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COMMITTEE REPORT  
SENATE

FURTHER: Finance

4/3/81

Date: \_\_\_\_\_

Mr. President:

The Committee on RESOURCES has had SB 388

Alaska Commercial Fishing and Agriculture Bank

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass  do not pass
  - do pass with attached amendments(s) *with individual bills.*  same title
  - replace with CS for \_\_\_\_\_  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

*[Handwritten signature]*  
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MEMBERS HAVING  
OTHER RECOMMENDATIONS:

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*[Handwritten signature]*  
 \_\_\_\_\_  
 CHAIRMAN

# Alaska State Legislature

BETTYE FAHRENKAMP, CHAIRMAN  
VIC FISCHER, VICE-CHAIRMAN  
BRAD BRADLEY  
DICK ELIASON  
DON GILMAN  
BOB MULCAHY  
ARLISS STURGULEWSKI



POUCH V  
STATE CAPITOL  
JUNEAU, ALASKA 99811  
(907) 465-3634  
(907) 465-3835

## Senate

### Committee on Resources

May 6, 1981  
1:30 p.m.

Beltz Room  
211 - Capitol

#### MEMBERS PRESENT

Senator Fahrenkamp  
Senator Fischer  
Senator Bradley  
Senator Mulcahy  
Senator Gilman

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#### Hearing:

- SB 388 An Act relating to the Alaska Commercial Fishing and Agriculture Bank
- S k 15 Relating to the gathering and evaluation of comprehensive information about salmon stocks in the Arctic-Yukon-Kuskokwim management area.
- SB 249 An Act relating to fisheries information planning and evaluation.
- SJR 43 Requesting the United States Senate to support continuation of the present fur seal harvest quota.

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Rosaleen Moore, Chairman of the Alaska Commercial Fishing and Agriculture Bank, stated that she supported the amendments to SB 388 by the United Fishermen of Alaska.

Pete Argetsinger, General Counsel for CFAB, discussed the issue of auditing CFAB. He stated that the legislative auditors are not bound to keep information confidential, while the banking auditors are covered by very strict federal and state requirements of confidentiality.

Larry Butterfield, Vice President, Spokane Bank of Cooperatives, stated that SB 388 clarifies CFAB's status as a private cooperative, and also, the confidentiality of CFAB's records. He stated that government oversight is necessary to make sure the intent of the original law is being carried out and that the state's investment is protected.

In response to the question, if SB 388 did not pass would you keep loaning CFAB money? Mr. Butterfield, stated that they would keep loaning money to CFAB. He indicated that if CFAB was challenged in court it might be declared a state agency.

Senator Mulcahy put forth the motion to move the amendments to SB 388 by United Fishermen of Alaska.

Senator Mulcahy put forth the following amendments to SB 388: page 4, line 1 delete "may" and insert "shall" in its place; page 4, line 4, between the words "or a" insert "may provide to"; page 5, line 8 starting with the word "However" and delete the sentence to line 11.

Senator Mulcahy put forth the motion to move SB 388 as amended with individual recommendations.

Senator Mulcahy stated that SCR 15 is the result of finding out that alot of information is available in the Departments but there is a need for the gathering and evaluation of comprehensive information about the salmon stocks in the Artic-Yukon-Kuskokwim area.

Senator Mulcahy put forth the motion to move Committee Substitute for SCR 15 with individual recommendations.

Senator Mulcahy stated that SB 249 is the result of finding out that it is not easy to gather fisheries information because it is located in numerous locations. The Division of Commercial Fish spends most of its time on management of the fisheries and preparing for the Board of Fisheries meetings. They do not have enough time or employees to gather and put together the information addressed in the bill.

Senator Mulcahy put forth the motion to move CSSB 249 with individual recommendations.

Senator Mulcahy stated that the fur seals in the Pribilof Islands contribute to the economy and provide a subsistence food base. The United States Senate is proposing to cut the annual harvest down to 7800 fur seal. SJR 43 is directed to the U.S. Senate to encourage them to continue the present fur seal harvest quota.

Senator Fischer put forth the following amendment: on page 1 between lines 10 and 11 insert " WHEREAS a reduction of the annual take of adult male seals would endanger the population stability of the Pribilof fur seal herd;" The manedment was accepted.

Senator Mulcahy put forth the motion to move SJR 43 as amended with individual recommendations.

The Committee adjourned at 2:35 p.m.

# Alaska State Legislature

BETTYE FAHRENKAMP, CHAIRMAN  
VIC FISCHER, VICE-CHAIRMAN  
BRAD BRADLEY  
DICK ELIASON  
DON GILMAN  
BOB MULCAHY  
ARLIS STURGULEWSKI



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(907) 465-3834  
(907) 465-3835

## Senate

### Committee on Resources

April 27, 1981  
1:30 p.m.

Beltz Room  
211 - Capitol

#### MEMBERS PRESENT

Senator Fahrenkamp  
Senator Mulcahy  
Senator Gilman  
Senator Sturgulewski  
Senator Eliason  
Senator Fischer

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#### HEARING:

- SB 218 An Act relating to the use of waste heat produced by certain pipeline facilities.
- SB 388 An Act relating to the Commercial Fishing and Agriculture Bank.

Senator Mulcahy put forth the motion to bring CSSB 218 before the Committee.

Senator Mulcahy put forth the motion to move CSSB 218 with individual recommendations.

Rosalie Moore, Chairman, Commercial Fishing and Agriculture Bank, stated that SB 388 contains language which clarifies CFAB's status as a private cooperative. If CFAB is not considered a private cooperative it can not leverage money with the Spokane Bank of Cooperatives.

In response to several questions, Ms. Moore stated that the following information will be provided for the Committee's May 4, 1981 hearing of SB 388;

1. Payback schedule and its relation to members shared dividends;
2. Sections of the banking code that should possibly be a portion of the law relating to CFAB;
3. Cost of converting employees from state benefits to private benefits program;
4. A copy of their policy on affirmative action, and;
5. Correspondence between CFAB and the Spokane Bank of Cooperatives.

SENATE RESOURCES COMMITTEE

April 27, 1981

Page: 2

Roger Painter, Executive Director, United Fishermen of Alaska, suggested an amendment to SB 388 that would allow CFAB to use limited entry permits as collateral for vessel and gear loans. He stated that he is supportive of SB 388.

The Committee adjourned at 2:55 p.m.

Alaska State Legislature

1981

SENATOR  
ARLISS S. STURGULEWSKI



Senate

2957 SHELDON JACKSON  
ANCHORAGE, ALASKA 99504  
DISTRICT 10-H

While in Juneau  
POUCH V  
JUNEAU, ALASKA 99811  
(907) 465-3818

COMMITTEES  
CHAIRMAN  
Legislative Budget & Audit  
Community & Regional Affairs  
Finance  
Resources

MEMORANDUM

TO: Senator Bettye Fahrenkamp  
Chairman, Senate Resources Committee

FROM: Senator Arliss Sturgulewski *(AS)*

DATE: May 5, 1981

SUBJECT: Senate Bill 388

I have appreciated the time and attention that you have given my concerns over CFAB's legislation. If it is acceptable to you and the Committee, I would like to suggest the attached as amendments to SB 388.

If my concerns for the protection of the Legislature's oversight of CFAB would delay the Committee's work on this bill, I can raise this issue in Senate Finance.

I have informed your staff that I will not be able to attend the Resources Committee meeting on May 6, 1981. However, I would appreciate your attention to the attached amendments.

Attachments



# UNITED FISHERMEN OF ALASKA

MAILING ADDRESS & OFFICE  
197 SOUTH FRANKLIN ST  
JUNEAU, ALASKA 99801  
907 586 2020

Rodger Painter  
Executive Director

Proposed Amendment to Senate Bill 388 (An Act relating to the Commercial Fishing and Agriculture Bank; and providing for an effective date.)

Insert on line 2, page 6:

\*Sec. 8. AS 44.81.210 POWERS OF THE BANK. (a)

(22) use Alaska limited entry permits as security for loans under (1) of this section for the repair, restoration or upgrading of existing vessels and gear, for the purchase of entry permits and gear, and for the construction and purchase of vessels. The provisions of AS 44.81.230-250 apply to Alaska limited entry permits pledged as security for loans in accordance with this section.

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

\*Sec. 10. This Act takes effect immediately in accordance with AS 01.10.070 (c).

10 \* Section ~~3~~. AS 44.81 is amended by adding a new section to read:

11 Sec. 44.81.195. CONFIDENTIALITY. (a) Information in the posses-  
12 sion of the bank which concerns the particulars of the business or  
13 affairs of a borrower of the bank or another person is not a matter of  
14 public record and shall be kept confidential by the bank.

15 (b) An independent outside auditor who conducts an audit of the  
16 bank may not release information made confidential under (a) of this  
17 section to the public.

18 (c) Information made confidential under (a) of this section which  
19 is obtained by the audit division of the Legislative Budget and Audit  
20 Committee during an audit of the bank may not be released to the  
21 public.

22 (d) Nothing in (a) - (c) of this section prohibits

23 (1) the publication of statistics or reports presenting  
24 information in a manner that prevents the identification of particular  
25 individuals; or

26 (2) the release to law enforcement officials of information  
27 relevant to a criminal investigation or prosecution upon issuance of a  
28 subpoena by the superior court.

AMENDMENTS TO SB 388

page 1, line 28 --omit "Employees.....line 29 "

page 2, line 1 --omit

page 2, lines 3-8 --omit Sec. 3 (This material is better left to by-laws)

page 2, line 20--after "system" insert "so long as the bank performs its public purpose, follows generally accepted bank accounting principles, and demonstrates intention to return the state's investment."

page 3, line 8-- after "loan" insert "and investment"

page 3, line 12, after "public" add ", or is directed to provide by the legislature."

page 3, line 26-- delete "Examiners and other authorized representatives of the line 27--commissioner of commerce and economic development " and replace with: "Independent auditors and auditors of the Division of Legislative Audit"

page 4, line 1-- replace "may" with "shall"

page 4, line 4-- after "agency," insert "and may supply such information to"

page 4, line 20-29 omit

page 5, line 1-3 omit

page 5, lines 22-25 omit

page 4, after line 19 insert:

(7) Notwithstanding the provisions of 1-6 of this section, nothing precludes the ability of Legislative Audit Division to audit the records of the bank.

ADD new section, attached

page 6, line 3, delete "44.81.220

ADD AS 44.81.220 is amended to read: Upon the repurchase of all the nonvoting, preferred shares initially issued by the bank and purchased by agencies of the state, the provisions of this chapter lapse and the bank may proceed to operate solely as a private cooperative corporation under the terms of its bylaws and subject to the provisions of AS 10.15.010 (.050) --10.15.600.

# Spokane Bank for Cooperatives

Farm Credit Banks Building  
West 705 First Avenue  
P. O. Box TAF-C2  
Spokane, Washington 99220  
Telephone: (509) 456-7340



May 1, 1981

Mr. Frank Homan  
Alaska Commercial Fishing and  
Agriculture Bank  
326 Fourth Street  
Room 1104  
Juneau, Alaska 99801

Dear Mr. Homan:

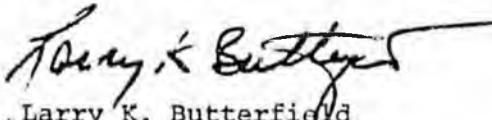
In response to your request, we asked our attorney to draft an opinion regarding the eligibility of the Alaska Commercial Fishing and Agriculture Bank (CFAB) to borrow from the Spokane Bank for Cooperatives if CFAB becomes an agency of the State of Alaska. A copy of his opinion is attached.

The Bank's attorney is charged with the responsibility for determining the eligibility of all cooperatives that apply for loans from the Bank. It is his opinion that CFAB would not be eligible to borrow from the Bank if CFAB becomes an agency of the State of Alaska.

An agricultural (or aquatic) cooperative is a business organization owned and controlled by member producers, which operates for the mutual benefit of its members or stockholders, as producers or patrons, on a cost basis after allowing for the expenses of operation and maintenance and any other authorized deductions for expansion and necessary reserves (see attached definition from Legal Phases of Farmer Cooperatives). The critical phrase in this definition is that a cooperative is owned and controlled by its member producers. If CFAB becomes a State Agency, it will not be owned and controlled by its members, and therefore will not be eligible to borrow from the Spokane Bank for Cooperatives.

If you have any questions regarding this issue, we would be pleased to respond to them.

Sincerely,

  
Larry K. Butterfield  
Vice President

Enclosures




## SPOKANE BANK FOR COOPERATIVES

## MEMORANDUM

DATE: 4/30/81  
M-3125

TO: Larry K. Butterfield, Vice President

FROM: Harve H. Phipps, Jr., General Counsel 

SUBJECT: Eligibility of CFAB for Borrowing from Spokane Bank for Cooperatives if CFAB Becomes an Agency of the State of Alaska

The lending powers of Banks for Cooperatives are provided by Federal statute, (12 U.S.C. § 2128 (1971)). Only eligible cooperatives can borrow from the Banks. Eligibility is defined by 12 U.S.C. § 2129 (1971). Copies of both statutes are attached for your reference.

CFAB's present status is that of a state instrumentality authorized by Alaska statutes, (Alaska Stat. §§48.81.010 - .350), providing for its incorporation under the provisions of Alaska Stat. §§10.15.340 - .355.

Based on CFAB's Articles of Incorporation and Bylaws and on its method of operation, I have determined it eligible to borrow from the Bank. A copy of my opinion is attached for reference.

CFAB's status would be substantially altered if it became an agency of the State of Alaska, or if an agency were formed to provide the same lending program in which CFAB is engaged.

CFAB, as an agency or any other State agency, would be a department or an administrative unit of the State of Alaska. Controls and regulations under which such an entity would operate would be part of the legislative authority under which the agency was established. The agency would be governed by the State of Alaska rather than by its membership of farmers and fishermen.

The agency would be the same as other agencies established by the State of Alaska to provide lending services for various classes of its citizens. The agency's services would fall into similar categories of Federal agencies, such as FHA, FmHA, REA, or SBA.



met, voting stock may also be retired at fair book value not exceeding par, on call or on such revolving basis as the board may determine with approval of the Farm Credit Administration with due regard for its total capital needs: *Provided, however,* That all equities in the district banks issued or allocated with respect to 1971 and prior years shall be retired on a revolving basis according to the year of issue with the oldest outstanding equities being first retired. Equities issued for subsequent years shall not be called or retired until equities described in the preceding sentence of this proviso have been retired.

Pub.L. 92-181, Title III, § 3.5, Dec. 10, 1971, 85 Stat. 604.

#### Historical Note

*Legislative History.* For legislative 1971 U.S.Code Cong. and Adm.News. p. history and purpose of Pub.L. 92-181, see 2091.

### § 2127. Guaranty fund subscriptions in lieu of stock

If any cooperative association is not authorized under the laws of the State in which it is organized to take and hold stock in a bank for cooperatives, the bank shall, in lieu of any requirement for stock purchase, require the association to pay into or have on deposit in a guaranty fund, or the bank may retain out of the amount of the loan and credit to the guaranty fund account of the borrower, a sum equal to the amount of stock which the association would otherwise be required to own. Each reference to stock of the banks for cooperatives in this chapter shall include such guaranty fund equivalents. The holder of the guaranty fund equivalent and the bank shall each be entitled to the same rights and obligations with respect thereto as the rights and obligations associated with the class or classes of stock involved.

Pub.L. 92-181, Title III, § 3.6, Dec. 10, 1971, 85 Stat. 604.

#### Historical Note

*Legislative History.* For legislative 1971 U.S.Code Cong. and Adm.News. p. history and purpose of Pub.L. 92-181, see 2091.

### § 2128. Lending powers

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

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5 Stat. 604.

de Cong. and Adm. News, p.

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Stat. 604.

de Cong. and Adm. News, p.

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the Central Bank and district banks for cooperatives. Each bank may own and lease, or lease with option to purchase, to stockholders eligible to borrow from the bank equipment needed in the operations of the stockholder.

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

#### Historical Note

**Legislative History.** For legislative 1971 U.S. Code Cong. and Adm. News, p. history and purpose of Pub.L. 92-181, see 2091.

### § 2129. Eligibility

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

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

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

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

(d) a percentage of the voting control of the association not less than 80 per centum (70 per centum in the case of rural electric, telephone, and public utility cooperatives), or such higher percentage as established by the district board is held by farmers, producers or harvesters of aquatic products, or eligible cooperative associations as defined herein;

shall be eligible to borrow from a bank for cooperatives.

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

BCBS MMS  
-r )

SPOKANE BANK FOR COOPERATIVES

MEMORANDUM

DATE: November 9, 1979  
M-2970

TO: File

FROM: Harve H. Phipps, Jr., General Counsel

SUBJ: ELIGIBILITY OF ALASKA COMMERCIAL FISHING AND AGRICULTURE BANK (ACFAB)

On March 27, 1978, I reviewed Alaska House Bill No. 703 which proposed legislation to establish a Commercial Fishing and Agriculture Cooperative Development Bank. Based on the proposed legislation, it was my preliminary opinion that the cooperative bank would be eligible to borrow from the BC. A copy of my opinion of March 28, 1978 is attached for reference.

The legislation was enacted into law as Chapter No. 159, Laws of Alaska for 1978. Under this law, the lending power of the bank was expanded to include processors and marketers. Section 44.55.210(1), which sets out the bank's lending authority, now reads as follows:

"Sec. 44.55.210. POWERS OF THE BANK. The bank may

(1) make variable rate or fixed rate loans to individuals who are residents and who are engaged in commercial agriculture or fishing, including harvesters, processors and marketers, or to corporations, partnerships, or joint ventures primarily 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 shareholder of the bank; however, the bank may 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 shareholder of the bank;"

ACFAB has been incorporated as a cooperative bank under the provisions of AS 10.15.005-600, Alaska Cooperative Corporation Act. Copies of the bank's Articles and Bylaws are attached for reference.

ACFAB provides for its members a business service which is eligible for BC financing (i.e., the lending of money to farmers and fishermen). It also qualifies on other BC eligibility requirements.

1. Members have one vote each (Article IV, Section 2).
2. Dividends are restricted to ten percent (Article IV, Sections 2 and 3).

3. All business is membership business (Article III, Section 2).

The requirement which will have to be monitored is voting control. Under current FCA regulations, processors and marketers are not eligible individual or noncooperative, corporate borrowers, and would be considered "other members" under the bank's current eligibility regulation. I understand that it is anticipated over 80 percent of the members will be commercial fishermen.

The question has been raised as to whether loans made by ACFAB to processors and marketers are primary functions of the association and within the scope of financing which the BC can provide under FCA Regulation 3120, which reads as follows:

"Scope of financing. A bank for cooperatives may make loans to meet any credit need which will enable a cooperative to perform those functional powers prescribed in Section 3070 through 3100 which will benefit its members. A bank may also make loans, to a cooperative otherwise eligible to borrow, for purposes not directly related to such primary functions or powers, so long as a finding is made that the amount to be loaned is reasonably modest in relation to the total credit provided and such business purpose(s) will enhance the well-being of the members and patrons."

In my opinion, the answer would be in the affirmative as processing and marketing are activities which will benefit the members as a whole rather than only the processors and marketers themselves.

Loans to cooperative financing institutions which would be used for purposes outside the scope of financing requirements of FCA Regulation 3120 are necessarily outside the bank's lending authority. However, I do not think this is the case where ACFAB is performing its primary function as a cooperative bank even though this function includes lending to members who would not be eligible for direct loans from a Farm Credit institution.

In my opinion, ACFAB would be an eligible borrower from the BC as long as the appropriate ratio of farmer-and-fisherman voting control is maintained. As stated in my opinion of March 27, 1978, FCA Regulation 6050 will have to be complied with if a loan is made to ACFAB.

# **Legal Phases of Farmer Cooperatives**

**FARMER COOPERATIVE SERVICE  
U. S. DEPARTMENT OF AGRICULTURE  
WASHINGTON, D. C.**

**FCS Bulletin 10**

**January 1958**

## Legal Phases of Farmer Cooperatives

**A**GRICULTURAL cooperation is a method of doing business. An agricultural cooperative is a business organization, usually incorporated, owned and controlled by member agricultural producers, which operates for the mutual benefit of its members or stockholders, as producers or patrons, on a cost basis after allowing for the expenses of operation and maintenance and any other authorized deductions for expansion and necessary reserves.<sup>1</sup>

The principle of doing business on a "cost basis" involves these concepts: (1) that the contract between a properly organized cooperative and its patrons vests the excess between its receipts and expenditures during an accounting period in its patrons, and (2) that, accordingly, a cooperative, as a legal entity, cannot have entrepreneur profit as respects any excess which is covered by such contract. This is in contrast to the status of this excess in the usual business corporation. There it is subject to the control of management as to its disposition *after* it has accrued, and hence is clearly a profit to the corporation. Accordingly, the present tendency in cooperative circles is not to use the term "profit" to describe this excess in a cooperative, but to use such terms as "net margins" or "net savings." Although a conscious effort has been made to recognize this trend in terminology in this revision, it was also necessary to accept the fact that many courts and writers have not recognized this distinction. Accordingly, the reader will find frequent use of the word "profit" in quoted material, or even in the text where that was considered necessary to present properly a court's holding in a particular case.

It should be kept in mind that a marketing or farm supply association of farmers is a capitalistic business organization for the financial advantage of its member-patrons. Few, if any, associations would be formed if it were not believed that they would operate to the financial advantage of their members. Associations are formed for the same reasons as other business enterprises. In a cooperative, however, the financial benefits accrue to the patrons, while in the usual commercial enterprise they accrue to those who have invested their money in the business.

It should not be assumed that it is unnecessary for a cooperative to have money, although the amount of money necessary for a given association depends upon the character of its business and the scope of its plans. Working capital and adequate financial resources are as essential for a cooperative as they are for any other commercial concern.<sup>2</sup>

In respect to a cooperative, producers may be shareholders or members, patrons, or investors. The patron relationship may create the legal relationships of creditor or debtor.

<sup>1</sup> Evans, Frank, and Stokdyk, E. A. *THE LAW OF AGRICULTURAL COOPERATIVE MARKETING*. 648 pp. Rochester, N. Y. 1937. See p. 3; Packel, Israel. *THE LAW OF THE ORGANIZATION AND OPERATION OF COOPERATIVES*. 307 pp. Albany, N. Y. 1940. See p. 3.

<sup>2</sup> Evans and Stokdyk, *supra* n. 1, at 163.

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  
incident 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. Re-  
moval of that will allow CFAB to continue to operate under  
this statute.



2550 Denali Street, Suite 17  
P.O. Box 4-2070  
Anchorage, Alaska 99509  
(907) 276-2007  
SRA 90-B  
Homer, Alaska 99603  
(907) 235-8234

236  
Roseleen "Snooks" Moore  
Chairman

April 30, 1981

Honorable Bettye Fahrenkamp  
Chairman  
Senate Resources Committee  
Pouch V  
Juneau, Alaska 99811

Dear Senator Fahrenkamp:

In an effort to provide additional information pertaining to the various questions raised by members of the Senate Resources Committee, I submit the following:

#### Allocation of Income

Attached is a copy of Mr. Anderson's correspondence of March 23, 1981 explaining CFAB's decision to declare a qualified written notice of allocation. We have also included information provided the Board of Directors by the Bank's accountants explaining the available options.

#### Affirmative Action Program

Alaska Commercial Fishing and Agriculture Bank has not adopted a formal affirmative action program as we have been advised by counsel that a review of the regulations indicates that our cooperative does not require a formal, predefined program. The Board of Directors and Management of CFAB are very concerned about equal employment opportunity and make every effort to hire the most qualified applicant; and to that end published the attached Equal Employment Opportunity statement in March, 1980.

#### Loans to CFAB Directors

As a part of the normal operation of a cooperative, elected members of the board of directors must be borrowers from the cooperative. There was initial concern expressed by the Directors of CFAB that loan requests submitted by Board members should receive the same scrutiny as applications from non-board members and, therefore, established the internal operating policy that requires that all appli-

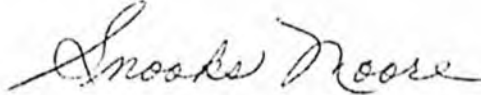
cations received from Board members must be submitted to the Spokane Bank for Cooperatives for their independent evaluation and approval prior to CFAB's funding.

Current Activity Report

We are including a current activity report in an effort to bring you up-to-date on our progress in providing loan funds to our members.

I trust that the foregoing information and attachments will help to answer your concerns.

Sincerely,



Roseleen (Snooks) Moore  
Chairman

sd

Attachments

March 23, 1981

Re Dividend Payments to CFAB Members

The Commercial Fishing and Agriculture Bank has declared patronage dividends to its members for fiscal 1980. It is the stated intent of the Board of Directors of CFAB to retain the maximum level of earnings for use to retire the State's investment in the cooperative. Declaration of patronage dividends and the payment of 20 percent of those dividends in cash will result in a \$7,600 savings to CFAB.

Under Federal tax law, a cooperative may escape Federal taxation on its earnings to the extent that it issues qualified patronage dividends to its members. To be qualified, 20 percent of the dividend must be in cash. The remaining 80 percent can be retained by the cooperative.

During 1980, CFAB returned a profit of \$198,000, which called for a Federal tax of \$35,000. By declaring \$120,000 in qualified patronage dividends, that tax is reduced to \$3,400 and \$24,000 is distributed to members. CFAB's outlay is reduced from \$35,000 to \$27,400 and our members receive \$24,000 that would have otherwise gone to the Federal government.

We wanted you to know of the reasons for and implications of those dividends rather than hear of them "on the street" and feel that CFAB was paying out funds which should have gone toward retirement of the State's stock.

If you have further questions, please feel free to call.

Sincerely,

  
Gary W. Anderson

sd

ALASKA COMMERCIAL FISHING AND  
AGRICULTURE BANK  
MEMORANDUM ON THE INCOME TAX  
CONSEQUENCES OF PATRONAGE DIVIDENDS

What are Patronage Dividends?

The concept behind cooperative taxation is that the cooperative is organized exclusively for the benefit of its patrons. Any earnings of the cooperative from doing business with its patrons are allocated or paid to the patrons, thus reducing the patrons' cost of doing business with the cooperative.

CFAB's earnings are allocated to its patrons, and CFAB, as all cooperatives, is allowed to reduce its taxable income by the amount of earnings paid or allocated to patrons. These payments or allocations are patronage dividends. The patrons include their share of CFAB earnings paid or allocated as patronage dividends, in their individual tax returns.

Patronage dividends relate solely to earnings from business done with or for patrons. Payments to patrons that do not relate to patronage earnings or, that are not proportional to the quantity or value of business done with patrons are not patronage dividends.

Forms of Payment of Patronage Dividends

Generally, patronage dividends are paid in money or written notices of allocation.

When are Patronage Dividends Deductible by the Cooperative?

Patronage dividends paid in money are deductible currently if paid within the "payment period" (see below).

Patronage dividends paid in the form of written notices of allocation are deductible currently, only if such notices are "Qualified" and issued within the payment period.

A written notice of allocation must meet two tests to be "Qualified": at least 20% of the patronage dividend amount is paid in money and the patron consents to including the balance not paid in money (i.e., the written notice of allocation) in his individual income.

CFAB has already obtained consent of the patrons through its bylaws, therefore, it need only meet the 20% test. For example, if a patronage dividend of \$50 is paid, \$10 in cash and the remaining \$40 in a written notice of allocation, then the written notice of allocation would be "Qualified", and the entire \$50 would be deductible by CFAB and includible in the patron's income. The patron would report no income when CFAB redeems the \$40 qualified written notice of allocation at a later date.

Any written notices of allocation which do not meet the above two tests would be "Non-Qualified." They would be deductible by CFAB and includible in the patrons' income only in the year redeemed.

#### Payment Period for Patronage Dividends

A cooperative must file a tax return and pay patronage dividends by the 15th day of the ninth month following the close of its taxable year. CFAB's 1980 tax return is due not later than September 15, 1981. It must also issue patronage dividends by September 15, 1981 to be deductible on its 1980 tax return.

#### Income to Patrons

Patrons must include patronage dividends of money and qualified written notices of allocation in their income for the taxable year in which they are received. A non-qualified written notice of allocation (CFAB did not pay at least 20% of the patronage dividend in money) is included in income the year the patron redeems it.

#### Tax Advantage of Qualified Written Notices of Allocation

The benefit of issuing patronage dividends using qualified written notices of allocation is that CFAB need only pay 20% of the patronage dividend amount in cash to get a 100% deduction on its tax return. Whenever the income tax rate exceeds 20% it will require less cash to pay the patronage dividends than to pay the income tax. Generally, this will be true for any taxable income in excess of \$50,000, unless investment tax credits are significant.

CFAB earned significant investment tax credits in 1980, and can absorb taxable income in excess of \$50,000, as indicated on the attached schedule. The optimum patronage dividend for 1980 is \$120,000 - \$24,000 in cash and \$96,000 in qualified written notices of allocation. This results in the lowest total cash outlay for patronage dividends and income taxes.

ALASKA COMMERCIAL FISHING AND AGRICULTURE BANK

1981 CASH FLOW ANALYSIS COMBINING

PATRONAGE DIVIDENDS AND INCOME TAX

|  |                  |                  |
|--|------------------|------------------|
| 1980 taxable income<br>before patronage<br>dividends                                       | \$198,000        | \$198,000        |
| Patronage dividend<br>deduction  | <u>None</u>      | <u>120,000</u>   |
| Income subject to tax  | <u>\$198,000</u> | <u>\$ 78,000</u> |
| Tax payable  | \$ 35,000        | \$ 3,400         |
| Add back 20% cash<br>payment requirement<br>for qualified written<br>notices of allocation | <u>None</u>      | <u>24,000</u>    |
| Total cash expenditure   | <u>\$ 35,000</u> | <u>\$ 27,400</u> |

# Alaska State Legislature

SENATOR  
ARLISS STURGULEWSKI

COMMITTEES  
CHAIRMAN  
Legislative Budget & Audit  
Community & Regional Affairs  
Finance  
Resources



Senate

2957 SHELDON JACKSON  
ANCHORAGE, ALASKA 99504  
DISTRICT 10-II

3 in Juneau  
JUCH V  
JUNEAU, ALASKA 99811  
(907) 465-3818

April 21, 1981

Mr. Gary W. Anderson, President  
Alaska Commercial Fishing and  
Agriculture Bank  
2550 Denali Street, Suite 1201  
Anchorage, Alaska 99503

Dear Gary:

Thank you for your letter of March 23 regarding Alaska Commercial Fishing and Agriculture Bank's declaration of patronage dividends. I surely can appreciate your desire to avoid paying taxes and to use what would have been tax funds for purposes closer to home.

I did, however, have a question regarding this action. If I understand the situation, if you had paid the tax, of your \$198,000 profit, you would have had \$163,000 for CFAB purposes. As it is, \$120,000 of the profit was declared a "patronage dividend." I would appreciate learning from you whether there are particular restrictions on the balance of the sum declared as patronage dividends that was not distributed to members? In other words, \$74,600 remains from the profit and \$96,000 remains in the patronage dividend account not distributed to members. Do both these sums of money return to the same pot and can they be used for the same purposes?

This question is prompted by my concern that, if there are restrictions on the patronage dividend amounts, that this method of handling funds may interfere with your stated goals of retiring the state's investment and maximizing funds placed back into CFAB for growth.

I will appreciate hearing from you on this matter.

Sincerely,

*Arliss Sturgulewski*  
Arliss Sturgulewski  
Senator, District 10-II



2550 Denali Street, Suite 1201  
P.O. Box 4-2070  
Anchorage, Alaska 99509  
(907) 278-4553  
In Juneau: (907) 586-2593

April 24, 1981

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

Dear Senator Sturgulewski:

Mr. Anderson is out of the office and I felt that your April 21st correspondence deserved an immediate response.

All income earned by a cooperative must be allocated back to the participating members during the current year in one of two forms, either as non-qualified patronage earnings or qualified earnings. The primary difference between the two is the federal income tax treatment. I believe that Gary's letter fully described this area.

Our treatment of earnings does in no way restrict the usage of retained patronage and therefore these monies will be available for growth, as well as, for the repurchase of Class C stock.

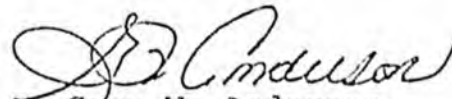
Sincerely,

Galen H. Schmidt  
Senior Vice President, Administration

GHS:p1

EQUAL EMPLOYMENT OPPORTUNITY

At ALASKA COMMERCIAL FISHING AND AGRICULTURE BANK, we are committed to the goal of providing equal job opportunity to applicants and employees regardless of their race, religion, national origin, age, sex, creed, handicap, or marital status. Staff members are judged by the work actually performed. Management is charged with the responsibility of providing a work environment where individuals can achieve their full potential within the Bank.

  
Gary W. Anderson  
President

ALASKA COMMERCIAL FISHING AND AGRICULTURE BANK

Activity Report: April 2, 1980 through April 30, 1981

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DOLLAR AMOUNT OF LOAN ADVANCES MADE SINCE APRIL 2, 1980:

\$63,535,594

OUTSTANDING APPROVED LOAN COMMITMENTS AS OF APRIL 29, 1981:  
(AVAILABLE FOR FUNDING)

| <u>Number</u> | <u>Amount</u> |
|---------------|---------------|
| 56            | \$33,741,013  |

NUMBER AND TOTAL DOLLAR VALUE OF LOAN APPLICATIONS IN  
PROCESS AS OF APRIL 27, 1981:

| <u>Number</u> | <u>Amount</u> |
|---------------|---------------|
| 114           | \$34,601,203  |

MEMBERSHIP AND STOCK HOLDINGS AS OF APRIL 30, 1981: (DOES  
NOT INCLUDE STATE OF ALASKA CLASS C STOCK)

|                                |           |
|--------------------------------|-----------|
| Number of members              | 178       |
| Number of borrowing members    | 165       |
| Stock held by current members: |           |
| Class A (Membership Stock)     | \$ 16,770 |
| Class B (Participation Stock)  | 2,489,100 |

CURRENT LOANS OUTSTANDING AS OF APRIL 30, 1981:

| <u>Number</u> | <u>Amount</u> |
|---------------|---------------|
| 169           | \$27,925,323  |

THE LEGISLATURE OF THE STATE OF ALASKA  
TWELFTH LEGISLATURE

APR 9 1981

FISCAL NOTE

I. REQUEST

Bill/Resolution No. SB 388

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          |       |       |       |       |       |       |
| 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 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)