

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

sent w/sfc
version
6/17/81

CSHB 413

FISCAL NOTE

I. REQUEST
Bill/Resolution No. CSHB 413 (Judiciary)
Title An Act relating to the Alaska Commercial Fishing and Agriculture Bank
Requested by _____ Date 5/4/81

II. FISCAL DETAIL
Agency Affected Department of Commerce & Economic Development
Program Category Affected Public Protection
BRU, Program, or Subprogram(s) Affected Financial Institutions
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

IV. DATE 5/4/81 PREPARED BY Willis F. Kirkpatrick Director of Banking
AGENCY Dept. of Commerce & Economic Development
PHONE 465-2521

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

CSHB 413

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TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

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FULL TIME						
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IV. DATE 5/4/81 PREPARED BY Willis F. Kirkpatrick Director of Banking
 AGENCY Dept. of Commerce & Economic Development
 PHONE 465-2521
 Original: Legislative Finance
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)

2/1
HB 413

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. H B 413
 Title An Act relating to the Alaska Commercial Fishing & Agriculture Bank
 Requested by Rep. Brown Date 4/13/81

II. FISCAL DETAIL

Agency Affected Administration
 Program Category Affected General Government
 BRU, Program, or Subprogram(s) Affected Retirement

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL		-0-	-0-	-0-	-0-	-0-

FUNDING (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

This bill will result in no charge to the Retirement System. Employees of the Bank are now in PERS and all contributions are made by the Bank and its employees.

IV. DATE 4/13/81 PREPARED BY Ken Humphreys
 AGENCY Administration
 PHONE 465-4460

Original: Legislative Finance
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)
 Rep. Gardiner

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

HB 413

FISCAL NOTE

I. REQUEST

Bill/Resolution No. HB 413

Title An Act Relating to the Alaska Commercial Fishing and Agriculture Bank

Requested by _____ Date 4/7/81

II. FISCAL DETAIL

Agency Affected Department of Commerce & Economic Development

Program Category Affected Public Protection

BRU, Program, or Subprogram(s) Affected Financial Institutions

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
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TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

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GENERAL FUND						
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FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

IV. DATE 4/7/81

PREPARED BY Willis F. Kirkpatrick, Director of Banking
AGENCY Dept. of Commerce & Economic Development
PHONE 465-2521

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

Original sponsor: Gardiner

1 IN THE HOUSE

BY THE FINANCE COMMITTEE

2 SENATE CS FOR CS FOR HOUSE BILL NO. 413 (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 relating to the Alaska Commercial Fishing and
7 Agriculture Bank; and providing for an effective
8 date."

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

10 * Section 1. AS 44.81.010(a) is amended to read:

11 Sec. 44.81.010. ALASKA COMMERCIAL FISHING AND AGRICULTURE BANK.

12 (a) There is established the Alaska Commercial Fishing and Agriculture
13 Bank. [THE BANK IS A PUBLIC CORPORATION AND GOVERNMENT INSTRUMENTALITY
14 IN THE DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT BUT HAS A LEGAL
15 EXISTENCE INDEPENDENT OF AND SEPARATE FROM THE STATE.] The exercise by
16 the bank of the powers conferred by this chapter is considered to be
17 for a public purpose [AN ESSENTIAL GOVERNMENTAL FUNCTION OF THE STATE].
18 Except as otherwise provided in this chapter, the bank is subject to
19 the provisions of AS 10.15.005 - 10.15.600. The bank is exempt from
20 the provisions of the Alaska Banking Code (AS 06.05) in the exercise of
21 powers granted by this chapter.

22 * Sec. 2. AS 44.81.070(c) is amended to read:

23 (c) The president may hire employees of the bank reasonably
24 necessary for the efficient performance of the functions of the bank.
25 Subject to the approval of the board of directors, the president may
26 also contract for and engage the services of professional and technical
27 advisors. The board of directors shall prescribe the duties and compen-
28 sation of employees of the bank. Employees of the bank are not em-
29 ployees of the state and are not considered to be employees of a public

1 organization for the purposes of AS 39.30.150 -39.30.180 or AS 39.35.

2 * Sec. 3. AS 44.81.110 is amended to read:

3 Sec. 44.81.110. COMPENSATION OF BOARD MEMBERS. Members of the
4 board receive compensation and are entitled to per diem and travel
5 allowances at a rate determined by the board for each day the board
6 meets if they attend the meeting [AND ARE ENTITLED TO PER DIEM AND
7 TRAVEL ALLOWANCES AS PROVIDED BY LAW FOR MEMBERS OF STATE BOARDS AND
8 COMMISSIONS].

9 * Sec. 4. AS 44.81.160 is amended to read:

10 Sec. 44.81.160. PLEDGE OF THE STATE. The state pledges to and
11 agrees with any lender to the bank [THE HOLDERS OF THE BONDS ISSUED
12 UNDER THIS CHAPTER] and with the federal agency or regional institution
13 of the federal farm credit system which loans or contributes funds in
14 respect of a project, that the state will not limit or alter the rights
15 and powers vested in the bank by this chapter to fulfill the terms of
16 any contract made by the bank with the lender to the bank [HOLDERS] or
17 federal agency or regional institution of the federal farm credit
18 system, or in any way impair the rights and remedies of the lender to
19 the bank or federal agency or regional institution of the federal farm
20 credit system [HOLDERS UNTIL THE BONDS, TOGETHER WITH INTEREST ON THEM
21 WITH INTEREST ON UNPAID INSTALLMENTS OF INTEREST, AND ALL COSTS AND
22 EXPENSES IN CONNECTION WITH ANY ACTION OR PROCEEDING BY OR ON BEHALF OF
23 THE HOLDERS, ARE FULLY MET AND DISCHARGED]. The bank is authorized to
24 include this pledge and agreement of the state, insofar as it refers to
25 a lender to the bank [HOLDERS OF BONDS OF THE BANK] in a contract with
26 the maker of a loan [HOLDERS], and insofar as it relates to a federal
27 agency or regional institution of the federal farm credit system, in a
28 contract with a federal agency or regional institution of the federal
29 farm credit system.

1 * Sec. 5. AS 44.81.200 is amended to read:

2 Sec. 44.81.200. REPORTS AND PUBLICATIONS. The board of directors
3 shall publish an annual report to the bank's members [SHAREHOLDERS].
4 The report shall be made available to the public and shall include
5 financial statements audited by independent outside auditors, [A STATE-
6 MENT OF THE AMOUNT OF MONEY RECEIVED BY THE BANK FROM EACH SOURCE
7 DURING THE PERIOD COVERED,] a statement of the bank's investments, a
8 description of the bank's loan [INVESTMENT] activity during the period
9 covered by the report, an analysis of economic and other effects of
10 loan [INVESTMENT] decisions on the state's commercial fishing and
11 agriculture industries, and any other information which the board
12 believes would be of interest to the governor, the legislature, and the
13 public, or which the legislature requests the board to include. The
14 board may also publish such other reports as it considers desirable to
15 carry out its purposes.

16 * Sec. 6. AS 44.81.210(a) is amended by adding a new paragraph to read:

17 (22) accept the pledge of a limited entry permit as security
18 for a loan made under this chapter for the repair, restoration, or
19 improvement of a commercial fishing vessel or commercial fishing gear,
20 or for the construction or purchase of a commercial fishing vessel,
21 subject to the conditions set out in AS 44.81.230 - 44.81.250 on pledge
22 of limited entry permits.

23 * Sec. 7. AS 44.81.220 is amended to read:

24 Sec. 44.81.220. TRANSITION. Notwithstanding the provisions of
25 AS 10.15.005, upon [UPON] the repurchase of all the nonvoting, preferred
26 shares initially issued by the bank and purchased by agencies of the
27 state, the provisions of this chapter lapse and the bank may proceed to
28 operate solely as a private cooperative corporation under the terms of
29 its bylaws and [SUBJECT TO] the provisions of AS 10.15.010 - 10.15.600

1 [AS 10.15.005 - 10.15.600].

2 * Sec. 8. AS 44.81 is amended by adding new sections to read:

3 Sec. 44.81.260. DATA REGARDING RECORDS OF THE BANK. (a) Except
4 as provided in (b) of this section, the directors, officers, and em-
5 ployees of the bank shall hold in strict confidence all information
6 regarding the business records of the bank, including information as to
7 the character, credit standing, and property of members and applicants
8 for loans. They shall not exhibit or quote from the bank's business
9 records, including documents regarding personnel of the bank or pertain-
10 ing to members or applicants for loans.

11 (b) The requirements of (a) of this section are subject to the
12 following exceptions:

13 (1) The legislative audit division has access to the records
14 of the bank to perform an audit authorized under AS 44.81.270.

15 (2) The board of directors or the president of the bank
16 shall supply statistical and other impersonal information pertaining to
17 members, applicants, and loans in response to requests from the legisla-
18 ture or a state agency or members of the federal farm credit system and
19 may provide similar information upon request to a responsible private
20 organization.

21 (3) Information concerning members may be given for the
22 confidential use of a member of the federal farm credit system or other
23 financial institution in contemplation of the extension of credit or
24 the collection of loans.

25 (4) Impersonal information based solely on transactions or
26 experience with a member, such as amounts of loans, terms, and payment
27 records may be given by the bank for the confidential use of a reliable
28 organization in contemplation of the extension of credit.

29 (5) Credit information concerning a member may be given where

1 the member consents to it in writing.

2 (6) In litigation between a member (or his successor in
3 interest) and the bank, any competent evidence may be introduced with
4 respect to relevant statements made orally or in writing by or to the
5 member or his successor.

6 Sec. 44.81.270. POWERS OF LEGISLATIVE AUDITOR TO AUDIT BANK. The
7 legislative auditor may cause the bank to be audited in the manner and
8 under the conditions prescribed by AS 24.20.271 for audits performed by
9 the legislative audit division. The legislative audit division has
10 free access to all books and papers of the bank which relate to its
11 business and books and papers kept by a director, officer, or employee
12 relating to or upon which a record of its business is kept, and may
13 summon witnesses and administer oaths or affirmations in the examination
14 of the directors, officers, or employees of the bank or any other
15 person in relation to its affairs, transactions, and conditions, and
16 may require and compel the production of records, books, papers, con-
17 tracts, or other documents by court order if not voluntarily produced.

18 Sec. 44.81.280. PROHIBITION ON RELEASE OF INFORMATION. The
19 legislative auditor and his employees may not disclose information
20 acquired by them in the course of an audit of the bank concerning the
21 particulars of the business or affairs of a borrower of the bank or
22 another person, unless the information is required to be disclosed by
23 law or under a court order.

24 * Sec. 9. FINDINGS. The legislature finds that

25 (1) the Alaska Commercial Fishing and Agriculture Bank has been
26 established in the form of a cooperative for the purpose of providing capital
27 to Alaska's commercial fishermen and farmers and assisting in the development
28 of fishing and agriculture in the state;

29 (2) the state has invested \$32 million in the bank to assist in

1 accomplishing its purposes;

2 (3) the state has an interest in assuring that its money is being
3 used in a manner so that the bank will accomplish those purposes which the
4 legislature intended in establishing the bank;

5 (4) audit of the bank by the state can best be accomplished by
6 use of the legislative audit division to complement the audit conducted by
7 the bank's independent outside auditors;

8 (5) there is an expectation of privacy guaranteed by the Consti-
9 tution of the State of Alaska which inures to the members of the bank, both
10 as borrower and as capital shareholder with an equity interest in the bank,
11 which can be protected through adherence to established methods of bank
12 examination.

13 * Sec. 10. AS 44.81.080, 44.81.120, 44.81.130, 44.81.140, 44.81.150,
14 44.81.170, and 44.81.180 are repealed.

15 * Sec. 11. This Act takes effect immediately in accordance with AS 01.-
16 10.070(c).

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Alaska Commercial Fishing and Agriculture Bank

Testimony - May 28, 1981

Senate Finance Committee

Mr. Chairman, Senators:

My name is Paul Huppert and I am vice chairman of the board of directors of the Commercial Fishing and Agriculture Bank.

I appreciate the opportunity of presenting CFAB's position on the proposed legislation before you.

To understand CFAB's development and current operations one must also understand that the instructions given to the original board of directors of CFAB were to form and to operate a private, self-governed lending co-operative. One must also understand that those original directors were not involved in the passage of the legislation and had no economic interest in the organization's creation.

This mandate to ~~to~~ the board to create a private organization is still clear in the minds of those that attended the first meeting of the board. Those in attendance included representatives of the Farm Credit System, the Legislature, the Governors Office and representatives from various state departments. They expressed that the intent was for the state to provide liberal early support to enable the co-operative to get off to a quick start but from that point forward CFAB was to stand on its own.

These identical instructions were given to the co-operative's original management staff. It is on this basis that both the Board of Directors and the Management have structured CFAB into its current form of organization. It is an organization intended to survive and evolve in form and structure to meet the needs of the changing industries it serves. It operates today to serve not only the present but also the future. Many of its activities are undertaken not only to build

industry expertise but also the framework of acceptance among both the national and international markets with which it must deal within the coming few years.

Having been patterned after the Farm Credit System and relying upon the Bank for Co-operatives for its principal source of funds, and additionally, having recruited its founding management from large commercial banks, it is natural that we have tended to pattern our operations after theirs in terms of personnel policies, levels and types of expenses, forms of activities and emphasis on forward planning. These differ markedly from the formation and operation of a state agency or other government programs. CFAB also differs in that it does not seek yearly appropriations from the legislature but must provide for its own administrative expenses from sound business practices that produce necessary funds for its operations and are responsible to its member shareholders.

In addition to the financial help provided in the form of stock purchases, the original legislation attempted to provide the co-operative with expanded sources of cheap outside money through access to the bond market. This necessitated bonding language, and tax exemptions being added to the statute which in turn gave CFAB the aura of closer state ties. While well intentioned, the language did not accomplish its purpose; but rather clouded public perception of the organization, created a conflict between public and private responsibilities imposed by dual ownership, and placed the Board of Directors in the nearly unresolvable position of violating one responsibility or the other. This conflict surfaced in the challenge for salary and bonus information and resulted in the board abiding by the original instructions while seeking the legislation correction before you. The conflicting statute and the resulting unfavorable coverage more importantly put our relationship with the Farm Credit System in jeopardy. This is our principal source of loan funds and central to our existence. By law they can only deal with member owned and member controlled co-operatives. They have provided oral and written testimony to this effect to both house and senate committees.

The bill before you seeks to remove extraneous bonding language and in so doing

to clarify CFAB's existence as a private co-operative.

An ammendment to the original bill submitted by the United Fishermen of Alaska allows CFAB to take limited entry permits as collateral for related fishing loans. It was recently discovered that CFAB's legislation was not ammended at the time the Limited entry statute was ammended creating this ommission. For most fishermen the limited entry permit is their most valuable asset. Their inability to use it as collateral for fishing related loans is a serious detriment.

We realize that the involvement of peripheral organizations such as CFAB in the state's PERS program is under study in both the house and the senate. The result of that study my remove CFAB from the program in any event. We ask that CFAB not be singled out before that study is completed. If it is deemed that CFAB should not participate in the PERS program, we request that we be given until the end of 1981 to secure alternate coverage.

Finally, the legislation before you addresses the State's oversight of CFAB

The Board and the Management have never felt that the State should be precluded from oversight. With \$32 million invested, the need to be assured of CFAB's economic viability and ability to repay the states investment, as well as, its success in addressing the needs for which it was created are both accepted and supported. Those needs are partially addressed in the original legislation through provision for two state seats on the Board of Directors and the requirement that an annual audit be performed by an independent firm of national CPA's and reported to the governor and the legislature. We have recognized the need for and desire for seperate inspections. At the same time the Board is keenly aware of the Co-operatives need for confidentiality of its records, customers, and business plans.

We, therefore, have suggested that CFAB be audited by the State Banking Department.

It is felt that they are more familiar with an organization such as CFAB and complete their examinations against standards of performance more closely applicable to a lending co-operative. This recommendation has the concurrence of the bank for co-operatives. The banking department has agreed to complete the audit and CFAB has agreed to bear the expense.

We have also suggested that CFAB present statistical data on areas of performance of interest to members of the legislature; such as, loan amounts loan size, geographic disbursement, approval and declination rates, and the various purpose of loans. If desired, this material could be audited by our CPA's prior to submission.

We are aware that some legislators want to retain legislative audit rather than using the bank auditors. While we do not want to take serious issue with this desire, we would like to comment on our concerns. The Board of directors is seriously concerned with confidentiality as it applies to our borrowers, shareholders, and our ability to conduct business. We are not concerned with confidentiality to hide anything from the public.

The imposition of a legislative audit without some control over the information obtained by the auditor and disseminated by him, places greater control and power in the hands of the auditor than in the hands of the Board of Directors. The directors of the co-operative are prohibited from disclosing information about the affairs of the organization; the auditor makes them all public. It is the board of directors that represent the shareholders--including the state of alaska, and it is the private shareholders that bear the entire risk of the operation. It seems more prudent to place the right of disclosure of a legislative audit, if one is needed, in the hands of the Budget and Audit

Committee, after examination of the audit and the board's reply, according to the conditions imposed upon normal bank audits. The audit document itself is a report; the evaluation of that report should rest with the committee. This is the practice with audits applied to other lenders.

As a point of current information, CFAB is completing its 13th month of operation with 206 members and an increase of 129 from year's end. These 206 members have collectively invested nearly 4 1/2 million dollars of their own money in their co-operative. Currently these 206 member/shareholders represent total loan volume of 30 million dollars. We expect to double the number of members by the end of this year and to reach a peak loan volume of \$80 million by the same time.

I am pleased to report that CFAB has completed its first repurchase of the states class C stock. Ten percent of the original \$2 million has been repurchased. The Board is keenly aware that our mandate is to repurchase the entire \$32,000,000 within 20 years and we will accomplish this in the most timely manner possible.

In conclusion, I would like to say that I have been a director of a telephone co-operative for 15 years and am currently the president of the Board. We have at this time \$35,000,000 of federal REA moneys invested in that co-operative. That investment is supervised by submission of an audit completed by independent CPA's selected by the co-operative but approved by officials of the REA.

Thank you for your time and consideration.

JAMES L. FAIKS

April 29, 1981

Senator Arliss Sturgulewski
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Arliss:

Jan and I are ~~opposed to SB388~~ regarding CFAB now in the Senate Resources Committee.

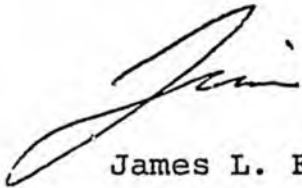
CFAB is a business created and funded by the state and is actively competing with the private sector. Any legislation involving CFAB should be to curtail its damaging activities, not to promote it.

CFAB has been given the following advantages: state capitalization, tax exemption, employee benefits, regulation free, lower interest rates. They have a tremendous and unfair advantage.

CFAB must be prohibited from making direct loans, and instead provide secondary loans as was the original intent.

An extremely dangerous precedent is at stake: should the state set up businesses to directly compete with its citizens? I think not.

Sincerely,



James L. Faiks

JLF/dan

AMENDMENT #2

OFFERED IN THE HOUSE:

BY: FANNING

TO: Committee Substitute HOUSE BILL No. 413 (JUD)

SENATE BILL No. _____

PAGE: 6

LINE: 5

Insert new section 9 and renumber succeeding sections.

Section 9 AS 44.81.210 (a)(1) is amended to read:

(1) purchase or insure [MAKE] variable rate or fixed rate loans to individuals who are residents and who are engaged in commercial agriculture or fishing, including harvesters, processors, suppliers and marketers, or to corporations, partnerships or joint ventures engaged in commercial agriculture or fishing, the majority interest of which is beneficially owned by residents of the state and a majority of the owners of which are residents of the state, if the recipient of the loan is a member of the bank; however, the bank may purchase or insure [MAKE] a loan under this paragraph to a corporation, partnership, or joint venture for the purchase of a new or existing fishing vessel or for the repair or renovation of an existing fishing vessel, the primary purpose of which is to commercially harvest fishery resources, only if the corporation, partnership, or joint venture is wholly owned and controlled by residents of the state and if the recipient of the loan is a member of the bank.

Fanned

Original sponsor: Gardiner

Offered: 4/29/81
Referred: Rules

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 413 (Judiciary) am
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 TWELFTH LEGISLATURE - FIRST SESSION

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16 the bank of the powers conferred by this chapter is considered to be
17 for a public purpose [AN ESSENTIAL GOVERNMENTAL FUNCTION OF THE STATE].
18 Except as otherwise provided in this chapter, the bank is subject to
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20 the provisions of the Alaska Banking Code (AS 06.05) in the exercise
21 of powers granted by this chapter.

22 * Sec. 2. AS 44.81.070(c) is amended to read:

23 (c) The president may hire employees of the bank reasonably
24 necessary for the efficient performance of the functions of the bank.
25 Subject to the approval of the board of directors, the president may
26 also contract for and engage the services of professional and technical
27 advisors. The board of directors shall prescribe the duties and
28 compensation of employees of the bank. Employees of the bank are not
29 employees of the state but are considered to be employees of a public

1 organization for purposes of AS 39.30.150 - 39.30.180 and AS 39.35.
2 The State of Alaska will not incur any liability for contributions to
3 the public employees retirement system for the bank or its employees.

4 * Sec. 3. AS 44.81.110 is amended to read:

5 Sec. 44.81.110. COMPENSATION OF BOARD MEMBERS. Members of the
6 board receive compensation not to exceed \$250 as [AT A RATE] determined
7 by the board for each day the board meets if they attend the meeting
8 [AND ARE ENTITLED TO PER DIEM AND TRAVEL ALLOWANCES AS PROVIDED BY LAW
9 FOR MEMBERS OF STATE BOARDS AND COMMISSIONS].

10 * Sec. 4. AS 44.81.160 is amended to read:

11 Sec. 44.81.160. PLEDGE OF THE STATE. The state pledges to and
12 agrees with any lender to the bank [THE HOLDERS OF THE BONDS ISSUED
13 UNDER THIS CHAPTER] and with the federal agency or regional institution
14 of the federal farm credit system which loans or contributes funds in
15 respect of a project, that the state will not limit or alter the rights
16 and powers vested in the bank by this chapter to fulfill the terms of
17 any contract made by the bank with the lender to the bank [HOLDERS] or
18 federal agency or regional institution of the federal farm credit
19 system, or in any way impair the rights and remedies of the lender to
20 the bank or federal agency or regional institution of the federal farm
21 credit system [HOLDERS UNTIL THE BONDS, TOGETHER WITH INTEREST ON THEM,
22 WITH INTEREST ON UNPAID INSTALLMENTS OF INTEREST, AND ALL COSTS AND
23 EXPENSES IN CONNECTION WITH ANY ACTION OR PROCEEDING BY OR ON BEHALF OF
24 THE HOLDERS, ARE FULLY MET AND DISCHARGED]. The bank is authorized to
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26 a lender to the bank [HOLDERS OF BONDS OF THE BANK] in a contract with
27 the maker of a loan [HOLDERS], and insofar as it relates to a federal
28 agency or regional institution of the federal farm credit system, in a
29 contract with a federal agency or regional institution of the federal

1 farm credit system.

2 * Sec. 5. AS 44.81.200 is amended to read:

3 Sec. 44.81.200. REPORTS AND PUBLICATIONS. The board of direc-
4 tors shall publish an annual report to the bank's members
5 [SHAREHOLDERS]. The report shall be made available to the public and
6 shall include financial statements audited by independent outside
7 auditors, [A STATEMENT OF THE AMOUNT OF MONEY RECEIVED BY THE BANK FROM
8 EACH SOURCE DURING THE PERIOD COVERED,] a statement of the bank's
9 investments, a description of the bank's loan [INVESTMENT] activity
10 during the period covered by the report, an analysis of economic and
11 other effects of loan [INVESTMENT] decisions on the state's commercial
12 fishing and agriculture industries, and any other information the board
13 believes would be of interest to the governor, the legislature and the
14 public. The board may also publish such other reports as it considers
15 desirable to carry out its purposes.

16 * Sec. 6. AS 44.81.210(a) is amended by adding a new paragraph to read:

17 (22) use Alaska limited entry permits as security for loans
18 under (1) of this subsection for the repair, restoration, or upgrading
19 of existing vessels and gear, for the purchase of entry permits and
20 gear, and for the construction and purchase of vessels; the provisions
21 of AS 44.81.230 - 44.81.250 apply to Alaska limited entry permits
22 pledged as security for loans in accordance with this paragraph.

23 * Sec. 7. AS 44.81 is amended by adding new sections to read:

24 Sec. 44.81.260. DATA REGARDING RECORDS OF THE BANK. (a) Except
25 as provided in (b) of this section, the directors, officers, and em-
26 ployees of the bank shall hold in strict confidence all information
27 regarding the business records of the bank, including information as to
28 the character, credit standing and property of members and applicants
29 for loans. They shall not exhibit or quote from the bank's business

1 records, including documents regarding personnel of the bank or pertain-
2 ing to members or applicants for loans.

3 (b) The requirements of (a) of this section are subject to the
4 following exceptions:

5 (1) Examiners and other authorized representatives of the
6 commissioner of commerce and economic development and other authorized
7 regulatory agencies have free access to all information, records and
8 files.

9 (2) The board of directors or the president of the bank
10 shall supply members' names and their loan amounts and the salaries,
11 benefits and bonuses of all employee positions and statistical and
12 other impersonal information pertaining to members, employees, and
13 loans in response to requests from the public.

14 (3) Information concerning members may be given for the
15 confidential use of a member of the federal farm credit system or other
16 financial institution in contemplation of the extension of credit or
17 the collection of loans.

18 (4) Impersonal information based solely on transactions or
19 experience with a member, such as amounts of loans, terms, and payment
20 records may be given by the bank for the confidential use of a reliable
21 organization in contemplation of the extension of credit.

22 (5) Credit information concerning a member may be given when
23 the member consents to it in writing.

24 (6) In litigation between a member (or his successor in
25 interest) and the bank, any competent evidence may be introduced with
26 respect to relevant statements made orally or in writing by or to the
27 member or his successor.

28 Sec. 44.81.270. POWERS OF COMMISSIONER OF COMMERCE AND ECONOMIC
29 DEVELOPMENT TO EXAMINE BANK. The commissioner of commerce and economic

1 development may cause the bank to be examined in the manner and under
2 the conditions prescribed by the Alaska Banking Code (AS 06.05) for
3 examination of state banks. The commissioner or his examiner have free
4 access to all books and papers of the bank which relate to its business
5 and books and papers kept by a director, officer, or employee relating
6 to or upon which a record of its business is kept, and may summon
7 witnesses and administer oaths or affirmations in the examination of
8 the directors, officers, or employees of the bank or any other person
9 in relation to its affairs, transactions, and conditions, and may re-
10 quire and compel the production of records, books, papers, contracts,
11 or other documents by court order if not voluntarily produced.

12 Sec. 44.81.280. PROHIBITION ON RELEASE OF INFORMATION. The
13 commissioner of commerce and economic development, his examiner, and
14 his employees may not divulge information acquired by them in the
15 process of examination conducted under AS 44.81.270, except insofar as
16 the information is necessary by law or under court order.

17 * Sec. 8. FINDINGS. The legislature finds that

18 (1) the Alaska Commercial Fishing and Agriculture Bank has been
19 established in the form of a cooperative for the purpose of providing
20 capital to Alaska's commercial fishermen and farmers and assisting in the
21 development of fishing and agriculture in the state;

22 (2) the state has invested \$32 million in the bank to assist in
23 accomplishing its purposes;

24 (3) the state has an interest in assuring that its money is being
25 used in a manner so that the bank will accomplish those purposes which the
26 legislature intended in establishing the bank;

27 (4) audit and examination of the bank by the state can best be
28 accomplished by use of bank examiners of the Department of Commerce and
29 Economic Development to complement the audit conducted by the bank's inde-

1 pendent outside auditors;

2 (5) there is an expectation of privacy guaranteed by the Consti-
3 tution of the State of Alaska which inures to the members of the bank, both
4 as borrower and as capital shareholder with an equity interest in the bank,
5 which can be protected through adherence to established methods of bank
6 examination.

7 * Sec. 9. AS 44.81.080, 44.81.120, 44.81.130, 44.81.140, 44.81.150,
8 44.81.170, 44.81.180, and 44.81.220 are repealed.

9 * Sec. 10. This Act takes effect immediately in accordance with AS 01.-
10 10.070(c).

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SCS CS HB 413 (FIN.)

"An Act relating to the Alaska Commercial Fishing and Agriculture Bank; and providing for an effective date."

1. Attached is a summary provided by CFAB of SB 388/HB 413 as introduced by the sponsor.
2. The Senate Resources Committee added two amendments, one of a technical nature. The other amendment allows CFAB to use limited entry permits as security for loans for vessels, gear, and permits.
3. The suggested Senate Finance Committee substitute offers changes to the Senate Resources Committee bill. The changes, detailed on the attached page, are for three purposes.
 - A. First, the original changes offered to CFAB's enabling legislation identify the bank solely as a "private cooperative," no longer an "instrumentality of the state," and not subject to the Banking Code or to legislative oversight. The rationale for the amendments proposed for SB 358/HB 413 are that so long as CFAB is capitalized by \$32 million of the State's money, the Legislature has a responsibility to the people of the State to see that those funds are used for the public purposes for which they were appropriated. At CFAB's request, audit by the Division of Legislative Audit was substituted for audit by the Department of Commerce and Economic Development.
 - B. Secondly, coverage of CFAB employees by the PERS system is deleted. This was done for two reasons: if CFAB is a private cooperative and not a public agency, it does not fit the definition for eligibility to PERS and, if allowed to remain in PERS, could jeopardize the tax exempt status of PERS.
 - C. The third amendment changes the existing "transition" provision, so that after the State's investment is returned, the bank will conduct business under its own bylaws and the State Cooperative Act, exclusive of the section prohibiting banking by cooperatives.

Interest groups, CFAB Board members, and CFAB's attorney, as well as the Vice President of The Spokane Bank for Cooperatives (CFAB's federal funding source) have all reviewed the amendments proposed in SCS CS HB 413 (Fin) and have raised no serious objections.

Attachment

ADDITIONS TO CS SB 388 (Res) proposed in SCS CSHB 413 (Fin)

Page 1, line 28 and following: CFAB employees are removed from coverage by PERS

Page 3, line 13: addition of "or which the legislature requests the board to include."

Page 3, line 24 and following: Inclusion and correction of "transition" provision.

Page 5, line 6 and following: substitution of Legislative Audit Division for Department of Commerce and Economic Development as auditors.

Page 5, line 19: substitution of Legislative Audit Division for Department of Commerce and Economic Development.

Page 6, line 6: substitution of Legislative Audit Division for Department of Commerce and Economic Development.

SUMMARY OF A BILL CONCERNING THE
ALASKA COMMERCIAL FISHING AND AGRICULTURE BANK
AND RELATING TO THE RELATIONSHIP OF THE BANK WITH THE STATE

By Frank Homan, Member, Board of Directors

The Bill now before the Legislature as SB 388, is designed to make clear what many believe to be the intent of the original drafters of the legislation which created the Alaska Commercial Fishing and Agriculture Bank ("CFAB") i.e., that CFAB was intended to exist as a private, cooperative corporation while filling a crucial need of the State in making capital available to commercial fishermen and farmers, thereby assisting with the development of fishing and agriculture in the state.

Unfortunately, the founders of CFAB apparently also hoped to create an entity with the ability to raise capital by issuing tax-exempt bonds. Thus, they include many features in what is now AS 44.81 which are common and essential to legislative acts which create authorities of the State which are designed to raise capital in the tax-exempt market. Among such authorities in Alaska are the Alaska Industrial Development Authority, Alaska Municipal Bond Bank, the Alaska Housing Finance Corporation and the Alaska Power Authority. The effect of such "bonding" language has been confusion as to the status of CFAB. Is it an instrumentality of the State or a private cooperative institution? Recent events indicate that the distinction should now be made clear.

In any event, the State has never had the form of control over CFAB so that CFAB could be considered a "constituted

authority" as required by Section 103 of the Internal Revenue Code and the Treasury Regulations thereunder for the issuance of tax-exempt bonds. Little is, therefore, lost by removal of the language in AS 44.81 intended to assist the sale of CFAB bonds. This Bill, of course, retains all of CFAB's ability to raise capital by contracting other types of debt.

A section by section summary of the proposed legislation follows:

Section 1 of the Bill makes it clear that CFAB serves a public purpose (filling an unmet need in the state by providing capital to commercial fishermen and farmers so that Alaska's fishing and agriculture industries may develop), while removing language from AS 44.81.010(a) which seems to indicate that CFAB is some kind of an instrumentality of the State. Language added to AS 44.81.010(a) also makes it clear that CFAB is not engaged in "banking" as contemplated by the Alaska Banking Code, as it seems clear that the Legislature intended that CFAB serve a different function than that of the commercial banks in the state. Regulation under the Alaska Banking Code would be inappropriate.

Section 2 clarifies the status of employees of CFAB. They are not employees of the State, but it does seem desirable, as with employees of many political subdivisions of the State, that CFAB employees be allowed to avail themselves of membership in the Public Employees Retirement System and the supplementary employee benefits on withdrawal from social security (to the extent that they may be eligible for the latter program).

Section 3 makes certain that members of the CFAB Board of Directors continue to be eligible for per diem and travel allowances.

Section 4 of the Bill amends AS 44.81.160, Pledge of the State, by removing a number of references to bonds and holders of bonds, while retaining the State's pledge to other creditors of CFAB that it will not take an action which might be considered to jeopardize the terms of a CFAB contract with that creditor.

Section 5 of the proposed Bill contains two housekeeping matters which are not necessarily connected with the purposes of the other amendments proposed in the Bill. The first of these is a change in terminology from "shareholders" to "members" which was overlooked in legislation passed by the Second Session of the Eleventh Legislature. The second change is an attempt to clarify the information which the Legislature expects will be contained in the annual report of CFAB. This change has been suggested by, among others, CFAB's independent outside auditors and as proposed uses language more appropriate to CFAB's activities.

Section 6 provides for confidentiality of CFAB's records while allowing for necessary disclosures to various agencies and government groups. It also provides for an audit of CFAB by the bank examiners. This is designed to provide for audit oversight at the State level.

Section 7 adds legislative findings necessary to establish intent and legislative history.

Section 8 repeals the several sections listed below:

AS 44.81.080 which classified CFAB employees in the exempt service.

AS 44.81.120, AS 44.81.130, AS 44.81.140, AS 44.81.150 which detailed the sale of tax-exempt bonds.

AS 44.81.170, AS 44.81.180 which classified CFAB as exempt from taxation and allows state agencies to purchase CFAB bonds.

AS 44.81.220 which provided that after repayment to the State CFAB would revert to the cooperative statutes. Removal of that will allow CFAB to continue to operate under this statute.