the commissioner, invest in capital stock, obligations, and securities of any service corporation organized under the laws of this state if: (1) the entire capital stock of the service corporation is available for purchase only by one or more savings and loan or banking institutions having their home offices in the state; and (2) substantially all of the activities of the service corporation are similar or incident to activities which may be engaged in by a service corporation in which a federal savings and loan association may invest or such other activities as the commissioner may approve. Investments in service corporations may not exceed five percent of the assets of an association.

* Sec. 13. AS 06.30.910(4) is amended to read:

(4) "direct-reduction loan" means a loan repayable in consecutive equal or unequal monthly installments beginning not later than 90 days after the date of the advance of the loan, which are sufficient

to retire the debt, interest, and principal within 40 [30] years; however, the initial loan contract may [SHALL] not provide for a monthly installment of an amount larger than a previous monthly installment and in the case of construction loans the first payment of the principal shall not be later than 24 [18] months after the date of the first advance and 36 months after the date of first advance if the construction loan is on improved real estate, and a direct reduction loan is an amortized loan;

* Sec. 14. AS 06.30.910 is amended by adding new paragraphs to read:

(28) "consumer loan" means a secured or unsecured loan to an individual for personal, family, or household uses;

(29) "multiple-family dwelling" means a dwelling for more than four families, the principal use of which is for residential purposes.

* Sec. 15. AS 06.30.240, 06.30.430, 06.30.500(4), and 06.30.535, are repealed.

MEMORANDUM State of Alaska

RE: WILD CARD POWERS

SB 279

TO: Julius J. Brecht
Division of Banking & Securities
Department of Commerce & Economic Development

DATE: August 4, 1980

FILE NO: J-99-096-80

TELEPHONE NO: 465-3600

FROM: WILSON L. CONDON
ATTORNEY GENERAL

By: Lucy J. Luarke for Lauri J. Adams
Lauri J. Adams
Assistant Attorney General

SUBJECT: Adoption of Proposed Regulations 3 AAC 05 Servicing Loans.

You have requested this department's advice regarding the addition of a new section to the Alaska Administrative Code, 3 AAC 05.165, relating to the requirements for servicing loans by savings associations. The regulation in question limits state-chartered savings associations to service mortgage and trust deeds in an amount greater than two-thirds the total savings liability of an association, provided that the debt servicing requirements which apply to federal savings and loan associations are complied with. The proposed regulation reads:

> 3 AAC 05.165 Servicing Loans. An association may service mortgages and trust deeds beyond two-thirds of the amount of savings liability of the association specified in AS 06.30.540 if the servicing by the association complies with the provisions of 12 C.F.R. § 545.11 as amended July 15, 1971.

This proposed regulation supersedes AS 06.30.540, which establishes the maximum amount of mortgages and trust deeds which may be serviced by a savings association. That statute provides that the amount of mortgages and trust deeds serviced by a savings association at any one time may not exceed two-thirds of the savings liability of the association. AS 06.30.540 reads:

> Servicing Loans. An association may service mortgages and trust deeds made by the association and later sold subject to regulations and restrictions prescribed by the commissioner. The maximum principal amount of mortgages and trust deeds serviced by an association at any one time shall not exceed two-thirds of the amount of the savings liability of the association.

As a general rule of law, the powers of an administrative agency to promulgate regulations are limited by the statutes conferring authority on the agency to implement the law. Thus, an administrative regulation is valid only if the particular matter which is the subject of the regulation is intended to be committed to agency discretion by the legislature. 1/ Where the statute is plainly inconsistent with what the regulation attempts to accomplish, it must be presumed that the legislature intended to withhold authority from the agency to provide otherwise by regulation.

This appears to be the situation in this instance. AS 06.30.540 specifically prohibits what the proposed regulation attempts to accomplish with regard to maximum limits on servicing of mortgages and trust deeds. The question remains, however, whether other provisions of the Banks and Financial Institutions Title, AS 6, confer authority on the commissioner, notwithstanding the express statutory limits in AS 06.30.540, to adopt regulations which are inconsistent with the statute.

AS 06.30.025, recently repealed re-enacted by Sec. 1, ch. 105, SLA 1980, describes the specific policies of the Savings Association Act which are to be implemented through the commissioner's rule-making authority. AS 06.30.025 provides:

> Declaration of Policy; Rule-Making Authority. (a) In giving authority for the establishment of associations, it is the intent of the legislature to make available to the people of the state the benefits of savings and loan associations, thereby promoting a sound and competitive association system, the practice of thrift, savings, investment, home financing, and the security of persons saving through associations.
>
> (b) The commissioner may by regulation define the powers of associations and adopt regulations to carry out the purposes of associations consistent with this chapter and AS 06.01.202.

1/ See, Hootch v. Alaska State-Operated School System, 536 P.2d 793, 807 N. 55 (Alaska 1975); Kelly v. Zamarello, 486 P.2d 906, 911 (Alaska 1970).

AS 06.30.030, as amended by sec. 3, ch. 105, SLA 1980, further provides:

> Standards for Regulations. The commissioner in the exercise of the power to issue regulations under this chapter shall act in the interests of a sound and competitive savings and loan system and in the interest of promoting and encouraging thrift, savings, investment, home financing, and the security of persons saving through savings associations.

Although these statutory provisions confer broad, discretionary authority on the commissioner to adopt regulations in the interests of a "sound and competitive" state savings association system, the commissioner is expressly limited in his administrative authority to adopt regulations that are "consistent with this chapter." Thus, the general rule-making authority of the commissioner under AS 06.30, the Savings Association Act, is insufficient to allow the adoption of proposed 3 AAC 05.165 relating to maximum limits on servicing of loans by associations, since it is in direct conflict with the maximums established in AS 06.30.540.

One other section of AS 6 must be also considered as a possible source of a grant of authority to the commissioner to adopt regulations varying the specific requirements of AS 06.30.540. AS 06.01.020 provides:

> The commissioner may by regulation authorize financial institutions, except licensees subject to ch. 20 of this title, to exercise any of the powers conferred upon a federally chartered bank, trust company, savings association, or other federally chartered institution doing business in this state which is subject to the regulations of the United States Comptroller of the Currency, the Federal Reserve Board, the Federal Home Loan Bank Board, the Federal Deposit Insurance Corporation or the succes or or successors of them, if the commissioner finds that the exercise of the power both:
>
> (1) serves the public convenience and advantage; and

(2) equalizes and maintains the quality of competition between state-chartered financial institutions and corresponding federally chartered financial institutions.

This provision was adopted by the legislature in 1978 for the purpose of expanding the powers of the commissioner to maintain a state-chartered banking system which would be competitive with federally-chartered financial institutions through regulations granting identical authority to state-chartered banks and financial institutions. The question which must be resolved in interpreting this statute is whether it is intended as a grant of administrative authority only where the Alaska statutes are silent with respect to the exercise of a particular type of function or whether it constitutes a broader grant of power which enables the commissioner to promulgate regulations superseding express statutory requirements whenever, (1) the regulations will serve the public convenience and advantage; and (2) will equalize the quality of competition between state and federally chartered financial institutions.

In analyzing the effect of AS 06.01.020 on other sections of Title 6, it is useful to review briefly the evolution of this provision in the Alaska Statutes and also similarly worded statutes adopted by other states. The concept of permitting the department to adopt regulations which allow state-chartered banks to function in the same manner as federal institutions originated in the 1951 version of the Banks and Financial Institutions Title. In § 2.104A of ch. 129, SLA 1951, which added section 06.05.005(3)(B) to the Alaska Statutes, the legislature provided that the department could authorize a bank "to engage in any banking activity in which a bank subject to the jurisdiction of the federal government may be authorized by federal legislation to engage" until the close of the next legislative session. Thus, this provision was intended to grant interim power to the commissioner to expand the authority of state-chartered banks only until the legislature had a chance to act on the matter in its next session. In 1970, this provision was amended by ch. 157, SLA 1970 to delete the limitation restricting the department's regulatory authority to the period ending with the close of the next legislative session. The judiciary committee report on the amendment explained that the change was necessary "to improve the competitive balance between state and national banks and to allow state-chartered banks to make loans and extend services to customers not authorized at the present time." 1970 H.J. 1085.

Section 54, ch. 169, SLA 1978, repealed AS 06.05.005(3)(B) of the Banking Code and added the new provision quoted above in AS 06.01.020 which authorizes the commissioner to adopt regulations to allow any state-chartered financial institution regulated under AS 06 (except licensees subject to ch. 20 of the title) to exercise any of the powers conferred upon similar federally chartered institutions. The apparent purpose of this new section was to extend the provisions previously applied only to commercial banks in AS 06.05.005(3)(B) expressly to cover mutual banks, trust companies and savings and loan associations regulated under Title 6. 2/

AS 06.01.020, as originally proposed in HCS CSSB 98 (Commerce) am. H, was modeled on a similar Oregon statute, and was intended to provide the department with the flexibility necessary to allow the state banking system to keep pace with new developments in the federal system. 3/ Statutes of this type are known generally as "wild card" provisions. Thirty-one other states have enacted similar provisions, with some variations, authorizing state administrative agencies to allow state banks to engage in any activity permitted national banks. 4/

Although AS 06.01.020, as originally proposed by the department, closely tracked Oregon's wild card statute in ORS § 706.555(1979), one significant deviation from the language of the Oregon statute is contained in Alaska's statute. Oregon law provides:

> §706.555. Notwithstanding any other provision of law, the superintendent may . . . make reasonable rules authorizing a financial institution to exercise any of the powers conferred upon a federally chartered bank . . . .

In the Alaska version of this provision, the "notwithstanding any other provision of law" language was deleted before the legislature acted on the bill.

2/ See, Memorandum of the Director of the Division of Banking, Securities and Corporations to the Committee dated June 9, 1978, summarizing the intent of this provision.

3/ See, the Department of Law's Memorandum to the Governor dated December 8, 1977, explaining the intent of the provision.

4/ See, 1977 State Banking Law Service, Profile of State Chartered Banking (Conference of State Bank Supervisors). See also, K. Scott, The Dual Banking System, A Model of Competition in Regulation, 30 Stan. L. Rev. 1, 36 (1977).

It is not clear from the legislative history of AS 06.01.020 whether the "notwithstanding" language was removed specifically to avoid the possibility that it would be construed as granting authority to the commissioner to adopt regulations contrary to other statutory provisions of the chapter. However, without that language, the statute gives no indication that it is intended to supersede all other requirements of state law relating to state chartered financial institutions. 5/

The silence of AS 06.01.020 on this point is particularly significant in light of the great variety of wild card statutes from other jurisdictions which on their face indicate exactly how broad a grant of authority is intended. For example, Florida's wild card statute reads:.

> 658.051. State Banks; competitive equality with national banks.--With the approval of the department, state banks subject to the Florida Banking Code may make any loan or investment or exercise any power which they could make or exercise if they were incorporated and operating in Florida as national banks under federal statutes and regulations. The provisions of this section may take priority over, and be given effect over, any other general or specific provisions of the banking code to the contrary, except for s. 659.062 and any other state statute governing the electronic transfer of funds. Nothing contained herein shall be construed to grant the power or right to establish any branch not otherwise specifically authorized by this code. (3 Fla. Stat. ch. 658 (1979)).

The language of this statute clearly expresses the legislative intent to allow the adoption of regulations which supersede specific statutory provisions. Similar language is also found in Hawaii's wild card provision which states:

5/ See, Warren v. Thomas, 568 P.2d 400, 403 (Alaska 1977) and Hafling v. Inlandboatmans Union of the Pacific, 585 P.2d 870, 876 (Alaska 1978) where the Alaska Supreme Court declined to construe later statutory provisions in a manner which would effect an implied repeal of former legislative enactments.

> The provisions of this section are in addition to, and not in limitation of, any other provision in this chapter, and the powers granted by this section may be exercised notwithstanding any other provision in this chapter . . . " . (Title 22, Hawaii Rev. Stat. ch. 405 (1976))

Since AS 06.01.020 does not contain language evidencing the legislature's intent to allow a state statute to be repealed by an administrative regulation, the grant of administrative authority must be interpreted as limited to promulgating regulations which do not effect a repeal of existing state statutes. Without an express grant of authority from the legislature, an administrator may not repeal statutes by regulation. Therefore, the wild card statute does not empower an administrator to promulgate regulations overriding earlier statements of legislative intent. In order to repeal an earlier statute by the enactment of a later, more general, statute, the legislative intent to override the earlier provisions must be clearly manifested. That is not the case in the instant wild card provision. As currently drafted, AS 06.01.020 does not create an express grant authority to override earlier statutory enactments, and therefore must be construed in harmony with the earlier statutory provisions.

LJL/ab

MEMORANDUM State of Alaska

TO: Willis Kirkpatrick
Director
Division of Banking, Securities
and Corporations
Department of Commerce and
Economic Development

DATE: February 19, 1981

FILE NO: J-66-321-81

TELEPHONE NO:

SUBJECT: "Wild Card" Legislation -- Amendments to AS 06.01.020

FROM: WILSON L. CONDON
ATTORNEY GENERAL

By: Arthur H Peterson
Assistant Attorney General

By means of an October 27, 1980 memo from your department's information officer, Katy Wallen, your predecessor, Julius Brecht, asked us to review the language of a draft of an amendment to AS 06.01.020. Julius and I have talked about this general subject several times on the telephone, but I have not written anything until now. This memo is not a thoroughly researched one, and should not be construed as an "opinion of the attorney general." It should be read in conjunction with Assistant Attorney General Lauri J. Adams' August 4, 1980 memorandum to Julius regarding a proposed regulation (3 AAC 05.165) on servicing loans. (Department of Law File Nos. J-99-096-80 and J-66-051-81.)

Here is Julius's draft, with a very slight rewording by me:

> Sec. 06.01.020. GENERAL POWERS OF DEPARTMENT. (a) Notwithstanding any other provision of this title, the [THE] commissioner may by regulation authorize financial institutions [, EXCEPT LICENSEES SUBJECT TO AS 06.20,] to exercise any of the powers conferred upon, and may by regulation impose upon financial institutions any of the limitations and service requirements imposed upon, a federally chartered bank, trust company, savings association, federally chartered credit union, or other federally chartered institution doing business in this state which is subject to the regulations of the United States Comptroller of the Currency, the Federal Reserve Board, the Federal Home Loan Bank Board, the Federal Deposit Insurance Corporation, the National Credit Union Administrator, or the successor or successors of them, if the commissioner finds that the exercise of the power both
>
> (1) serves the public convenience and advantage; and
>
> (2) equalizes and maintains the quality of competition between state-chartered financial institutions and corresponding federally chartered financial institutions.

(b) No statute enacted after the effective date of this subsection will be effective as a limitation on the authority of the commissioner under (a) of this section unless it expressly refers to this section.

(c) This section does not apply to licensees subject to AS 06.20 or 06.40.

The "notwithstanding" language makes clear that it is the legislative intent to have this authority supersede any statutory specification of a power, limitation, or requirement. The next underlined language broadens the commissioner's authority by expanding upon the kinds of statutes he can override by regulation. The new subsection (b) is intended to make clear that the legislature does not intend any future enactments to supersede the commissioner's authority unless they expressly say that they do so. The new subsection (c) merely relocates language which appeared near the beginning of subsection (a) and adds a reference to AS 06.40.

I cannot guarantee exactly how our supreme court will deal with this statute if it is amended as proposed. It is clear that our court does not like implied amendments or repeals; by requiring limitations on the commissioner's authority to be express, part of this amendment reinforces that position. It is also clear that our court readily accepts the notion of a delegation of law-making authority (i.e., for administrative regulations); this statute is consistent with that position. But it is clear that our court gives substantial weight to the procedural requirements for law-making, set out in Art. II of the Alaska Constitution, and this cuts against the amendment since it not only authorizes the commissioner to fill the gaps left by legislation it authorizes him to override legislation.

If the old cliche about one legislature not binding a future legislature were to be used in argument against subsection (b), the response might appropriately be that this is merely a rule of construction. In other words, rather than being a binding rule of substantive law, it could be treated as an expression of legislative intent. If a question arises in the future about the application of a statute which does not refer to this one, but which appears on its face to be a limitation on the commissioner's authority, the question for a court or an administrator would be whether the legislature intended that future enactment to be such a limitation. Reference to subsection (b) of this statute expresses the legislature's intent with regard to such a question, and thus would help to answer it. A statutory expression of legislative intent is perhaps of the best way of expressing that intent.

Our statutes already contain variations of the general idea contained in subsection (b). See, for example, AS 29.13.100 (limitations on home rule municipal powers), 44.62.280 (procedures for adopting administrative regulations), and 44.62.330(a) (procedures for administrative adjudication). And AS 17.12.090, for example, is somewhat similar to subsection (a) in that it authorizes the commissioner of health and social services to exempt from the coverage of AS 17.12 drugs which would otherwise be covered by that chapter. (Also see AS 17.12.040(b) and (c).)

WLC:AHP:cjs

cc: Katy Wallen
Information Officer
Department of Commerce
and Economic Development

responsibility for enforcing compliance with Alaska law. In the annotations supplied by the league, it is stated that, at least eight other states have exempted a "corporate central" from the requirement of this type of insurance, I would be interested in seeing how the other 42 states handle this issue.

f) AS 45.45.010(b). Usury Statute. The only misgiving I have over the proposed change is that a private individual who proposes to lend money to another individual may have some difficulty in finding out what the usury ceiling is on a given day. That is, that information would ultimately come from the Seattle Branch of the Federal Reserve Bank of San Francisco. Whether or not an individual could obtain that information timely would be one consideration. I suppose that the individual could get that information from a local bank. However, the only way the individual could be assured that his or her transaction does, in fact, comply with the state usury law would be to verify the information through an office of the Federal Reserve. At least under th present quarterly recalculation procedure, the public is aware, or has reasonable access to the maximum rate allowed under the state law. It should be noted that if nothing is done to the Alaska usury statute, then at least the portions dealing with business and agriculture loans and home mortgage lending may lapse under legislation enacted by Congress earlier this year.

g) AS 06.45.060. Powers of a Credit Union. The recommended addition to paragraph 6 of this section establishing share draft accounts appears to be unnecessary in that this department had already established this authority by regulation. However, I have not as yet seen a copy of the written policy statement of NCUA, which, purportedly, requires an amendment to the Alaska law to allow state-chartered credit unions to offer share drafts. However, aside from this point, I have no issue with the proposed change.

2. Explanation as to how the proposed "wildcard" amendment would work. The present 'wildcard" can be used where a present provision of AS 06 is unclear or where AS 06 is silent on an issue. The proposed amendment would allow

the "wildcard" to be used in addition in situations where, notwithstanding a provision of a chapter within AS 06, the Commissioner could, after making the appropriate findings required under the "wildcard," adopt regulations to allow a given type of financial institution, e.g., commercial bank, savings association, credit union, etc., to take advantage of certain innovations set out in the regulations or statutes governing the appropriate federally-chartered counterpart. For example, where there is a specified prohibition against certain activity, e.g., prohibiting a state-chartered savings and loan association from servicing more than two-thirds of its loans, or restricting the loan-to-value ratio of loans made by commercial and mutual banks to less than 90%, or specifying a definite interest ceiling for credit unions, the department could make findings of fact as required in AS 06.01.020 and adopt a regulation which incorporates the regulations of the appropriate federal agency which it applies in regulating the appropriate federally-chartered financial institutions. That is, a 95% loan-to-value ceiling for commercial banks, no restriction on servicing of loans by a savings association, or raising the interest ceiling for credit unions from 12% to 15% per annum.

3. The statistics from the 1970-1980 period on commercial banks and mutual banks have already been provided to the committee in the form of call reports and spread sheets. Information on credit unions can be obtained directly from the Alaska Credit Union League and the information on savings and loan associations may be obtained directly from the Alaska League of Insured Savings and Loan Associations.

4. Alaska's options, vis-a-vis, Federal Usury Preemption. In March 1980, the Congress enacted the Financial Institutions Deregulation and Monetary Control Act (PL96-221), a part of which preempts state usury laws throughout the country, if they are lower than a federally prescribed formula of five points above the Fed discount rate. That rate can vary daily. The Alaska law is similar; however, the rate is recalculated only once a quarter. There have been times during the past when the Alaska law was effective at the beginning of the quarter, but during a period of rapid increase in the Fed discount rate, the federal law preempted it during that three-month span. The options available to Alaska at this time, in light of this preemptive law are as follows:

   a) do nothing and, very likely, lose the opportunity, at some time in the future, to establish a usury ceiling in the context of business and agricultural loans or home mortgage loan restrictions; or