HB
458

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

REPLY TO:

☐ *1031 W 4th AVENUE*
SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 276-3550

☐ *1st NATIONAL CENTER*
100 CUSHMAN ST.
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FAIRBANKS, ALASKA 99701
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☑ *POUCH K - STATE CAPITOL*
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

May 10, 1984

The Honorable Jalmar M. Kerttula
President
Alaska State Senate
Pouch V
Juneau, AK 99811

Re: HCS CSSB 375(Res) and
agricultural disposals

Dear Senator Kerttula:

Richard Ramsey, your aide, requested a brief review of the provisions of HCS CSSB 375(Res) relating to agricultural disposals. In particular, he asked us to review them to ensure that those provisions did not weaken or diminish the current restrictions on the use of such land for agricultural purposes.

Sections 23 and 27 of the bill relate specifically to agricultural disposals. Section 23 repeals and reenacts AS 38.-05.059 which outlines limitations and conditions on the sale or lease of agricultural land. In substance, the section makes clear that land obtained in an agricultural disposal, whether by conveyance of the state's entire interest or by lease, must be used for agricultural purposes. In our view, we believe this section provides sufficient assurances that the land must be used for agricultural purposes and gives the state sufficient legal authority to reacquire the land if it is used for any purpose other than agricultural.

Section 27 amends AS 38.05.069(c) in a manner which does not affect restrictions on the use of agricultural land by a grantee of such land from the state.

The Honorable Jalmar M. Kerttula
President, Alaska State Senate
Re: HCS CSSB 375

May 10, 1984
Page 2

In conclusion, it is our opinion that the provisions of HCS CSSB 375(Res) relating to agricultural disposals do not reduce or diminish the current restrictions that such land be used by the state's grantee only for agricultural purposes. If we can be of further assistance, please contact us at your convenience.

Sincerely,

NORMAN C. GORSUCH
ATTORNEY GENERAL

/s/

By:
G. Thomas Koester
Assistant Attorney General

GTK:dlm

cc: [illegible]

The Honorable Robert H. Ziegler, Sr.

Alaska State Legislature

BETTYE FAHRENKAMP, Chairman
ROBERT H. ZIEGLER, SR., Vice Chairman
DICK ELIASON
PAUL FISCHER
VIC FISCHER
BOB MULCAHY
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Senate
Committee on Resources

M E M O R A N D U M

TO: Senate Resources Committee Members

FROM: Senate Resources Committee Staff

RE: Committee Meeting, Monday, May 14th

DATE: May 11, 1984

On Monday, May 14th at 3:00 pm in the Beltz Room, the Senate Resources Committee will hear the following bills:

HB 188, An Act relating to big game hunting by nonresidents.

Under current statute, nonresident hunters of brown bear, paloar bear, grizzly bear, or dall sheep must be accompanied by a licensed guide or an Alaskan resident within the second degree of kindred. HB 188 would amend the kindered provision to include "marriage relations" such as fathers-in-law and step children. The fine for violation is increased from $2500 to $5000.

HB 458, An Act relating to agricultural rights to land.

Under current statute, the Commissioner is authorized to require a development plan of agricultural land purchasers. Section 1 of HB 458 would allow waiver, postponement, or modification of the development requirements if certain conditions are present. The provision, though broadly applicable, is intended to provide relief to recipients of agricultural land in Gustavus.

Under the "agricultural rights" title currently issued by the state, private financing for home constuction has been difficult to obtain. Section 2 of HB 458 is intended to provide relef through issuance of a fee simple conditional title, with the condition being that DNR may reenter the land if it is used for other than agricultural purposes.

HB 546, An Act relating to harassment of persons lawfully engaged in hunting, fishing, or trapping.

HB 546 is intended to protect hunters, fishers, and trappers from harassment. Obstructing or hindering a person legally engaged in hunting, fishing or trapping would be punishable by a fine of up to $500 and/or 30 days or both. Civil remedies, including recovery of damages, would be allowed. The bill is patterned after legislation being adopted in other states where anti-hunting groups have "taken to the field" in an attempt to deter hunters.

HB 709, An Act relating to fees for guided tours through historical sites.

HB 709 would authorize DNR to establish and collect fees for guided tours through historical sites. In 1983, DNR acquired the House of Wickersham as a part of our state park system. Passage of HB 709 is intended to allow for costs to be covered through entrance fees. Under current statute, vehicle registration is all that is required for entry into a state park.

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: 4/25/84

REQUEST
Bill/Resolution No.: CSHB 458 (Res)
Title: re: Agricultural Rights to Land
Sponsor:
Requestor:
Date of Request:

FISCAL DETAIL
Agency Affected: Natural Resources
Program Category Affected: NRMEC
BRU, Program or Subprogram(s) Affected: NONE

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Frank Mielke Phone: 265-4347
Division: Land & Water Management Date: 4/25/84

NF Approved by Commissioner: [signature], Deputy Date: 4/25/84
Agency: Natural Resources

Distribution (by Agency preparing fiscal note):
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

12/1/83

applicant who is entitled to receive a conveyance of the land by lottery. If the commissioner does not receive an application for a parcel of state land or if a purchaser fails to sign a lease agreement or contract of sale, the parcel shall be offered to the first eligible person to apply for the parcel. If the parcel was designated as a homesite and offered to the public under AS 38.05.047(f), the parcel shall be disposed of under the terms required by AS 38.08.010 — 38.08.120."

AS 38.05.047, referred to near the end of subsection (f), was repealed by § 45, ch. 113, SLA 1981.

AS 38.05.055, referred to in (g) of this section, was amended by § 15, ch. 113, SLA 1981. One of the changes was the deletion of language relating to the form of contract. See AS 38.05.065(b) for the terms required in contracts of sale for land sold under this section.

NOTES TO DECISIONS

Quoted in Gilman v. Martin, Sup. Ct. Op. No. 2652 (File No. 5937), 662 P.2d 120 (1983); LeResche v. Lustig, Sup. Ct. Op. No. 2656 (File No. 6058), P.2d (1983).

Sec. 38.05.058. Land discount program. [Repealed, § 19 ch 67 SLA 1983.]

Sec. 38.05.059. Limitation on purchases of agricultural land. A person may purchase from the state a total of not more than one parcel of land that is part of an agricultural development project under AS 44.33.475 during any eight-year period. (§ 3 ch 129 SLA 1982)

Sec. 38.05.060. Rejection of bids.

NOTES TO DECISIONS

Cited in State v. University of Alaska, Sup. Ct. Op. No. 2303 (File No. 4579), 624 P.2d 807 (1981).

Sec. 38.05.065. Terms of contract of sale. (a) The contract of sale for land sold at public auction under AS 38.05.055 shall require the remainder of the purchase price to be paid in monthly, quarterly or annual installments over a period of 20 years, with interest at the prevailing rate for real estate mortgage loans made by the federal land bank for the farm credit district for Alaska at the time the contract is signed. Installment payments plus interest shall be set on the level-payment basis.

(b) The contract of sale for land sold under AS 38.05.057 and under AS 38.05.078 shall require the remainder of the purchase price to be paid in monthly, quarterly, or annual installments over a period of not more than 20 years. Installment payments plus interest shall be set on the level-payment basis. The interest rate to be charged on installment payments is the prevailing rate for real estate mortgage loans made by the federal land bank for the farm credit district for Alaska at the time the contract is signed.

appraised fair market value, exclusive of value accruing from improvements or development, such as fill material, buildings or structures, by the occupant or his predecessor in interest or reflecting, equities of the occupant;

(9) "home rule cities and cities of the first class" do not include a borough. (§ 5 art III ch 169 SLA 1959; am § 6 ch 61 SLA 1960; am § 1 ch 18 SLA 1962; am §§ 1, 2 ch 81 SLA 1964; am § 1 ch 4 SLA 1966)

Editor's notes. — This section is set out above to correct an error in the main pamphlet.

NOTES TO DECISIONS

Purpose of section. — One purpose of the Alaska Land Act was to establish equitable methods of disposing of certain tidelands. Toward this end, and within the federal parameters requiring the recognition of "preference rights," this section was included in the Act. City of Homer v. State, Sup. Ct. Op. No. 1455 (File No. 3009), 566 P.2d 1314 (1977).

Due process required. — Private parties are entitled to due process of law before property rights may be removed; therefore, the minimal protection provided by adjudicatory procedures of the Department of Natural Resources must meet that standard. City of Homer v. State, Sup. Ct. Op. No. 1455 (File No. 3009), 566 P.2d 1314 (1977).

Municipalities are entitled to due process in the adjudication of claims to tide and submerged lands. City of Homer v. State, Sup. Ct. Op. No. 1455 (File No. 3009), 566 P.2d 1314 (1977).

With respect to the disposition of tidelands, municipal corporations are to be afforded the same rights of due process as are private parties. City of Homer v. State, Sup. Ct. Op. No. 1455 (File No. 3009), 566 P.2d 1314 (1977).

The language of subsection (b) is clear and unambiguous. State Dep't of Nat'l Resources v. City of Haines, Sup. Ct. Op. No. 2342 (File No. 5067), 627 P.2d 1047 (1981).

Scope of subsection (b) grant. — The grant in subsection (b) of this section encompasses tideland adjacent to subsequently expanded municipal boundaries. State, Dep't of Nat'l Resources v. City of Haines, Sup. Ct. Op. No. 2342 (File No. 5067), 627 P.2d 1047 (1981).

In effect, this section gives the authorities of a city, etc.

In accord with original. See Talbot's, Inc. v. Cessnun Enter., Inc., Sup. Ct. Op. No. 1462 (File Nos. 2561, 2671), 566 P.2d 1320 (1977).

In order for easement under subsection (b)(6) of this section to be established, it must appear that it is reasonably necessary for the enjoyment of the property, the term "necessary" meaning that there could be no other reasonable mode of enjoying the dominant tenement without the easement. An easement by implication does not arise merely because its use is convenient to the beneficial enjoyment of the dominant portion of the property. Talbot's, Inc. v. Cessnun Enter., Inc., Sup. Ct. Op. No. 1462 (File Nos. 2561, 2671), 566 P.2d 1320 (1977).

While strict or absolute necessity is not required, something more than mere convenience must be shown before an occupant of tidelands is entitled to an easement under subsection (b)(6) of this section. Talbot's, Inc. v. Cessnun Enter., Inc., Sup. Ct. Op. No. 1462 (File Nos. 2561, 2671), 566 P.2d 1320 (1977).

Sec. 38.05.321. Restriction on sale, lease or other disposal of agricultural land. (a) The sale, lease or other disposal of state land classified as agricultural land transfers only rights for agricultural purposes, and all other interests in the land remain with the state unless otherwise required by law.

4/12/84 HB 458

A mechanism for agriculture use on lands designated, classified, reserved or homesteaded with the intention of farming:

A covenant between the State of Alaska and the landowner to be recorded in the Judicial District in which said land is geographically located. Within this covenant the State and the landowner shall agree upon special conditions relative to agricultural development and conservation planning. Any subdividing of parcels smaller than forty acres or the division of parcels more than once shall be decided by a Board of Directors. This Board of Directors would be selected from each Judicial District from which said parcel is located. The Board of Directors would be elected from the Soil and Water Conservation District cooperators. Their election would be on a rotational basis.

This guy was at Brown Bag - made pitch - no comments from anyone -

Rick Rinear
SR Box 51055
Fairbanks, Alaska 99701

RELATING TO DEVELOPMENT OF SMALL FARMS

SB 44 Still in Resources – sponsor hasn't requested a hearing. MOSS/V. FISCHER

Establishes a cost-sharing program for the development of small farms to provide financial assistance for clearing and breaking of land. Excludes land with timber that has commercial value and land that's subject to a long-term ag. loan.

Development plan must be prepared in consultation with USDA (Agricultural Stabilization and Conservation Service). Establishes limits on cost-sharing money.

No repayment required if put land into production as crop or pasture within 3 years and keep it in production for 5 of the next 7 years.

SB 45 – (Moss) in Finance – 5 year moratorium on land purchase payments if farm is being developed. (Benefits Delta II landowners).

SB 47 – (Moss) – Scheduled for hearing this Monday in Resources. 3 year moratorium on land clearing payments if farm being developed.

SB 297 – (Moss) in Finance – Establishes separate land clearing account within the Ag. Revolving Loan Fund.

SB 298 – (Moss) in Finance – Provides for repayment of outstanding clearing loans to the new clearing account, rather than to the general fund.

Loans for clearing land are allowed under current statute – $250,000 limit, 8% interest, maximum 20 year term.

Alaska State Legislature

POUCH V
JUNEAU, ALASKA 99811

REPRESENTATIVE
ROBERT H. "BOB" BETTISWORTH

211 CUSHMAN STREET
FAIRBANKS, ALASKA 99701

April 24, 1984

M E M O R A N D U M

To: Representative Al Adams, Chairman House Finance Committee
From: Representative Bob Bettisworth
Subject: HB458 "An Act relating to agricultural rights to land".

As it was originally introduced HB458 attempted to cure existing defects in state patents to agricultural land by requiring the Commissioner of Natural Resources to convey retained interests at the request of the grantee or lessee provided certain conditions are met. The essential problem is that the present language of the agricultural patents is far too restrictive. The documents contain severe impediments to perfection of a security interest by potential lenders (other than the State of Alaska) and the ability of those potential borrowers to obtain title insurance for certain purposes. The state, under the present system, would be ahead of any other party in a situation where a grantee or lessee has not performed on a state contractual obligation. Discretion to re-enter, on the part of the state, is totally left up to the Department and other interests are not protected should the state elect to re-enter. This situation prevents commercial lending on housing or the ability to obtain title insurance where agricultural patents are involved.

The Resources CS differs from my original approach by causing the issuance of a fee simple conditional title. The condition being that if the land is used for other than agricultural purposes, as defined, the title can revert to DNR and prior liens and/or security interests are valid.

Other elements of the original bill including what the department may require of grantees or lessees--for example development plans, conservation plans and repayment of state loans--are retained.

TO: SENATOR JAY KERTTULA

FROM: JIM REAVES

It is my considered opinion that CSHB458(fin) will not serve any worthwhile purpose and in fact will dilute the statutes as originally written and destroy the intended purpose. This land should not be allowed to be subdivided under any circumstances. Since inception of the farm community within Alaska, conventional lenders, banks and others have considered most farm units as extremely high risk.

For this reason, institutional lenders have not chosen to make loans to farmers in general without adequate collateral and sources of repayment rather than dependency upon farm products.

Presently banks and other investors are not able to loan funds on land that is restricted in use and not held in fee simple. By attempting to change this land to fee simple and retaining a restricted use, it will not, in my opinion, meet the criteria required by those lenders as mentioned above, and therefore no good purpose will be served by changing the present statutes. Perhaps the state may need to revise or expand its present lending policy within the Alaska Agricultural Revolving Loan Fund in order to accommodate the needs for housing, etc.

The successful purchasers of this agricultural land knew well in advance under what terms and conditions they were purchasing this land. upon presentation of their farm development plans the commissioners had the

option to determine whether or not they could provide themselves with adequate shelter.

In those cases where adequate funds or other provision for housing were not available within their development plan, a lease should not have been granted. It also appears to me that there are some major legal considerations that the sponsors of this bill did not address. Without the benefit of legal counsel, I do not think the state should enter into an arrangement such as this.

This is not a good bill for the farm community or the State of Alaska. I recommend that it be soundly defeated.

Alaska State Legislature

RONALD L. LARSON
DISTRICT 16B

POUCH V
JUNEAU, ALASKA 99811
(907) 465-3727

BOX 53
PALMER, ALASKA 99645
(907) 745-3826

House of Representatives

March 21, 1984

TO: Members of the Senate Resources Committee

FROM: Representative Ron Larson R.L.

SUBJECT: HB 458

The enclosed document is from the testimony of Wayne E. Burton, PhD, Agricultural Development Economist, which was given during the teleconference hearing on March 10th. Dr. Burton has also provided some additional comments which he forwarded to me in relation to his testimony and I would like to offer this information for your information in relation to HB 458 and agricultural preference lands.

MAR 21 1984

P.O. Box 871750
Wasilla, AK 99687
March 12, 1984

Honorable Ronald L. Larson
Alaska Legislature
Pouch V (mail stop 3100)
Juneau, Alaska 99811

Dear Ron:

I am sending along my prepared statement regarding HB 458 (03/10/84) as per your request. The brief delay has resulted from hunting up some additional materials you might find of interest.

I would note that my critical assessment of the testimony given during the teleconference would indicate those testifying in favor of HB 458 were addressing that which I identified (page 2, lines 2 &3) as "asset viability of state conveyed agricultural-rights lands". The "patent" (exhibit 1) given is, in fact, not a 'fee simple' title, but is a unique 'agricultural profit a prendre' (similar in nature to an "oil" lease). The unique features of the so-called "patent" are: (1) the "conditions and covenants of the farm conservation plan ..." (exhibit 1) and (2) the "reverter clause" also found on the so-called "patent": "If at any time the Director of the Division of (Forest) Land and Water Management of the Department of Natural Resources determines that the grantee or his successors in interest has failed to observe any provisions or conditions of this patent, the Director may declare a forfeiture of this conveyence and title hereby conveyed shall thereupon revert to the State of Alaska" (exhibit 1). [underline added] A perceptive reading of the relevant statutes (exhibit 2) should illustrate quite well why lenders and title insurers do not recognize any asset viability what-so-ever for said "agricultural-rights patents".

Tom Williams did a very effective job of focusing on the absolute jeopardy incurred by each and every "agricultural interest only" purchaser, and on the resulting void of asset viability. As the present statutes stand, each and every recipient of state "agricultural interests only" holds said land from day-to-day at the absolute sufference of the Director (11 AAC 67.162) and (11 AAC 67.165). The "forfeiture" (reverter) clause (11 AAC 67.165 (d)) includes all permanent structures and growing crops. The only things which could be removed by the "prior owner" (farmer) would be household goods, rolling stock (vehicles, machinery, equipment & tools), livestock & stored crops - if they were removed within the allowable 60 days! Now, to back up just a bit, the title and interest conveyed (11 AAC 67.162 a.) is the conveyance of the surface estate in fee simple subject to the conditions subsequent and covenants relating to agricultural use and development. It is my very considered professional judgement that there isn't a single attorney in the state of Alaska, except perhaps my son Dan, that can perceptively define "the conditions subsequent and covenants relating to agricultural use and development" as stated! I can assure you, however, that they include the Director's interpretation of each and every statement in both the "Farm Conservation Plan" and the "Farm Development Plan", both of which must be prepared within a 30 day period subsequent to the relevant lottery or sale by the state.

Tom Williams noted in his testimony that the "Farm Conservation Plan", as prepared by the District (Federal) Soil Conservation Service personnel, was overly detailed, to the extent of detailed "practices", and was seven (7) pages long. I do not believe this was the type of "Farm Conservation Plan" intended by the legislature to begin with, but they are "title covenants" as a intergal part of the title conveyed! I would seriously welcome the opportunity to challenge the Soil Conservation Service district personnel on their technical competency and validity of each and every inclusion in the "Farm Conservation Plans" prepared for "agricultural interests only" purchasers. While I have a great admiration for the Soil Conservation Service, and have had a long and productive working relationship with them, I have found on various occassions that district conservationists can take off on tangents, being quite authoratative, where they have no substantative Alaska research data to back up their positions, i.e., Burt Clifford, 1970, went to great lengths to criticize the use of a breaking disc in the Delta Junction area. His expressed position was that no "real" farmer would attempt to break agricultural land with other than a moleboard plow. There is a long technical explaination of why this would have been the worst possible tillage method for that soil and location. Burt later changed his mind and recommendations. There are other illustrations of the same type of instances. Any way, this situation regarding the "Farm Conservation Plan" must be changed! Since the present situation has been institutionalized, it will be necessary to amment the statutes to alleviate this unnecessary constraint on farm development.

The "Farm Development Plan", with its statutory requirements of 40% or class II and III lands being developed within 3 years & 75% being developed within 6 years, poses an undue hardship on all farm operators, and in some instances is certainly not in the best interests of either individual or state interests in said farm development. It is my considered judgement that the initial period should be increased to five years, and the second period should be increased to either nine (9) or ten (10) years. Reasons: it will take one or more years to develop a viable farm organization and development plan, and develop and arrange for a viable financial package; it would allow time for considered utilization of timber found on the prospective farm lands in the construction of needed housing and farm buildings; it would allow for the continued part or full time employment of the prospective farmer, or spouse, thus reducing materially the initial needed capitalization (in the form of hard cash or loan money which could not be repaid during the several year development period due to no farm product sales). While I certainly do not disagree with the need for a farm organizational and development plan, I heartilly disagree with such being included as a covenant on the title. Further, the "conditions subsequent" inclusion provides a "sword of Damocles" for the prospective farmer; it allows the state, via the vagaries of inclination of a Division Director, to add any requirement or 'regulation' to the covenants - after the fact - at any time!

Ron, much of the disappointment, both from "agricultural interests only" farmers and from state and other public interests, in the rate and nature of agricultural production development has resulted from the lack of recognition of the forementioned statutory and regulatory or administrative constraints. It will get no better until the above mentioned statutes have been changed to a more realistic fit. It is inconceivable to me that no-one has previously recognized and addressed the "forfeiture" clause! Some of the other statutes are equally bad. While I am the first to recognize that the legislature which enacted such legislation had the best of intentions, it is time to readdress the whole topic from the farmer's viewpoint! It is my considered judgement that the initial statutes

were overly influenced by agency bureaucrats - to protect "the land" at all costs, and that the "people" factor was completely forgotten. I would respectfully suggest that the Alaskan "agricultural interests only" farmer, particularly the project farmer, will in time find that he or she has less "rights" than did the traditional "plantation" share-cropper! This situation will never be conducive to building a viable agricultural industry!

I was very serious in my testimony suggestion that someone "hold the feet of agency and institutional professionals to the fire" until they provide perceptive and knowledgeable answers to current and prospective problems of modern agricultural development being expressed today. I am grossly disappointed in recent agency and institutional reports regarding Alaskan agricultural development. Not one has addressed the problems of the "real world", or the technical production system and data needs on developing commercial farmers. No comprehensive assessment has been made, that I have heard of, of the Delta I farming project. One Ag. Action Council report on agri. finance, didnt even mention the critical problems caused by the "forfeiture clause" in the statutes and so=called patents for "agricultural interests only". I have yet to see any recent Alaska study of farm organization and development of "new lands" farming efforts. Research and service efforts, that are conspicuous by their absence, are legion. I have often headr the statement: "There isn't a single research effort being carried out that is of any use what ever to Alaska's commercial farmers!" That's not to say there isn't some good work being done, but it just isn't perceived as relevant, and in most instances for very good reasons. One could probably identify several millions of dollars of state money being spent each year, on things considered agriculture, with out one iota of beneficial effect to the developing farmers. What a waste!!

I am enclosing a few things for your perusal: (1) Exhibit 1. a blanked copy of an "agricultural interests only" patent (note the marked sections); (2) Exhibit 2 relevant parts of the Alaska Statutes (note the marked sections); (3) exhibit 3. a copy of my 1976 critique of the first plan draft for the Delta barley project; and Exhibit 4. a copy of my 1977 critique of the second planning draft for the Delta barley project. While several changes were made in plans for that project before it was actually started, I would suggest much of the basic philosophy remains to-day through out the agricultural interests only development efforts by the state.

Ron, I hope I have sufficiently identified the fact that even with the passage of the existing HB 458 nothing would change regarding asset viability of agricultural interests only farms. As long as the "forfeiture" (reverter) terminology and concept remains part of the statutes, there is no real asset value to the agricultural interests! Regarding the second emphasis of HB 458, all of those "purchase preference" clauses are found within current Alaska statutes! Some one's legislative assistant just didn't do a very comprehensive job!

I suppose I tend to be a wee bit sadistic on rare occassions, but, from time to time, I get a real chuckle thinking what fun it would be to select, by lottery, one or more of our agricultural agency and/or institutional professionals that prospective farmers must deal with, and assign them to a state "agricultural interests only tract, for a period of three years, giving them the full time assignment to plan, organize, and develop/operate an demonstration farm (only one staff member to a semi-remote tract location) - without state budget other than salary and a small office budget. Require that they go through the same activities, on the same terms, as a prospective farmer acquiring such agricul-

tural interests only tract(s). A comprehensive report on such an effort(s) should provide most interesting and very enlightening!

Sincerely,

Wayne E. Burton

Wayne E. Burton, PhD
Agricultural Development Economist

enc: (5)

Sorry for being so slow, but ran into a few additional interruptions

Wayne

House sub-committee on agriculture
Teleconference hearing
March 10, 1984, 1:30-4:30 pm

A STATEMENT OFFERED AS TESTIMONY FOR THE PUBLIC RECORD ON HOUSE BILL NO. 458 "An Act relating to agricultural rights in land."

Mr. Chairman and Members of the Sub-Committee: My name is Wayne E. Burton. My address is P.O. Box 871750, Wasilla, and I reside at Lot 9, Block 1, Woodside Estates near Wasilla. I am an agricultural development economist by training and experience. I am testifying in my own behalf. I would further note that I have practiced my profession of agricultural economist in Alaska for the past twenty (20) years.

I would first express my unalterable opposition to HOUSE BILL 458, and strongly recommend rejection of the Bill for further consideration since it provides for the "give-away" of hundreds of millions in State assets and provides for preferential treatment in acquiring State agricultural lands to those who have already benefitted greatly by State lands disposals. I am certain that I am not alone in my frustrations regarding the unequal distribution of State gratuities, and my inability to acquire agricultural lands.

Section (a) of the proposed HB 458 disturbes me greatly. This section states: "... the remaining interests retained by the state shall be conveyed or leased by the commissioner on the request of the grantee or lessee ...", and "The commissioner shall convey or lease the remaining interests without compensation to the state except for administrative costs ...". A cursory perusal of probable asset value transfer from the state to purchasers of "agricultural-rights" lands (1978-1984 period), without compensation to the state, would probably exceed $129,000,000 and could run as high as $250,000,000. Recognizing that state agricultural-rights lands lottery recipients have already received very substantial gratuities from the state through severly discounted prices, residency and veterans discounts, and heavily subsidized clearing loans on project lands (also development credits against purchase price on Delta I project lands), I find the inclusions of section (a) totally unacceptable. The very thought of the state conveying assets, without cost, at an average rate of $338,000 to each of the 382 state agricultural-rights land purchasers leaves me cold!!!

Section (c) of the proposed HB 458 makes me exceedingly angry!! I have been trying to acquire state agricultural lands through sale and/or lottery since 1964, and have as yet been unable to do so. My interest in doing so has not diminished one whit!! The "preference right" inclusion of this section is an incidious discrimination against each and every Alaskan who desires to acquire agricultural lands to farm or ranch, but has as yet been unable to do so. It is a classic example of "those who has gets, and those who ain't dont!!". One personal example: I sat in the Delta Junction sale of 1970 where some very excellent and accessable state agricultural land was being sold, with an acute desire to buy; every tract in the sale but one fell under a "preference right" filing. In recent years, every agricultural-rights land lottery tract that I have applied for has been applied for by from to 200 to 800 other people. More than 3,000 people went away from the Point MacKenzie agricultural-rights land lottery without agricultural land. I cannot conceive of the committee continuing with this preferential treatment of so few at the expense of so many!!

The proposed Bill, H.B. 458, would appear to tacitly address two critial problems of present day Alaskan farm development: (1) asset viability of state conveyed agricultural-rights land, and (2) economic viability of present and prospective farm development in Alaska. H.B. 458 will not contribute to the resolution of structural deficiencies associated with either problem. Moreover, each and every individual purchaser of state agricultural-rights land entered into the present situation with full knowledge of state imposed deficiencies and constraints; each recipient's signature is on documents noting their awareness and understanding. I would respectfully suggest a more viable and productive approach, to the resolution of noted problems, would be to "hold the feet of agency and institutional professionals to the fire" until the committee received viable and constructive answers, data, and recommendations regarding the above noted problems. It is my professional judgement that recent reports by state agencies, regarding agricultural development topics, display voids in understanding, incomplete and inaccurate data, ineptness in the treatment of data, and, on occasions, impotence in the reporting effort.

In closing, I would again urge the committee to terminate further consideration of H.B. 458. The proposed Bill would provide for a "give-away" of untold millions of dollars worth of state assets to not more than 382 individual state agricultural-rights land purchasers - with absolutely no benefit to the state's agricultural development efforts. Moreover, the proposed Bill, H.B. 458, would provide for the totally unwarranted "purchase preference" of state agricultural-rights land by existing agricultural land holders at the expense of those thousands of landless Alaskans who are now prospective farmers and agriculturalists. I would further suggest that prospective development of viable agricultural lands has now fallen to less than 800,000 acres, from the some 20 million acres identified some 10 years ago. I would again reiterate the conclusion that I reached in 1977; "Alaska will be unable to respond in any manner to any national food emergency within any foreseeable future (50 years)". I would ask this committee: "What are you going to do about this unfortunate situation?"

Thank you for your kind attention.

Alaska State Legislature

BETTYE FAHRENKAMP, Chairman
ROBERT H. ZIEGLER, SR., Vice Chairman
DICK ELIASON
PAUL FISCHER
VIC FISCHER
BOB MULCAHY
ARLISS STURGULEWSKI

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Senate

Committee on Resources

MINUTES

May 14, 1984
3:13 pm

Beltz Room
Room 211, Capitol

MEMBERS PRESENT

Senator Fahrenkamp, Chairman
Senator Ziegler, Vice-chairman
Senator Eliason
Senator Paul Fischer
Senator Vic Fischer
Senator Mulcahy
Senator Sturgulewski

CALENDAR

HB 188, An Act relating to big game hunting by nonresidents.

HB 458, An Act relating to agricultural rights to land.

HB 546, An Act relating to harassment of persons lawfully engaged in hunting, fishing, or trapping.

HB 709, An Act relating to fees for guided tours through historical sites.

HB 188

Dave Stancliff, Aide to the House Resources Committee, explained that this bill would allow nonresident hunters of big game to be accompanied by Alaska residents of the second degree of kindred, including "marriage relations". It would also increase the fine for violation of this provision from $2500 to $5000.

Paddy McGuire, Alaska Department of Fish and Game, spoke in support of the bill.

Senator Mulcahy moved CS HB 188 (Finance)am from committee with individual recommendations. There was no objection.

HB 709

Carol Wilson, Special Assistant to the Commissioner, Department of Natural Resources, spoke in support of the bill, which would authorize DNR to establish and collect fees for guided tours through historical sites.

Senator Mulcahy moved CS HB 709 (State Affairs) from committee with individual recommendations. There was no objection.

HB 546

Dave Stancliff, Aide to the House Resources Committee, spoke in support of the bill and explained that the problems with HB 163, a similar bill that was vetoed by the Governor last year, have been solved in HB 546.

Lisa Nelson, Criminal Division, Department of Law, testified that there is no Constitutional problem with the bill as currently written.

Ron Sommerville, Alaska Outdoor Council, spoke in support of the bill.

Senator Mulcahy moved CS HB 546 (Resources)am from committee with individual recommendations. Senator Sturgulewski objected and then withdrew her objection.

HB 458

Representative Bob Bettisworth, sponsor of the bill, explained that the bill was intended to help those purchasers of "agricultural rights" land who are having difficulty obtaining financing for home construction by issuing a fee simple conditional title to those purchasers.

Senator Kerttula reviewed the history of federal homesteading, the problems of diminishing farm land in other states, and the importance of preserving agricultural land in Alaska.

Betty Cook, Alaska Housing Finance Corporation, Anchorage, testified that even if fee simple title were issued, AHFC's regulations would prohibit loans being made on land that produces significant income, and prohibit refinancing of loans. There would be additional problems if there were other liens on the property and because of AHFC's lack of experience with agricultural loans.

Ralph Bennett, Aide to Representative Bettisworth, testified that his research indicated that banks were willing to make loans on land for which fee simple conditional title was held.

The meeting adjourned at 3:58 pm.

conditional title — would have to sell as ag land

HB 458 p. 18, p. 24

wouldn't qualify

(ii) restricts the ground rent to annual increases of no more than 10 percent per annum;

how do other states do?

(iii) has a term no less than that of the loan;

(iv) is recordable in the appropriate district recording office.

Bank - federal regs.

(14) The collateral securing the loan must have been appraised no more than six months before the loan application is submitted to the Corporation. The appraisal shall have been

(A) performed by an appraiser approved by the Corporation and completed on a form approved by the Corporation;

(B) completed after improvements to the property have been completed for existing units;

(C) subject to a final inspection for units not set up on the site at the time of appraisal.

(c) For the purpose of determining the maximum financing allowed under (b) of this section, the cost of real property is limited to the purchase price or amount refinanced and the direct costs paid to a party other than the borrower for providing permanent improvements including, but not limited to water, sewer, and access improvements.

(d) In this section,

(1) "borrower's mobile home" means

(A) the mobile home the borrower will purchase with the loan if the loan is one described in (a)(1), (2), or (3) of this section

(B) the mobile home described in (a)(4) of this section if the loan is one described in (a)(4) of this section; and

(2) "mobile home" means a mobile home which has at least 600 square feet of living area determined by measuring the exterior of the unit at the base but excluding the tongue of the unit and any lean-tos, wanigans, and the like;

(3) "Class I Loan" means a loan that qualifies for purchase under a Corporation bond indenture the funds related to which are being committed at the time the loan is approved.

(4) "Class II Loan" means a loan under this section which does not qualify for purchase under a Corporation bond indenture the funds related to which are being committed at the time the loan is approved. (Eff. 10/1/83, Reg. 87)

Authority: AS 18.56.090(3), 5
AS 18.56.100

15 AAC 118.290. DEFINITIONS. Repealed 2/17/82.

15 AAC 118.300. SPECIAL MORTGAGE LOAN PURCHASE PROGRAM SCOPE. (a) 15 AAC 118.300 - 15 AAC 118.580 implement the special mortgage loan purchase program established by AS 18.56.098.

(b) 15 AAC 118.400 - 15 AAC 118.450 implement the portion of the special mortgage loan purchase program to be financed with the proceeds of qualified mortgage bonds.

(c) 15 AAC 118.490 - 15 AAC 118.580 implement the portion of the special mortgage loan purchase program to be financed with the proceeds of qualified veterans' mortgage bonds. (Eff. 6/30/80, Reg 78; am 9/17/81, Reg. 80; am 2/17/82, Reg. 82; am 1/26/83, Reg. 85)
Authority: AS 18.56.088 AS 18.56.098

15 AAC 118.305. BORROWER ELIGIBILITY. A person is eligible under the program for a residential mortgage loan to finance the purchase of dwelling, including a duplex, triplex or four-plex, condominium, or an individual unit within a PUD project, subject to any restrictions under 15 AAC 118.400 - 15 AAC 118.580 for mortgages financed by bonds issued thereunder. Eligibility is without regard to location of the dwelling within the State of Alaska or another eligible location. The dwelling must be designed for residential use, and intended for use and used as the principal residence of the borrower pursuant to AS 18.56. A person is not eligible for a loan if the person is an owner of a dwelling financed by an outstanding loan purchased by the Corporation. As used in this section "owner" includes a person who is liable on a mortgage or note with respect to a loan but does not include a person not occupying a dwelling but remaining a co-owner after legal termination of marriage. A loan to finance the purchase of a dwelling includes a loan to an owner/builder, providing that the loan constitutes the first permanent financing of a dwelling which has been newly constructed by the owner/builder; OR a loan to a purchaser, providing that the loan constitutes the initial permanent financing obtained for the dwelling by the purchaser, and further providing that the loan is submitted to AHFC as soon as practicable, but in no event more than one year from date of purchase. The determination of whether the dwelling constitutes "newly constructed" or whether a loan constitutes the first "permanent financing" by the purchaser on a dwelling or whether the loan is submitted to AHFC as soon as practicable shall be made by the Corporation based upon information submitted to the Corporation. (Eff. 10/2/80, Reg. 78; am 1/27/81, Reg. 78; am 2/17/82, Reg. 82; am 10/27/82, Reg. 84; am 1/26/83, Reg 85; am __/__/83, Reg __)
Authority: AS18.56.088 AS18.56.098

15 AAC 118.310. LOAN TERMS. (a) Each residential mortgage loan purchased by the Corporation as part of the special mortgage loan purchase program, except as otherwise provided in (d) of this section for triplexes and four-plexes and (f) of this section for loans to members of the Alaska Delegation to Congress, must

(1) be serviced by a seller/servicer approved by the Corporation;

(2) constitute a first or second lien on real estate in fee simple or on a leasehold estate and, if a first lien, be subject only to permitted encumbrances, and, if a second lien, be subject only to permitted encumbrances and a first lien mortgage loan serviced by a seller/servicer approved by the Corporation;

(3) if a first lien, be the subject of private mortgage insurance, federal insurance, or federal guarantee, the benefits of which are payable to the Corporation, in the event that the ratio of the loan to the value of the property ("loan-to-value ratio") exceeds 80 percent;

(4) if a second lien, be the subject of private mortgage insurance, federal insurance or federal guarantee, the benefits of which are payable to the Corporation, in the event that the ratio of the first and second lien mortgage loans combined to the value of the property exceed 80 percent to the extent necessary to cause the ratio to go down to 75 percent;

(5) be for purchase of completed, owner-occupied residential housing or for the improvement or rehabilitation of owner-occupied residential housing, the mortgage of which shall be eligible for purchase by the Corporation under the Act;

(6) be insured by a mortgagee's policy of title insurance issued by a title insurance company qualifed to do business in the area in which the residence is located and acceptable to the Corporation, insuring the enforceable mortgage, subject only to permitted encumbrances or in the case of a second lien mortgage, subject only to permitted encumbrances and the first lien mortgage.

(b)(1) The loan-to-value ratio and the loan amounts on first lien mortgage loans of the Corporation to finance a single-family residence, including a unit in a condominium project or a planned unit development (herein called a "single-family residence") or a duplex shall be as set forth in this paragraph:

(A) The loan-to-value ratio on a mortgage loan for a single-family residence and a duplex shall not exceed 95 percent.

(B) The loan amount on a mortgage loan for a single-family residence shall not exceed $178,650.

(C) The loan amount on a mortgage loan for a duplex shall not exceed $207,750.

(D) The loan amount on a mortgage loan guaranteed by the Veterans Administration for a single-family residence and a duplex shall not exceed $135,000.

(E) The amount of the guarantee plus the down payment on a mortgage loan guaranteed by the Veterans Administration for a single-family residence and a duplex must equal 25 pecent of the value of the single-family residence or the duplex.

(F) The loan amount on a mortgage loan insured by the FHA for a single-family residence shall not exceed $101,250.

(G) The loan amount on a mortgage loan insured by the FHA for a duplex shall not exceed $114,000.

(H) The down payment and loan-to-value ratios of mortgage loans insured by the FHA shall be as required by FHA.

(2) The limitations provided in (b)(1) of this sub-section are applicable to a first lien mortgage loan. The limitations as to amount of loan shall also limit the amount of a second lien mortgage loan provided that in computing the amount of a second lien mortgage loan any first lien mortgage loan shall be deducted. The loan-to-value ratio of a second lien mortgage loan shall be as fixed in the Act. All loan-to-value ratios and maximum lien amounts shall be reduced if Federal National Mortgage Association, Veterans Administration of FHA limits are reduced for Alaska.

(c) One unit of a duplex, triplex, or four-plex must be owner-occupied for a residential mortgage loan to finance the purchase of that duplex, triplex, or four-plex to be eligible for purchase by the Corporation.

(d) For triplexes and four-plexes, loans purchased as part of the special mortgage loan purchase program

(1) must constitute a first lien on real estate in fee simple or on a leasehold estate and be subject only to permitted encumbrances;

(2) must be only for the purchase of a completed owner-occupied residential housing, the mortgage of which shall be eligible for purchase by the Corporation under the Act;

(3) must have a loan-to-value ratio no more than 90 percent for a triplex or four-plex;

(4) will not exceed a loan amount of $250,800 for a triplex and $311,850 for a four-plex.

(e) A residential mortgage loan hereafter purchased by the Corporation in order to finance a unit in a condominium project or in a planned unit development project ("condominium" or "PUD project") shall be subject to the following terms and conditions:

(1) the living units of the condominium or PUD project must be within the same structure or a reasonably contiguous structure. Common elements of the project must have been completed prior to the purchase of the loan; and

(2) prior approval procedures, warranties and provisions relating to the sale and occupancy of units which are reasonable and customary in mortgage lending, shall apply as prescribed in the seller/servicer guide.

(f) A residential mortgage loan hereafter purchased by the Corporation in order to finance a residence for members of the Alaska Delegation to Congress shall be subject to the following term and condition:

(1) the residence shall be located in the District of Columbia or within 50 miles of the District of Columbia. (Eff. 6/30/80, Reg. 78; am 6/18/81, Reg. 79; am 9/17/81, Reg. 80; am 2/17/82, Reg. 82; am 10/27/82, Reg. 84; am 1/4/83, Reg. 85; am __/__/__, Reg.__)

Authority: AS 18.56.096 AS 18.56.098(a) and (e)

15 AAC 118.315. PURCHASES OF LOANS FROM SELLER/SERVICERS. Repealed 2/17/82.

15 AAC 118.320. ASSUMPTIONS OF MORTGAGE LOANS. Repealed 2/17/82.

15 AAC 118.325. MINIMUM CONSTRUCTION STANDARDS AND STANDARD DEVIATIONS. Repealed 2/17/82.

15 AAC 118.330. IMPROVEMENT OR REHABILITATION. Repealed 2/17/82.

15 AAC 118.335. APPEALS PROCEDURE. Repealed 2/17/82.

15 AAC 118.340. SERVICING FEE. Repealed 2/17/82.

15 AAC 118.342. HOME OWNERSHIP ASSISTANCE PROGRAM. (a) The home ownership assistance program provides assistance to persons of lower and moderate income to purchase homes financed with a mortgage loan purchased by the Corporation under 15 AAC 118.283 - 15 AAC 118.345. Except as provided in this section, the same limitations and conditions otherwise applicable under 15 AAC 118.283 - 15 AAC 118.345 apply to mortgage loans where the borrower is eligible for home ownership assistance under this section.

(b) A person is eligible for home ownership assistance for the purchase of a single-family residence, including a condominium or PUD unit after having met general borrower loan qualifications of the Corporation and those of this section. Owner/builder refinances, are not eligible under this section.

(c) To be eligible to receive benefits under the program, an applicant must establish that:

(1) A minimum of 28 percent of the gross income per household is contributed toward the applicant's monthly payments of principal and interest on the loan, together with applicable taxes, hazard insurance, mortgage insurance, credit insurance, space rent, and home owner association fees (less any utility expenses included in those fees).

(2) The household must not own assets of value exceeding $50,000 for a one member household and an additional $5,000 for each household member beyond one. If a member of the household is 65 years old or over, the household must not own assets of value exceeding one and one-half times the applicable limit for the household size set forth in this paragraph.

(3) Neither the purchase price nor the appraised value of the property for which the subsidy under the program is provided exceeds:

(i) $80,000 for a 1 or 2 member family;

(ii) $85,000 for a 3 member family;

(iii) $90,000 for a 4 member family; and

(iv) $100,000 for a family with 5 or more members.

(d) The terms for home ownership assistance are as follows:

(1) mortgage payments may be partially subsidized by the home ownership fund in an amount not to exceed the lesser of the following amounts:

(A) for borrowers who first executed a home ownership assistance agreement prior to February 1, 1983:

(i) the sum necessary to reduce the borrower's monthly payments of principal and interest on the mortgage loan to the amounts payable as if the mortgage loan were a level debt service loan bearing interest at the rate of six percent a year; or

(ii) the sum necessary to reduce the borrower's monthly payments of principal and interest on the mortgage, together with taxes, hazard insurance, mortgage insurance and homeowner association fees if any with respect to the property, to 25 percent of gross income per family;

(B) for borrowers who first executed a home ownership assistance agreement on or after February 1, 1983:

(i) the sum necessary to reduce the monthly payments of principal and interest on the mortgage loan to the amounts payable as if the mortgage loan were a level debt service loan bearing interest at the rate of six percent a year; or

(ii) the sum necessary to reduce the monthly payments of principal and interest on the mortgage loan, together with taxes, hazard insurance, mortgage insurance, credit insurance, space rent, and any homeowner association fees (less any utility expenses included in those fees) with respect to the property, to 28 percent of gross income per household;

(C) Repealed 1/31/84.

(2) the term for a mortgage loan with respect to which there is a home ownership assistance agreement must be the maximum term allowed under the Corporation's program providing financing for the home or the remaining economic life of the property, whichever is less;

(3) Repealed 1/31/84.

(4) Repealed 1/31/84.

(5) the loan-to-value ratio for a mortgage loan with respect to which there is a home ownership assistance agreement shall not exceed the maximum percent allowable by statute.

(6) the borrower shall be required to enter into a home ownership assistance agreement with the Corporation which shall expire December 31 each year and contain periodic income review requirements in the form required by the Corporation including, without limitation, provisions reducing or eliminating assistance depending on

(A) application of the assistance formula of paragraph (d)(1) of this section;

(B) a formula or other method based on the amount available for assistance from income or revenues of the Home Ownership Fund;

(7) when the term of a home ownership assistance agreement, which is originally executed by a borrower on or after February 1, 1983, expires as provided in (d)(6) of this section, a new home ownership assistance agreement may be entered pursuant to the terms of (d) of this section, but the assistance amount under a new agreement may not exceed the assistance amount allowed (pior to any adjustments) under the previous agreement;

(8) after February 1, 1983, the Corporation will not enter into a home ownership assistance agreement with a borrower who has not previously obtained a loan prior to that date under the home ownership assistance program if the amount of assistance is determined to be less than fifty dollars ($50) per month.

(e) A home ownership assistance agreement is personal to the borrower and may not be assigned.

(f) No secondary financing of a mortgage loan with respect to which there is a home ownership assistance agreement is permitted.

(g) As used in this section

(1) "family" means those individuals executing the mortgage note and Deed of Trust, and their dependents who occupy the residence on a permanent basis;

(2) "household" means all persons who may or may not be members of the family who occupy the residence on a permanent basis as a full or part-time resident. (Eff. 12/15/80, Reg. 78; am 9/17/81, Reg. 81; am 1/26/83, Reg. 85; am 1/31/84, Reg. ___)
Authority: AS 18.56.091

15 AAC 118.344. FAIRBANKS NORTH STAR BOROUGH PROGRAM. A portion of the special mortgage loan purchase program may be implemented in the Fairbanks North Star Borough by the Corporation with the proceeds of $35,000,000 bonds of the Borough which are tax-exempt under Section 1104(b)(4) of the Mortgage Subsidy Bond Tax Act of 1980, and with amounts appropriated to the Corporation for the special mortgage loan purchase program. The provisions of this chapter which implement the special mortgage loan purchase program shall govern the portion of the program to be implemented in the Fairbanks North Star Borough, except that the mortgage loans purchased with the proceeds of the bonds shall be secured by real property and owner-occupied residences located only in the Fairbanks North Star Borough, and shall be originated and serviced by seller/servicers with originating and servicing capacity in the Borough. The details of the portion of the special mortgage loan purchase program to be implemented in the Borough including, without limitation, the amount of the appropriation to be used by the Corporation in connection therewith, shall be fixed by agreement between the Corporation and the Borough. The agreement may be part of a trust indenture securing the bonds between the Borough, the Corporation and the Trustee. (Eff. 6/30/80, Reg. 78; am 4/29/82, Reg. 82)
Authority: AS18.56.088 AS 18.56.090 AS18.56.098

15 ACC 118.345. DEFINITIONS. Repealed 2/17/82.

15 AAC 118.400. QUALIFIED MORTGAGE BOND PROGRAM (SPECIAL MORTGAGE LOAN PURCHASE PROGRAM). 15 AAC 118.400 - 15 AAC 118.450, are adopted to permit the Corporation to issue qualified mortgage bonds as described under Section 103A(c)(1) and (c)(2) [(b)(2)] of the Internal Revenue Code and the Temporary Regulations published in the Federal Register with respect thereto (herein called the "Temporary Regulations") and to define and describe mortgages eligible to be financed with the proceeds of qualified mortgage bonds as part of the special mortgage loan purchase program of the Corporation (herein called the "program"). These sections are intended to establish procedures to ensure compliance with the mortgage eligibility provisions referred to in the Temporary Regulations. (Eff. 9/17/81, Reg. 80; am 2/17/82, Reg. 82; am 10/27/82, Reg. 84; am 1/26/83, Reg. 85)
Authority: AS 18.56.088 AS 18.56.098

15 AAC 118.401. ELIGIBILITY. When a person seeks to finance the purchase of a single-family owner-occupied residence, including a condominium, PUD project unit or a duplex, and that purchase is eligible for financing with proceeds from Qualified Mortgage Bonds issued pursuant to Section 103A of the Internal Revenue Code and 15 AAC 118.400-118.450, the person must finance the purchase with those proceeds when proceeds are available. This requirement does not apply to persons who are eligible to finance the purchase of a single-family owner-occupied residence, including a condominium, PUD project unit or a duplex with the proceeds from a State Guaranteed Bond issued under the Veterans Mortgage Program. (Eff. 5/11/83, Reg. 86)
Authority: AS 18.56.088 AS 18.56.098

15 AAC 118.405. SINGLE-FAMILY RESIDENCES. A person is eligible under the program for a residential mortgage loan which is eligible for purchase by the Corporation under the Act to finance the purchase of a single-family, owner-occupied residence, including a condominium, PUD project unit or a duplex (in 15 AAC 118.405 - 15 AAC 118.450 called "residence"). As used in 15 AAC 118.405 -15 AAC 118.450, "single-family" owner-occupied residences" includes a duplex if one unit of the duplex is occupied by the owner of the duplex and the principal residence within a reasonable time not exceeding 60 days, after the financing is provided and will establish other procedures to ensure that the requirement is met. Whether a residence is used as principal residence will depend on all the facts and circumstances of each case, including the good faith of the mortgagor. Except for duplexes, a residence which can reasonably be expected to be used to a trade or business, as an investment property , or as a recreational home, will not be considered a principal residence. The term "residence" does not include property such as an appliance, a piece of furniture, a radio, etc., which under Alaska law is not a fixture. Land appurtenant to a residence shall be considered as part of the residence only if such land reasonably maintains the basic livability of the residence and does not provide, other than incidentally, a source of income to the mortgagor. Land appurtenant to a residence is not included in the definition of "residence" if the land may be further subdivided under zoning or platting regulations in effect at the time of the making of the mortgage loan. (Eff. 9/17/81, Reg. 80)
Authority: AS 18.56.088 AS 18.56.098

15 AAC 118.410. OWNERSHIP REQUIREMENTS. (a) Except as provided in (d) of this section, each of the mortgagors to whom owner financing (i.e., financing to acquire a residence under 15 AAC 118.405) is provided must meet the requirements

of this paragraph. A mortgagor meets the requirements of this paragraph only if the mortgagor had no present ownership interest in a principal residence located anywhere at any time during the three-year period prior to the date on which the mortgage is executed. For purposes of the preceding sentence, the mortgagor's interest in the residence with respect to which the financing is being provided shall not be taken into account. In the event there is more than one mortgagor with respect to a particular residence, each of the mortgagors must meet the three-year requirement. A person who is liable under a note secured by a mortgage, but who does not have a present ownership interest in a residence subject to the mortgage, need not meet the three-year requirement. For example, where a parent of a home purchaser co-signs the note for a child, but the parent takes no interest in the residence, it is not necessary that the parent meet the three-year requirement since the parent is not a mortgagor of the residence. Examples of interest which constitute present ownership interest are the following:

(1) a fee simple interest;

(2) a joint tenancy, a tenancy in common, or a tenancy by the entirety;

(3) a life estate;

(4) a land contract (i.e., a contract pursuant to which possession and the benefits and burdens of ownership are transferred although legal title is not transferred until some time later); and

(5) an interest held in trust for the mortgagor (whether or not created by the mortgagor) that would constitute a present ownership interest if held directly by the mortgagor.

(b) Examples of interest which do not constitute present ownership interest are the following:

(1) a remainder interest;

(2) a lease with or without an option to purchase;

(3) a mere expectancy to inherit an interest in a principal interest;

(4) the interest that a purchaser of a residence acquires on execution of a purchase contract; and

(5) an interest in other than a principal residence during the previous three years.

(c) The Corporaton will require proof by affidavit of mortgagors of eligibility and compliance with the above requirement and will establish other procedures to ascertain eligibility and compliance with the requirements.

(d) Mortgagors who do not meet the qualifications described in (a) of this section are eligible under the qualified mortgage bond program.

(1) to the extent permitted under Section 103A of the Internal Revenue Code, as amended, and any Temporary Regulations with respect thereto;

(2) to the extent of availability of

(A) 10 percent of the lendable proceeds of qualified mortgage bonds issued prior to September 3, 1982 which are uncommitted on that date and

(B) 10 percent of the lendable proceeds of qualified mortgage bonds issued after September 3, 1982; and

(3) pursuant to the provisions of AAC 118.417. (Eff. 9/17/82, Reg. 80; am 10/27/82, Reg. 8')
Authority: AS18.56.088 AS18.56.098

15 AAC 118.415. PURCHASE PRICE REQUIREMENTS. (a) The acquisition cost, as herein defined, of each single-family residence may not exceed the "specified percent" of the average area purchase price of the statistical area in which the residence being financed is located as determined by the executive director in accordance with the Temporary Regulations. The executive director shall determine the average area purchase price separately with respect to (1) residences which have not been previously occupied, (2) residences which have been previously occupied, (3) one-family residences, and (4) two-family residences. The executive director may adopt the average area purchase price limitations published by the Treasury Department for the statistical area in which a residence is located which are referred to in the Temporary Regulations as the "Safe Harbor Regulations". The term "acquisition cost" means the cost of acquiring a residence from the seller as a completed residential unit. The determination whether a particular residence meets the purchase price requirement shall be made as of the date on which the commitment to provide the financing is made, or if earlier, the date of purchase of the residence. The term "acquisition cost" includes the following:

(A) All amounts paid, either in cash or in any kind, by the purchaser (or a related party or for the benefit of the purchaser) to the seller (or a related party or for the benefit of the seller) as consideration for the residence.

(B) If a residence is incomplete, the reasonable cost of completing the residence whether or not the cost of completing construction is to be financed with bond proceeds. For example, where a mortgagor purchases a building which is so incomplete that occupancy of the building is not permitted under local law, the acquisition cost includes the costs of completing the building so that occupancy of the building is permitted;

(C) Where a residence is purchased subject to a ground rent, the capitalized value of the ground rent. Such value shall be calculated using a discount rate equal to the yield on the issue of bonds as defined in the Temporary Regulations.

(b) The term "acquisition cost" does not include the following:

(1) The usual and reasonable settlement or financing costs. Settlement costs include titling and transfer costs, title insurance, survey fees, or other similar costs. Financing costs include credit reference fees, legal fees, appraisal expenses, "points" which are paid by the buyer (but not the seller, even though borne by the mortgagor through a higher purchase price) or other costs of financing the residence. However, such amount will be excluded in

determining acquisition cost only to the extent that the amounts do not exceed the usual and reasonable cost which would be paid by the buyer where financing is not provided through a qualfied mortgage bond issue. For example, if the purchaser agrees to pay to the seller more than a pro rata share of property taxes, such excess shall be treated as part of the acquisition cost of a residence;

(2) The value of services performed by the mortgagor or members of the mortgagor's family in completing the residence. For purposes of the preceding sentence, the family of an individual shall include only the individual's brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants. For example, where the mortgagor builds a home alone or with the help of family members, the acquisition cost includes the cost of materials provided and work performed by sub-contractors (whether or not related to the mortgagor) but does not include the imputed cost of any labor actually performed by the mortgagor or a member of the mortgagor's family in constructing the residence. Similarly, where the mortgagor purchases an incomplete residence, the acquisition cost includes the cost of material and labor paid by the mortgagor to complete the residence but does not include the imputed value of the mortgagor's labor or the labor of the mortgagor's family in completing the residence.

(3) The cost of land which has been owned by the mortgagor for at least 2 years prior to the date on which construction of the residence begins.

(c) The term "specified percent" as used in this section is the percentage fixed by Section 103A of the Internal Revenue Code, as amended, and applied to the average area purchase price calculations as a requirement for the use of proceeds of qualified mortgage bonds, and that percentage is 90 percent for qualified mortgage bonds issued prior to September 3, 1982 and 110 percent for qualified mortgage bonds issued thereafter. (Eff. 9/17/82, Reg. 80; am 10/27/82, Reg. 84)
Authority: AS 18.56.088 AS 18.56.098

15 AAC 118.417. ALLOCATION OF PROCEEDS AFTER SEPTEMBER 3, 1982. (a) Proceeds available to mortgagors who do not meet the qualifications described in 15 AAC 18.410(a) will be allocated as follows and in the following sequence depending upon availability of proceeds:

(1) to mortgagors eligible for receipt of funds under the Corporation's home ownership assistance program or such other programs as the Corporation may from time to time establish for handicapped persons and which programs are designated as eligible hereunder by the executive director;

(2) if the executive director determines that mortgagors under the home ownership assistance program or other programs described in (1) of this subsection are not utilizing proceeds in a timely fashion, to mortgagors with a lower or moderate income not otherwise eligible under the qualified mortgage loan program, the home ownership assistance program, or the other programs described in (1) of this subsection;

(3) if the executive director determines that proceeds are not being utilized in a timely fashion for mortgagors eligible under (1) and (2) of this subsection, to any other mortgagor.

(b) Mortgagors who are eligible for funds under the home ownership assistance program and who would meet the qualifications for the qualified mortgage bond program described in 15 AAC 118.410(a) must apply for financing under qualified mortgage bond program procedures prescribed by the Corporation and may not apply through the home ownership assistance program for proceeds made available under (a)(1) of this section.

(c) Subject to the priorities set forth in (a) of this section, the executive director may prescribe rules for the availability and allocation of proceeds available for mortgagors who become eligible for financing under the qualified mortgage bond program by operation of 15 AAC 118.410(d) and this section.

(d) The executive director may prescribe rules for the allocation of proceeds from qualified mortgage bonds subject to different computations for the "specified percent" of the average area purchase price as set forth in 15 AAC 118.415(c). (Eff. 10/27/82, Reg. 84)
Authority: AS 18.56.088 AS 18.56.098

15 AAC 118.420. QUALIFIED HOME IMPROVEMENT LOANS. A person is eligible under the program for a qualified home improvement loan as provided in this section.

(1) The term "qualified home improvement loan" means a mortgage loan in an amount which does not exceed $15,000 with respect to any residence which finances alterations, repairs, and improvements on, or in connection with, an existing single-family, owner-occupied residence by the owner thereof, but only if such items substantially protect or improve the basic livability or energy efficiency of the residence.

(2) Alterations, repairs, or improvements that satisfy the requirement of subdivision (1) include the renovation of plumbing or electric systems, the installation of improved heating or air conditioning systems, the addition of living space, or the renovation of a kitchen area. Items that will not be considered to substantially protect or improve the basic livability of the residence include swimming pools, tennis courts, saunas, or other recreational or entertainment facilities.

(3) A qualified home improvement loan may be made to a borrower for a residence for which one or more qualified home improvement loans previously have been provided, whether or not by the same lender provided that:

(A) the prior loan or loans have been repaid; and

(B) if any person who had a present ownership interest in such residence at the time the previous qualified home improvement loan or loans were made has a present ownership interest in the residence at the time the subsequent qualified home improvement loan is made, then the allowable amount of the subsequent qualified home improvement loan shall be reduced by the amount, at origination, of any previous qualified home improvement loan, so that the sum of such loans does not exceed $15,000. (Eff. 9/17/81, Reg. 80; am 2/17/82, Reg. 82)
Authority: AS 18.56.088 AS 18.56.098

15 AAC 118.425. QUALIFIED REHABILITATION LOAN. A person is eligible under the program for a Qualified Rehabilitation Loan as provided in this section.

(1) The term "qualified rehabilitation loan" means any owner financing provided in connection with -

(A) A qualified rehabilitation; or

(B) The acquisition of a residence with respect to which there has been a qualified rehabilitation,

but only if the mortgagor to whom such financing is provided is the first resident of the residence after completion of the rehabilita-tion. Where there are two or more mortgagors of a rehabilitation loan, the first residency requirement is met if any of the mortgagors meets the first residency requirement.

(2) The term "qualified rehabilitation" means any rehabilitation of a residence if

(A) there is a period of at least 20 years between the date on which the building was first used and the date on which physical work on such rehabilitation begins;

(B) 75 percent or more of the existing external walls of such building are retained in place as external walls in the rehabilitation process; and

(C) the expenditures for such rehabilitation are 25 percent or more of the mortgagor's adjusted basis in the residence (including the land on which the residence is located).

(3) For purposes of (1)(A) and (B), the rules applicable to the investment tax credit for qualified rehabilitated buildings under section 48(g)(1)(A)(iii) and (B) of the Internal Revenue Code shall apply. However, unlike section 48(g)(1)(B), once a building meets the 20-year test, more than one rehabilitation of that building within a 20-year period may qualify as a qualified rehabilitation.

(4) The adjusted basis to the mortgagor is the mortgagor's adjusted basis for purposes of determining gain or loss on the sale or exchange of a capital asset (as defined in Section 1221 of the Internal Revenue Code). The mortgagor's adjusted basis shall be determined as of the date of completion of the rehabilitation, or, if later, the date the mortgagor acquires the residence, i.e., the date on which the mortgagor includes in basis any amounts expended for rehabilitation that are expended for capital assets.

(5) The amount expended by the mortgagor for rehabilitation include all amounts expended for rehabilitation regardless of whether the amounts expended were financed from the proceeds of the loan or from other sources, and regardless of whether the expenditure is capital expenditure, so long as the expenditure is made during the rehabilitation of the residence and is reasonably related to the rehabilitation of the residence. The value of services performed bythe mortgagor or members of the mortgagor's family (as used in 15 AAC 118.415) in rehabilitating the residence will not be included in determining the rehabilitation expenditures for purposes of the 25 percent test.

(6) Where a mortgagor purchases a residence that has been substantially rehabilitated, the 25 percent test is determined by comparing the total expenditures made by the seller for the rehabilitation of the residence with the acquisition cost of the residence to the mortgagor. The total expenditures made by the seller for rehabilitation do not include the cost of acquiring the building or land but do include all amounts directly expended by the seller in rehabilitaing the building (excluding overhead and other indirect charges). (Eff. 9/17/81, Reg. 80)
Authority: AS 18.56.088 AS 18.56.098

15 AAC 118.430. QUALIFIED MORTGAGE LOANS. (a) First lien mortgage loans may be purchased under 15 AAC 118.400 - 15 AAC 118.450 only if made to persons who did not have a mortgage (whether or not paid off) on the residence securing the mortgage note at any time prior to the execution of the mortgage. For purposes of this section, the replacement of -

(1) construction period loans;

(2) bridge loans or similar temporary initial financing; and

(3) in the case of a qualified rehabilitation, an existing mortgage,

shall not be treated as the acquisition or replacement of any existing mortgage. Generally, temporary initial financing is any financing which has a term of 24 months or less.

(b) Second lien mortgage loans may be purchased under 15 AAC 118.400 - 15 AAC 118.450 to extent such loans are allowable under applicable Federal law and comply with the provisions of 15 AAC 118.420 and 15 AAC 118.425. (Eff. 9/17/81, Reg. 80; am 2/17/82, Reg. 82)
Authority: AS 18.56.088 AS 18.56.098

15 AAC 118.440. LOAN TERMS. Repealed 2/17/82.

AAC 118.450. PURCHASE OF QUALIFIED MORTGAGE LOANS FROM SELLER/SERVICER. In addition to the terms and conditions fixed by Section 250 for the purchase of mortgage loans from the originating mortgage lender ("seller/servicer"), the sales and servicing agreement between seller/servicer and the Corporation and the seller/servicer guide will provide for reasonable periodic inspection by, and other reasonable procedures, including reasonable investigations by the seller/servicer to assure that the mortgage loans purchased comply with the requirement of the Temporary Regulations. The sales and servicing agreement shall contain covenants by the seller/servicer designed to assure compliance with the Temporary Regulations. (Eff. 9/17/81, Reg. 80; am 2/17/82, Reg. 82)
Authority: AS 18.56.088 AS 18.56.098

15 AAC 118.490 QUALIFIED VETERANS' MORTGAGE BOND PROGRAM (SPECIAL MORTGAGE LOAN PURCHASE PROGRAM). (a) 15 AAC 118.490 - 15 AAC 118.580 are adopted to permit the Corporation to issue qualified mortgage bonds as described under Section 103A(c)(3) of the Internal Revenue Code and the Temporary Regulations published in the Federal Register with respect thereto (herein called the "Temporary Regulations") and to define and describe mortgages eligible to be financed with the proceeds of qualified veterans' mortgage bonds as part of the

special mortgage loan purchase program of the Corporation (herein called the "program"). These sections are intended to establish procedures to ensure compliance with the mortgage eligibility provisions referred to in the Temporary Regulations.

(b) A person is eligible under the program for a residential mortgage loan which is eligible for purchase by the Corporation under the act if

(1) the person is a qualified veteran as described in 15 AAC 118.500 - 15 ACC 118.580;

(2) the residential mortgage loan will finance a single-family, owner-occupied residence as the term "single-family, owner-occupied residence" is used and described in 15 AAC 118.405. (Eff. 1/26/83, Reg. 85)
Authority: AS 18.56.088 AS 18.56.098

15 AAC 118.492. QUALIFIED VETERANS' MORTGAGE LOANS. (a) Fist lien mortgage loans may be purchased under 15 AAC 118.490 - 15 AAC 118.580 only if made to persons who did not have a mortgage (whether or not paid off) on the residence securing the mortgage note at any time prior to the execution of the mortgage. For purposes of this section, the replacement of

(1) construction period loans;

(2) bridge loans or similar temporary initial financing; and

(3) in the case of a qualified rehabilitation, and existing mortgage,

shall not be treated as the acquisition or replacement of an existing mortgage. Generally, temporary initial financing is any financing which has a term of 24 months or less.

(b) Second lien mortgage loans may be purchased under 15 AAC 118.490 - 15 AAC 118.580 to the extent such loans are allowable under applicable federal law and comply with the provisions of 15 AAC 118.420 and 15 AAC 118.425. (Eff. 1/26/83, Reg. 85)
Authority: AS 18.56.088 AS 18.56.098

15 AAC 118.494. PURCHASE OF QUALIFIED VETERANS' MORTGAGE LOANS FROM SELLER/SERVICERS. In addition to the terms and conditions fixed by 15 AAC 118.260 for the purchase of mortgage loans from the originating mortgage lender ("seller/servicer"), the sales and servicing agreement between seller/servicer and the Corporation and the seller/servicer guide will provide for reasonable periodic inspection by, and other reasonable procedures, including reasonable investigations by the seller/servicer to assure that the mortgage loans purchased comply with the Temporary Regulations. The sales and servicing agreement shall contain covenants by the seller/servicer designed to assure compliance with the Temporary Regulations. (Eff. 1/26/83, Reg. 85)
Authority: AS 18.56.088 AS 18.56.098

15 AAC 118.500. VETERANS. As provided in sec. 7, Ch. 35 SLA 1982, "qualifying veteran", for the purposes of the State Guaranteed Veterans' Home Mortgage Program, has the meaning provided for the term "qualified veteran" under the

Mortgage Subsidy Bond Tax Act of 1980 (94 Stat. 2660 - 2680). Temporary regula- ions of the Internal Revenu Service (Sec. 6a.103A-3(c), as published in the leral Regis Vol. 46, no. 126, Wednesday, July 1, 1981, page 34324) have lemented t Mortgage Subsidy Bond Tax Act by defining "veteran" to have the ning provided in 38 U.S.C. 101(2). There is no definition of "qualified teran" under the Mortgage Subsidy Bond Tax Act or the regulations adopted under that Act. The corporation will accept as a "qualified veteran" a person who meets the definition of "veteran" as established in the temporary regulations of the Internal Revenue Service described above. The provision of 15 AAC 118.500 - 15 AAC 118.580 are intended to interpret and clarify the temporary regulations. However, Sec. 7, Ch. 35, SLA 1982, incorporates by reference future amendments to the definition of "qualified veteran" under the Mortgage Subsidy Bond Tax Act. Therefore to the extent that the temporary regulation of the Internal Revenue Service referred to above is amended or replaced by another regulation, the provisions of the later amendment or replacement prevail over contrary provision in 15 ACC 118.510 - 15 AAC 118.580. (Eff. 1/26/83, Reg. 85)
Authority: Sec. 7, Ch. 35 SLA 1982
AS 18.56.050 AS 18.56.088 AS 18.56.090

15 AAC 118.510 DUTY IN ARMED FORCES. (a) A person is a qualified veteran for purposes of the state guaranteed veterans' home mortgage program if the person satisfies the requirements of (b) of this section and if

(1) the person has served on full-time duty, other than for training, in the United States Army, Navy, Marine Corps, Air Force, or Coast Guard or in a reserve component of the United States Army, Navy, Marine Corps, Air Force, or Coast Guard;

(2) subject to (c) of this section, the person has served on full-time duty for training purposes in a reserve component of the United States Army, Navy, Marine Corps, Air Force, or Coast Guard and was disabled from a disease or injury incurred or aggravated in the line of that duty; or

(3) subject to (d) of this section, the person was disabled from a disease or injury incurred or aggravated in the line of duty as a member of a reserve component of the United States Army, Navy, Marine Corps, Air Force or Coast Guard if

(A) the duty was other than full-time duty and was prescribed for the reserve component of which the person was a member by the appropriate United States Secretary under 37 U.S.C. 206 or another law; or

(B) the duty was part of special additional duties authorized for the reserve component of which the person was a member by an authority designated by the appropriate United States Secretary and was performed by the person on a voluntary basis in connection with the prescribed training or maintenance activities of the reserve component to which the person was assigned.

(b) In addition to the requirements of (a) of this section, a person is a qualified veteran for purposes of the state guaranteed veterans' home mortgage program if the person

(1) has retired or been discharged or released from the duty described in (a) of this section under conditions other than dishonorable; or

(2) has not retired or been discharged or released from duty described in (a) of this section but

(A) has completed his or her initial period of duty; and

(B) would have been entitled to a discharge or release under conditions other than dishonorable at the end of his or her initial period of duty.

(c) A person is not a qualified veteran under (a)(2) oft is section if the duty served by the person was as a temporary member of the Coast Guard Reserve.

(d) A person is not a qualified veteran under (a)(3) oft his section if the duty served by the person consisted of

(1) work or study performed in connection with correspondence courses;

(2) attendance at an educational institution in an inactive status; or

(3) duty performed as a temporary member of the Coast Guard Reserve. (Eff. 1/26/83, Reg. 85)
Authority: Sec. 7, Ch. 35, SLA 1982
AS 18.56.050 AS 18.56.088 AS 18.56.090

15 AAC 118.520. DUTY IN PUBLIC HEALTH SERVICE. (a) A person is a qualified veteran for purposes of the state guaranteed veterans' home mortgage program if the person satisfies the requirements of 15 AAC 118.510(b) with regard to the duty described in this section and if

(1) the person has served on full-time duty, other than for training purposes, as a commissioned officer of the Public Health Service, or of the Reserve Corps of the Public Health Service, after July 28, 1945, or, if the duty occurred before July 29, 1945, under circumstances affording entitlement to full military benefits;

(2) the person has served on full-time duty for training purposes as a commissioned officer of the Reserve Corps of the Public Health Service at the times and under the circumstances required by (1) of this subsection and the person was disabled from a disease or injury incurred or aggravated in the line of that duty; or

(3) subject to the limitations in 15 AAC 118.510(d), the person was disabled from a disease or injury incurred or aggravated in the line of duty as a commissioned officer of the Reserve Corps of the Public Health Service under the circumstances described in 15 AAC 118.510(a)(3)(A) and (B).

(b) For the purposes of (a) of this section, the corporation will, in its discretion, seek the assistance of the Veterans' Administration in determining whether an individual's service before July 29, 1945, in the Public Health Service was under circumstances affording entitlement to full military benefits. (Eff. 1/26/83, Reg. 85)
Authority: Sec. 7, Ch. 35, SLA 1982
AS 18.56.050 AS 18.56.088 AS 18.56.090

15 AAC 118.530. DUTY IN NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION OR IN COAST AND GEODETIC SURVEY. A person is a qualified veteran for purposes of the state guaranteed veterans' home mortgage program if

(1) the person has served on full-time duty as a commissioned officer of the National Oceanic and Atmospheric Administration or of the Coast and Geodetic Survey

(A) after July 28, 1945; or

(B) before July 29, 1945, if

(ii) the person was on transfer to the United States Army, Navy, Marine Corps, Air Force, or Coast Guard;

(ii) during time of war or national emergency declared by the President, the person was assigned to duty on a project for the United States Army, Navy, Marine Corps, Air Force, or Coast Guard in an area determined by the Secretary of Defense to be of immediate military hazard; or

(iii) the person served continuously in the Philippine Islands from December 7, 1941, to July 28, 1945; and

(2) the person satisfies the requirements of 15 AAC 118.510(b) with respect to the duty described in (1) of this section. (Eff. 1/26/83, Reg. 85)
Authority: Sec. 7, Ch. 35, SLA 1982
AS 18.56.050 AS 18.56.088 AS 18.56.090

15 AAC 118.540. DUTY IN UNITED STATES MILITARY, AIR FORCE, COAST GUARD, OR NAVAL ACADEMY. A person is a qualified veteran for purposes of the state guaranteed veterans' home mortgage program if

(1) the person has served as a cadet at the United States Military, Air Force, or Coast Guard Academy or as a midshipman at the United States Naval Academy; and

(2) the person satisfies the requirements of 15 AAC 118.510(b) with respect to the duty described in (1) of this section. (Eff. 1/26/83, Reg. 85)
Authority: Sec. 7, Ch. 35, SLA 1982
AS 18.56.050 AS 18.56.088 AS 18.56.090

15 AAC 118.550. DUTY IN ALASKA NATIONAL GUARD OR AIR NATIONAL GUARD. A person is a qualified veteran for purposes of the state guaranteed veterans' home mortgage program if

(1) the person has served in the Alaska National Guard or Air National Guard under 32 U.S.C. 316, 502, 503, 504, or 505 (or a prior corresponding provision of law);

(2) the person was disabled from a disease or injury incurred or aggravated in the line of that duty; and

(3) the person satisfies the requirements of 15 AAC 118.510(b) with respect to the duty described in (1) of this section. (Eff. 1/26/83, Reg. 85)
Authority: Sec. 7, Ch. 35, SLA 1982
AS 18.56.050 AS 18.56.088 AS 18.56.090

15 AAC 118.560. TRAVEL TO OR FROM DUTY. For the purposes of 15 AAC 118.510 - 115 AAC 118.550, "duty" or "service" includes authorized travel to and from the duty or service. (Eff. 1/26/83, Reg. 85)
Authority: Sec. 7, Ch. 35, SLA 1982
AS 18.56.050 AS 18.56.088 AS 18.56.090

15 AAC 118.570. SPOUSES. A spouse of a qualified veteran is not a qualified veteran for purposes of the state guaranteed veterans' home mortgage program unless the spouse also qualifies under 15 AAC 118.510 - 15 AAC 118.550. However, if the residence for which a loan is sought is to be owned by a husband and wife as joint tenants and one spouse is a qualified veteran for purposes of the state guaranteed veterans' home mortgage program, the Corporation will consider both spouses as qualified veterans with regard to that loan. (Eff. 1/26/83, Reg. 85)
Authority: Sec. 7, Ch. 35, SLA 1982
AS 18.56.050 AS 18.56.088 AS 18.56.090

15 AAC 118.580. EVIDENCE OF QUALIFICATIONS. (a) The corporation may accept, as evidence of the satisfactory fulfillment of the requirements of 15 AAC 118.510(b)(1), an official document of the appropriate federal agency indicating that the individual has received an honorable or general discharge. If the individual has received a discharge or release other than honorable or general, the Corporation may require additional evidence to demonstrate that the discharge or release was under conditions other than dishonorable.

(b) The Corporation may seek assistance from the United States Veterans' Administration as the corporation considers necessary or appropriate to determine whether an individual qualifies as a veteran under 15 ACC 118.500 - 15 ACC 118.580. The corporation may accept a certification from the Veterans' Administration as evidence of an individual's qualification as a veteran for the purposes of the state guaranteed veterans' home mortgage program. However, a certification or other determination of the Veterans' Administration is not binding upon the Corporation. (Eff. 1/26/83, Reg. 85)

15 AAC 118.900. DEFINITIONS. In 15 AAC 118.210 - 15 AAC 118.900 unless the context requires otherwise,

(1) the definitions in AS 18.56.210 apply to words used in this chapter;

(2) "act" means AS 18.56;

(3) "adjusted income per family" means total family gross income, less adjustments for

(A) the number of family members in the household;

(B) child support payments for children; and

(C) the second wage earner's income as determined from time to time by the Corporation based on standard reporting data for the State of Alaska:

(4) "appraised value" means the market value of the property securing the mortgage as estimated by an appraiser acceptable to the Corporation;

(5) "common elements" mean those things which are maintained by, but not owned by, the owner's association of a condominium project. The common elements typically include, among other things, the land, roofs, floors, lobbies and community space and facilities;

(6) "condominium" means a form of ownership of real property characterized by title created by statute to a unit in a project together with an undivided real estate in erest in the common elements which are a part of said project in accordance with state enabling law;

(7) "executive director" means the executive director of the Alaska Housing Finance Corporation;

(8) "FHA" means the Federal Housing Administration or its legal successors;

(9) "FNMA" means the Federal National Mortgage Association or its legal successors;

(10) "FHLMC" means the Federal Home Loan Mortgage Corporation or its legal successors;

(11) "home mortgage" or "residential mortgage" means a mortgage which is secured by real property upon which is located a dwelling unit designed for residential use and where the real estate is owned in fee simple or consists of a leasehold estate;

(12) "leasehold estate" means an estate having a remaining term running or renewable at the option of the lessee, for a period of not less than 10 years after the maturity of the mortgage loan, or to any earlier date at which the fee simple title will vest in the lessee, which leasehold estate is assignable or transferable if the same is subjected to the lien of the mortgage, and there term of the mortgage loan must not exceed the term of the set ground rent by more than 10 years and the leasehold estate must otherwise be acceptable to the Corporation;

(13) "mortgage" means the mortgage deed, deed of trust or other security instrument, the obligation secured thereby, the title evidence, and all other documents and other papers pertaining to the mortgage loans;

(14) "owner-occupant" means a borrower whose principal residence is the dwelling which is the subject of the mortgage loan;

(15) "permitted encumbrances" means liens, encumbrances, reservations and other imperfections of title as shall not materially impair the use or value of the premises or as to which appropriate steps have been taken to secure the interest of the Corporation; and

(16) "planned unit development (PUD)" means a real estate development which consists of separately owned lots with contiguous or noncontiguous area or facilities usually owned by an owner's association in which the owners of the lots have a stock or membership interest which cannot be severed from the ownership of an individual unit. Title to the real estate under the dwelling units is held by the individual lot owners and not by the owner's association. The owner's association usually has title to and administers the common areas, and levies monthly charges against lot owners for common area expenses. (Eff. 2/17/82, Reg. 82)
Authority: AS 18.56.088

Alaska Association of Soil Conservation Distr

PO Box 953
Delta Junction, Alaska 99737

MAY

May 7, 1984

The Honorable Jay Kerttula
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Dear Senator Kerttula:

Enclosed is a copy of a resolution expressing discontent with HB 458. We feel that both HB 458 and CSHB 458 would unnecessarily jeopardize one of Alaska's valuable resources--its agricultural lands. For this reason, this resolution has the unanimous concensus of the Alaska Association of Soil and Water Conservation Districts.

Sincerely,

Mike Carlson

Mike Carlson
President

RESOLUTION NO. AASWCD 84-2

SUBJECT OF RESOLUTION HB 458

ORIGIN OF RESOLUTION 1984 Spring Meeting of the Alaska Association of Soil and Water Conservation Districts

DATE OF ORIGIN March 31, 1984

WHEREAS, the Alaska Association of Soil and Water Conservation Districts is on record as supporting the concept of the conveyance of agricultural rights only on agricultural land disposals; and

WHEREAS, there are substantial problems with the existing method of conveying agricultural rights to lands that unnecessarily tend to cloud the title to the lands, impede the agricultural development of these lands, and ivite needless litigation; and,

WHEREAS, the proposed HB 458 seeking to remedy these problems appears to be jeopardize the agricultural potential of these lands by unacceptably inviting non-agricultural development;

THEREFORE BE IT RESOLVED, that the Alaska Association of Soil & Water Conservation Districts respectfully requests that the legislature take no further action on HB 458 during the 1984 legislative session in order that the Association and other interested bodies can present additional commentary, and develop suggested alternative approaches more consistent with the philosophy of the conveyance of agricultural rights only, and which are more acceptable to our cooperators.

ACTION TAKEN BY AASWCD STANDING COMMITTEE ______

ACTION TAKEN BY AASWCD RESOLUTIONS COMMITTEE ______

ACTION TAKEN BY AASWCD ______

M E M O R A N D U M

TO: Senate Committee on Resources
Senator Bettye Fahrenkamp, Chair

FROM: Senator Jay Kerttula
Senate President

SUBJECT: CS HB 458 (Finance) am

DATE: May 14, 1984

CS HB 458 (Finance) am passed the House 23-17. It is scheduled for a hearing in Senate Resources, Monday May 14, at 3:00 p.m. I believe, the sponsors' intention was to enable holders of state disposed agricultural land to receive a "better" title, become eligible for loans from traditional lending institutions, become eligible for AHFC to purchase farmstead mortgages, and to provide an "out" for persons who received land in inaccessible or inadequate areas.

While these intentions are commendable, the effect is benign and may in some cases be harmful to agricultural development in the state.

Sec. 1, P. 2 Lines 6-10 is intended to aid tract holders in Gustavus by relieving them of their development schedules and requirements. Although the provision is well intended (there is a real problem in Gustavus created through poor disposal by DNR) it threatens all large developments. For example, Nenana-Totchaket, may not have access provided when disposed. A slick attorney could argue that a market does not exist - allowing postponement or cancellation of development schedules and requirements. The specific intent of the subsection is good; the generic effect could be disastrous.

Sec. 2 provides a new description of the type of interest in ag land to be conveyed to the disposal winners. The intention is to get better title to the tract holders allowing them to borrow from banks for agricultural activities. House Resources heard testimony from banks and

title companies in favor of this provision. That research was not thorough. Jim Reaves, 1st Interstate Bank, Wasilla, will testify and send a letter to the committee saying that the statute change will not make ag ventures any more attractive to lenders.

The last principle issue is to enable AHFC to purchase mortgages for farmstead structures on ag disposed lands. AHFC should be at the hearing to testify on the problems with the existing situation and the minimum needs in order to purchase mortgages. P. 3 lines 10-15 does not accomplish this. It allows construction of farmsteads on areas not to exceed 20 acres. This could allow over help of some farms to be used for farmsteads. It would be allowed to be 10% not to exceed 20 acres.

This bill does not really accomplish what it sets out to do and it may even jeopardize some elements of the ag industry, such as the land base.

Several groups have opposed the bill: Alaska Association of Soil and Water Conservation Districts, Alaska Farmers and Stockgrowers Association and over 450 Alaskans who signed the petition supporting SJR 3, which retains the ag rights only and would put the measure before the voters with a constitutional amendment.

If you have any questions or need additional information, please advise.

JK/rjr/st

prefiled 1/84

1 IN THE HOUSE BY BETTISWORTH

2 HOUSE BILL NO. 458

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to agricultural rights to land."

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

8 * Section 1. AS 38.05.069 is repealed and reenacted to read:

9 Sec. 38.05.069. AGRICULTURAL LAND. (a) If the commissioner has

10 conveyed or leased state land only for agricultural purposes, the

11 remaining interests retained by the state shall be conveyed or leased

12 by the commissioner on the request of the grantee or lessee or the

13 assigns of the grantee or lessee. The commissioner shall convey or

14 lease the remaining interests without compensation to the state except

15 for administrative costs of the conveyance or lease.

16 (b) The commissioner may not transfer an interest under (a) of

17 this section to a person who is in arrears on the purchase or lease of

18 the land. Before conveying or leasing under (a) of this section, the

19 commissioner may require the submission of a development plan with

20 covenants specified by the commissioner regarding agricultural use of

21 the land.

22 (c) An Alaska resident may submit to the commissioner a request

23 for the sale or lease for agricultural purposes of unoccupied state

24 land situated adjacent to or in the approximate vicinity of land

25 presently used for agricultural purposes and held by the resident. If

26 the resident submits with the request a development plan that contains

27 covenants specified by the commissioner regarding the agricultural use

28 of the land and if the commissioner determines that it is in the best

29 interests of the state to sell or lease the unoccupied state land for

make compatible w/ our lands bill

1 agricultural purposes, the commissioner shall grant to a resident
2 owning and using or leasing and using land for agricultural purposes a
3 60-day first option after the date of the public auction to purchase
4 or lease the unoccupied land for the amount of the high bid received
5 at public auction. A parcel of agricultural land transferred under
6 this subsection may not be less than 20 acres.
7 (d) Land that is acquired under (c) of this section shall be
8 used consistently with covenants required in the development plan
9 specified by the commissioner.
10 (e) If more than one person files a request under (c) of this
11 section for the same land and each person owns or leases land situated
12 adjacent to or in the approximate vicinity of the state land, the
13 commissioner shall determine priority among the applicants for the
14 state land under the following standards:
15 (1) to the person who demonstrates the greatest need for
16 the unoccupied land in order to establish an economic unit;
17 (2) to the person who occupies land that is most readily
18 accessible to the unoccupied land to be sold or leased if two or more
19 persons have qualified under (1) of this subsection;
20 (3) to the veteran if two or more persons have qualified
21 under (1) and (2) of this subsection;
22 (4) by lot if two or more persons have qualified under (1),
23 (2) and (3) of this subsection.
24 (f) When not in conflict with this section, other provisions of
25 AS 38.05.045 - 38.05.105 apply to disposals under this section.
26 (g) Nothing in (a) of this section affects the disposal of
27 minerals under AS 38.05.135 - 38.05.183.
28 (h) For the purposes of this section,
29 (1) "agricultural purposes" includes farming, ranching,

1 grazing, and storage or control of agricultural crops or livestock;
2 (2) "approximate vicinity" includes an area in which the
3 land does not have a common boundary to presently held land or in
4 which the land is physically separated from presently held land by any
5 type of barrier.
6 * Sec. 2. The commissioner of natural resources shall advise the
7 owners, lessees, and the assignees of owners or lessees of land limited to
8 agricultural uses of the changes in the law made by this Act.
9 * Sec. 3. AS 38.05.321(a) is repealed.

... to the public any land which is subject to a valid existing United States Forest Service permit in effect in a state-selected area at the time the area was patented to the state, or which is subject to a lease issued under § 87 of this chapter, the director shall offer the land for sale to the permittee or his successor in title, if he can be found, at not less than its fair appraised market value before offering to the general public.

(b) When not in conflict with this section, other provisions of §§ 45 — 69 of this chapter apply to sales under this section. (§ 1 ch 26 SLA 1963; am § 39 ch 127 SLA 1974)

Effect of amendment. — The 1974 amendment substituted "§§ 45 — 69" for "§§ 45 — 67" in subsection (b).

Legislative committee report. — For report on ch. 127, SLA 1974 (SCSHB 817 am S), see 1974 House Journal, p. 657.

Sec. 38.05.069. Preference to persons for agricultural purposes. (a) If the director determines that the highest and best use of unoccupied land is for agricultural purposes, and if he determines that it is in the best interests of the state to sell or lease the land, he shall grant to an Alaskan resident owning and using or leasing and using land for agricultural purposes a 60-day first option after the date of the auction to purchase or lease the unoccupied land situated adjacent to or in the approximate vicinity of his presently held land for the amount of the high bid received at public auction; provided the aggregate number of acres owned and acquired under the option shall not exceed 320 acres; and further provided that the land acquired under this section is used for agricultural purposes as required by law.

(b) If more than one person is eligible for a first option under (a) of this section, the director shall determine priority by granting precedence first to the person who demonstrates the greatest need for the unoccupied land in order to establish an economic unit and, secondly, to the eligible person who occupies land that is most readily accessible to unoccupied land to be sold or leased. In the event that two or more persons have approximately equal qualifications for priority under this section, the director shall grant priority to that person who is a veteran. If more than one person is approximately equally well qualified under this section, the director shall determine priority by lot.

(c) Under this section

(1) the director may convey or lease an interest in the land only for agricultural purposes, and all other interests in the land remain in the state; the sale or lease shall be at public auction;

(2) the remaining interests may subsequently be conveyed or leased by the director only upon the request of the grantee or lessee or his

(3) the conveyance or lease of the remaining interests shall be : public auction; the original grantee or lessee or his assigns have preference right to meet the high bid within 30 days after the day (the auction; if the right is exercised, the value of improvements owne by the holder of the preference right, included with the remainin interests sold, shall be deducted from the purchase price;

(4) by requesting the conveyance or lease of the remaining interes the original grantee or lessee or his assigns

(A) consents to the sale or lease, and

(B) if the preference right provided by (3) of this subsection is n exercised, consents to sell at fair market value the improvements relat to the remaining interest, as appraised by the director;

(5) the remaining interests in the land may not be conveyed or lease for less than their appraised value together with improvements excep for the deduction allowed by (3) of this subsection.

(d) When not in conflict with this section other provisions of §§ — 105 of this chapter apply to disposals under this section.

(e) For the purposes of this section,

(1) "agricultural purposes" includes farming, ranching, grazing, an storage or control of agricultural crops or livestock;

(2) "approximate vicinity" includes an area in which the land does n have a common boundary to presently held land or in which the land i physically separated from presently held land by any type of barrier

(f) Nothing in (e) of this section affects the disposal of minerals und §§ 135 — 183 of this chapter. (§ 1 ch 97 SLA 1965; am §§ 1, 2 ch 71 SL 1976; am §§ 4 — 6 ch 257 SLA 1976)

Revisor's note (1976). — AS 38.05.069 was amended by both § 1 ch. 71, SLA 1976, and § 4, ch. 257, SLA 1976. Since the two amendments appear to be inconsistent, and ch. 71 is superseded by ch. 257, only the later enactment has been given effect here.

Cross reference. — For provision restricting the sale, lease or other disposal of agricultural land in a manner inconsistent with this section, see AS 38.05.321.

Effect of amendments. — The first 1976 amendment, in the first sentence of subsection (a), substituted "after the date of the auction" for "from the date the land becomes available to the public or 90 days from the effective date of this section, whichever is later" and inserted "for t amount of the high bid received at pub auction" near the middle of the senten substituted "320 acres" for "640 acre near the end of that sentence, an substituted "as required by law" for "f at least one year following purchase" at th end of that sentence. The amendment al added the second sentence of subsection (. and rewrote subsection (e).

The second 1976 amendment rewro subsection (a), substituted "leased" f "lease" at the end of the first sentence subsection (b), substituted "sha determine" for "may determine" in th third sentence of subsection (b), and add subsection (f).