HOUSE
COMMITTEE REPORT

(11)
Date referred: 4/9/86

FURTHER REFERRALS:

DATE: 4-29-86

The FINANCE Committee has considered HB 579

"An Act relating to financing of fish processors by the Commercial Fishing and Agriculture Bank."

and recommends:

[ ] do pass
[ ] do not pass
[ ] do pass with attached amendment(s)
[ ] no recommendation
[X] replace with CS HB 579 (Loans) [ ] same title [X] new title

and recommends DO PASS

[ ] further referral to the ______ Committee

and attaches:
[ ] letter of intent
[ ] first fiscal note
[ ] new fiscal note
[X] zero fiscal note new 4-4-86

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

Steve [illegible] No Recommendation

Chairman

Offered: 3/5/86
Referred: Resources and Finance

Original sponsor: Herrmann

IN THE HOUSE

BY THE HOUSE SPECIAL COMMITTEE ON STATE LOANS

CS FOR HOUSE BILL NO. 579 (Loans)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to financing of fish processors and agricultural and timber processors and harvestors by the Commercial Fishing and Agriculture Bank."

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

* Section 1. FINDINGS. The legislature finds that

(1) shore-based fish processing and agricultural and timber processing and harvesting facilities, regardless of ownership, are an essential part of the state economy and provide for the development of a renewable resource tax base vital to many Alaska communities;

(2) shore-based fish processing and agricultural and timber processing and harvesting facilities in the state, regardless of ownership, significantly contribute to the economic development and stability of Alaska's communities; and

(3) shore-based fish processing and agricultural and timber processing and harvesting facilities in the state, regardless of ownership, employ a significant resident work force and contribute substantially to local community economies through the demand for goods and services.

* Sec. 2. AS 44.81.210 is amended by adding a new subsection to read:

(c) Notwithstanding (a)(1) of this section, the bank may make a variable or fixed rate loan to a shore-based fish processor, a timber processor or harvestor, or an agricultural processor or harvestor that does not meet the resident ownership requirements of (a)(1) of this section for capital investment or operating capital if the majority interest in the processor or harvestor is beneficially owned by

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: ________

REQUEST
Bill/Resolution No: CS HB 579 (Loans)
Title: Financing of Fish, Agriculture and Timber Processors by CFAB

Sponsor: House Loans
Requestor: House Resources
Date of Request: April 2, 1986

FISCAL DETAIL
Agency Affected: Department of Revenue
BRU: Treasury Management

Components:

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
OPERATING						
PERSONAL SERVICES	-	-	-	-	-	-
TRAVEL	-	-	-	-	-	-
CONTRACTUAL	-	-	-	-	-	-
SUPPLIES	-	-	-	-	-	-
EQUIPMENT	-	-	-	-	-	-
LANDS & STRUCTURES	-	-	-	-	-	-
GRANTS, CLAIMS	-	-	-	-	-	-
MISCELLANEOUS	-	-	-	-	-	-
TOTAL OPERATING	-	-	-	-	-	-
CAPITAL	-	-	-	-	-	-
REVENUE	-	-	-	-	-	-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-	-	-	-	-	-
FEDERAL FUNDS	-	-	-	-	-	-
OTHER	-	-	-	-	-	-
TOTAL	-	-	-	-	-	-

POSITIONS:

FULL-TIME	-	-	-	-	-	-
PART-TIME	-	-	-	-	-	-
TEMPORARY	-	-	-	-	-	-

ANALYSIS: Attach a separate page for analysis.

Prepared By: Milt Barker MB
Phone: 465-2350
Division: Treasury
Date: April 3, 1986

Approved by Commissioner: [signature]
Date: 4/4/86
Agency: Department of Revenue

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

10/25/85

or vehicular way or area, as defined under AS 28.40.100, to be used for a special purpose, the state is not subject to legal action or recovery of damages for injury arising out of, or in any manner connected with the special purpose use. (§ 1 ch 65 SLA 1965; am § 19 ch 241 SLA 1976; am § 24 ch 144 SLA 1977)

Part 8. Independent State Boards, Associations, Commissions, and Corporations.

Chapter

Chapter 81. Commercial Fishing and Agriculture Bank.

Section

Editor's notes. — As to legislative findings and the purposes of the enabling act, see §§ 1 and 2, ch. 159, SLA 1978, respectively, in the 1978 Temporary and Special Acts and Resolves.

Sec. 44.81.010. Alaska Commercial Fishing and Agriculture Bank. (a) There is established the Alaska Commercial Fishing and Agriculture Bank. The exerci[illegible] by the bank of the powers confer[illegible]ed by this chapter is considered to be for a public purpose. Except as otherwise provided in this chapter, the bank is subject to the provisions of AS 10.15 (Alaska Cooperative Corporation Act). The bank is exempt from the provisions of AS 06.05 (Alaska Banking Code) in the exercise of powers granted by this chapter.

(b) For the purpose of the funding of the bank's operations, the board of directors may issue nonvoting, preferred shares of stock in the bank and determine the value of each share. The State of Alaska, through appropriate agencies, may purchase the nonvoting, preferred shares issued by the bank. Shares purchased by the state shall be repurchased by the bank within 20 years after their purchase. If the bank fails to repurchase the shares within 20 years, the commissioner of commerce and economic development may dissolve the bank.

(c) After the board of directors has completed the necessary organizational matters described in AS 44.81.030 — 44.81.040, the commissioner of revenue may purchase with funds from the general fund up to $2,000,000 of preferred stock of the bank during fiscal year 1979 at such time and with terms agreed upon by the commissioner and the board. (§ 3 ch 159 SLA 1978; am § 1 ch 53 SLA 1979; am § 12 ch 122 SLA 1980; am § 1 ch 109 SLA 1981)

Revisor's notes. — Formerly AS 44.54.010. Renumbered in 1980.

Cross references. — As to legislative findings for amendments in 1981, see § 9, ch. 109, SLA 1981.

Effect of amendments. — The 1980 amendment deleted "initial" preceding "funding" near the beginning of subsection (b), substituted "may" for "shall" preceding "issue" near the beginning of subsection (b) and preceding "purchase" near the beginning of the second sentence of subsection (b), deleted "shall" preceding "determine" near the middle of the first sentence of subsection (b), and deleted "initially" following "preferred shares" near the middle of the second sentence of subsection (b).

The 1981 amendment deleted the former second sentence of subsection (a) which read "The bank is a public corporation and government instrumentality in the Department of Commerce and Economic Development but has a legal existence independent of and separate from the state." The amendment also, in subsection (a), substituted "to be for a public purpose" for "an essential governmental function of the state" in the present second sentence and added the present fourth sentence of the subsection.

Sec. 44.81.020. Board of directors. (a) The bank shall be managed by a board of directors consisting of seven members. At least one member of the board shall be an Alaska farmer with at least 10 years of Alaskan farm experience. Initial appointments to the board shall be made by the governor. Two of the initial appointments shall be made at the time of the first annual membership meeting of the bank. Thereafter, five board members shall be elected by the members of the bank, with at least one of the elected board members being an Alaska farmer with at least 10 years of Alaskan farm experience, and two board members shall be appointed by the governor until the repurchase of all the nonvoting, preferred shares initially issued by the bank and purchased by agencies of the state. After repurchase is completed, all board members shall be elected by the members of the bank. The board members shall annually elect a chairman from among themselves. The purpose of the board is to manage the assets of the bank.

(b) The governor shall designate the two members whose positions on the board will remain appointive for the period set out in (a) of this section. (§ 3 ch 159 SLA 1978; am § 2 ch 53 SLA 1979; am § 3 ch 51 SLA 1980)

Revisor's notes. — Formerly AS 44.54.020. Renumbered in 1980.

Effect of amendments. — The 1980 amendment substituted "members of the bank" for "shareholders" near the beginning and at the end of the fifth sentence in subsection (a).

Editor's notes. — Section 6, ch. 53, SLA 1979, provides: "For the purposes of AS 44.81.020 and 44.81.090, the five members of the board of directors of the Commercial Fishing and Agriculture Bank who were appointed before August 4, 1979 shall continue to serve on the board of directors until their terms expire as provided in AS 44.81.090."

Sec. 44.81.030. Articles of incorporation. Not later than November 1, 1978, the board of directors shall file with the commissioner of commerce and economic development articles of incorporation as provided in AS 10.15.340 — 10.15.355 except that any filing fees shall be waived. (§ 3 ch 159 SLA 1978)

Revisor's notes. — Formerly AS 44.54.030. Renumbered in 1980.

Sec. 44.81.040. Bylaws. The board of directors shall adopt the initial bylaws of the bank. The power to alter, amend or repeal the bylaws is vested in the board of directors. The bylaws may contain provisions for the regulation and management of the affairs of the bank not inconsistent with this chapter or other provisions of law. (§ 3 ch 159 SLA 1978)

Revisor's notes. — Formerly AS 44.54.040. Renumbered in 1980.

Sec. 44.81.050. Membership meetings. Upon filing the articles of incorporation, the board of directors, with the assistance of the commissioner of commerce and economic development or the commissioner's designee, may hold public meetings throughout the state for the purpose of explaining to members of the commercial fishing and farming industries the functions of the bank and to encourage membership in the bank. (§ 3 ch 159 SLA 1978)

Revisor's notes. — Formerly AS 44.54.050. Renumbered in 1980.

Sec. 44.81.060. Membership stock. (a) The board of directors shall issue shares of membership stock in the bank in the amounts and with the value determined by the board and stated in the articles of incorporation.

(b) Loans made to members of the bank under the provisions of this chapter shall be in accordance with a schedule of maximum amounts adopted by the board of directors based upon proportional ownership of shares of capital stock. (§ 3 ch 159 SLA 1978; am § 4 ch 51 SLA 1980)

Revisor's notes. — Formerly AS 44.54.060. Renumbered in 1980.

Effect of amendments. — The 1980 amendment substituted "members" for "shareholders" near the beginning of subsection (b), and added "of capital stock" at the end of subsection (b).

Sec. 44.81.070. President; officers and employees. (a) The board of directors shall employ a president. The president may not be a member of the board of directors. The president serves at the pleasure of the board of directors. The president is the chief executive officer of the bank.

(b) The board of directors shall appoint one or more vice-presidents, as prescribed in the bylaws of the bank, a secretary, a treasurer and other officers as the board of directors considers necessary. The board of directors may appoint one person to more than one of the positions described in this subsection. The officers described in this subsection are not required to be members of the board of directors.

(c) The president may hire employees of the bank reasonably necessary for the efficient performance of the functions of the bank. Subject to the approval of the board of directors, the president may also contract for and engage the services of professional and technical advisors. The board of directors shall prescribe the duties and compensation of employees of the bank. Employees of the bank are not employees of the state and are not considered to be employees of a public organization for the purposes of AS 39.30.150 — 39.30.180 or AS 39.35.010 — 39.35.690. (§ 3 ch 159 SLA 1978; am § 5 ch 51 SLA 1980; am § 2 ch 109 SLA 1981)

Revisor's notes. — Formerly AS 44.54.070. Renumbered in 1980.

Effect of amendments. — The 1980 amendment rewrote the section.

The 1981 amendment added the present third sentence of subsection (c).

Sec. 44.81.080. Exempt status. [Repealed, § 10 ch 109 SLA 1981. For current law see AS 44.81.070(c).]

Sec. 44.81.090. Term of office. The members of the board shall serve for terms of three years, and they may serve successive terms. Terms shall be staggered. Initial terms of the first five members appointed to the board shall be two members serving until the first annual membership meeting of the bank, two members serving until the second annual membership meeting of the bank, and one member serving until the third annual membership meeting of the bank. Initial terms of the two members appointed at the time of the first annual membership meeting of the bank shall be one member serving until the second annual membership meeting of the bank and one member serving until the third annual membership meeting of the bank. (§ 3 ch 159 SLA 1978; am § 3 ch 53 SLA 1979)

Revisor's notes. — Formerly AS 44.54.090. Renumbered in 1980.

Sec. 44.81.100. Quorum. A majority of the members of the board constitutes a quorum for the transaction of business and the exercise of the powers and duties of the board. (§ 3 ch 159 SLA 1978)

Revisor's notes. — Formerly AS 44.54.100. Renumbered in 1980.

Sec. 44.81.110. Compensation of board members. Members of the board receive compensation not to exceed $250 as determined by the board for each day the board meets if they attend the meeting. (§ 3 ch 159 SLA 1978; am § 3 ch 109 SLA 1981)

Revisor's notes. — Formerly AS 44.54.110. Renumbered in 1980.

Effect of amendments. — The 1981 amendment added "of the board" following "members," substituted "not to exceed $250 as" for "at a rate" preceding "determined" and deleted "and are entitled to per diem and travel allowances as provided by law for members of state boards and commissions" following "if they attend the meeting."

Secs. 44.81.120 — 44.81.150. Bonds of the bank; trust indentures and trust agreements; validity of pledges; nonliability on bonds. [Repealed, § 10 ch 109 SLA 1981.]

Sec. 44.81.160. Pledge of the state. The state pledges to and agrees with any lender to the bank and with the federal agency or regional institution of the federal farm credit system that loans or contributes funds in respect of a project, that the state will not limit or alter the rights and powers vested in the bank by AS 44.81.010 — 44.81.350 to fulfill the terms of any contract made by the bank with the lender to the bank or federal agency or regional institution of the federal farm credit system, or in any way impair the rights and remedies of the lender to the bank or federal agency or regional institution of the federal farm credit system. The bank is authorized to include this pledge and agreement of the state, insofar as it refers to a lender to the bank in a contract with the maker of a loan, and insofar as it relates to a federal agency or regional institution of the federal farm

bers serving until
, and one member
of the bank. Initial
f the first annual
r serving until the
and one member
; of the bank. (§ 3

.bers of the board
; and the exercise
LA 1978)

ers. Members of
as determined by
the meeting. (§ 3

nd are entitled to per
vances as provided by
of state boards and
ng "if they attend the

trust indentures
bility on bonds.

pledges to and
deral agency or
m that loans or
will not limit or
AS 44.81.010 —
he bank with the
stitution of the
the rights and
regional institu-
orized to include
efers to a lender
nd insofar as it
the federal farm

credit system, in a contract with a federal agency or regional institution of the federal farm credit system. (§ 3 ch 159 SLA 1978; am § 4 ch 109 SLA 1981)

Revisor's notes. — Formerly AS 44.54.160. Renumbered in 1980.

Effect of amendments. — The 1981 amendment substituted "any lender to the bank" for "the holders of the bonds issued under this chapter" preceding "and with the federal agency," substituted "lender to the bank" for "holders" preceding "or federal agency or regional institution," and substituted "lender to the bank or federal agency or regional institution of the federal farm credit system" for "holders until the bonds, together with interest on them, with interest on unpaid installments of interest, and all costs and expenses in connection with any action or proceeding by or on behalf of the holders, are fully met and discharged" following "rights and remedies of the" in the first sentence. In the second sentence, the amendment substituted "a lender to the bank" for "holders of bonds of the bank" preceding "in a contract" and substituted "the maker of a loan" for "the holders" preceding "and insofar as."

Secs. 44.81.170 — 44.81.180. Exemption from taxation; bonds legal investments for fiduciaries. [Repealed, § 10 ch 109 SLA 1981.]

Sec. 44.81.190. Conflicts of interest. A member of the board of directors may not vote on a transaction of the bank under this chapter if the member is a party to the transaction. (§ 3 ch 159 SLA 1978)

Revisor's notes. — Formerly AS 44.54.190. Renumbered in 1980.

Sec. 44.81.200. Reports and publications. The board of directors shall publish an annual report to the bank's members. The report shall be made available to the public and shall include financial statements audited by independent outside auditors, a statement of the bank's investments, a description of the bank's loan activity during the period covered by the report, an analysis of economic and other effects of loan decisions on the state's commercial fishing and agriculture industries, and any other information that the board believes would be of interest to the governor, the legislature, and the public, or that the legislature requests the board to include. The board may also publish other reports it considers desirable to carry out its purposes. (§ 3 ch 159 SLA 1978; am § 5 ch 109 SLA 1981)

Revisor's notes. — Formerly AS 44.54.200. Renumbered in 1980.

Effect of amendments. — The 1981 amendment substituted "members" for "shareholders" at the end of the first sentence and deleted "a statement of the amount of money received by the bank from each source during the period covered" following "independent outside auditors," substituted "loan" for "investment" twice, added "that" preceding "the board believes" and added "or that the legislature requests the board to include" following "and the public" in the second sentence.

Sec. 44.81.210. Powers of the bank. (a) The bank may

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

(2) make and alter bylaws necessary or desirable to carry out its corporate functions;

(3) establish amortization plans for repayment of loans, which may include extensions for poor fishing or farming seasons, or for adverse market conditions for Alaskan products;

(4) enter into agreements with regional institutions of the federal farm credit system, private lending institutions, and other state agencies or agencies of the federal government, to carry out the purposes of AS 44.81.010 — 44.81.350;

(5) adopt, alter, and use a corporate seal;

(6) sue and be sued in the name of the bank;

(7) issue bonds to carry out any of its corporate purposes and powers;

(8) sell, lease as lessor or lessee, exchange, donate, convey or encumber in any manner by mortgage or by creation of any other security interest, real or personal property owned by it, or in which it has an interest, when, in the judgment of the board of directors, the action is in furtherance of its corporate purposes;

(9) incur secondary liability by guaranty or endorsement of the obligations of another corporation or legal entity when, in the judgment of the board of directors, the action is in furtherance of its corporate purposes;

(10) make loans as provided in (1) of this section in participation with financial institutions, and establish and regulate the terms of the loans;

(11) make contracts and execute instruments necessary or convenient in the exercise of its corporate powers;

(12) acquire by purchase, lease, bequest, devise, gift, the satisfaction of debts, or the foreclosure of mortgages, and hold, maintain, use, operate, and convey real or personal property;

(13) borrow money and issue secured and unsecured evidence of indebtedness for a corporate purpose or to fund, refund, pay, or dis-

charge outstanding obligations, and enter agreements and contracts concerning these obligations;

(14) secure the payment of its obligations by pledge or mortgage or other lien on its contracts, revenues, income, or property;

(15) appoint officers, employees, trustees for certificate holders, and agents, and prescribe their powers and duties;

(16) provide technical services to members of the bank; for the purpose of this paragraph, "technical services" includes services that will enhance the ability of the member to obtain financial assistance from the bank;

(17) make loans, as provided in (1) of this section, secured by liens subordinate to valid first liens and security agreements granted to a private lending institution;

(18) participate with state departments and agencies in formulating policy and in planning for the development of commercial fishing and agriculture in the state;

(19) do what is necessary or desirable to carry out the corporate purposes and powers expressed or implied in AS 44.81.010 — 44.81.350;

(20) make loans to individual commercial fishermen for limited entry permits; a loan under this paragraph may be made only to an individual commercial fisherman who has been a state resident for a continuous period of two years immediately preceding the date of application for the loan and who has had a crewmember or commercial fishing license under AS 16.05.480 or a permit under AS 16.43 for the year immediately preceding the date of application and any other two of the past five years, and who has actively participated in the fishery during that period; loans made under this paragraph are subject to the provisions of AS 44.81.230;

(21) indemnify directors, officers or employees of the bank and their heirs, executors and administrators against all liabilities and related expenses including, but not limited to, court costs and attorney fees, judgments, and the cost of reasonable settlements, incurred by them in connection with or arising out of an action or proceeding brought against them because of an act or omission in the performance of their official duties as directors, officers or employees of the bank regardless of whether they were directors, officers or employees at the time the expenses or liabilities are incurred;

(22) accept the pledge of a limited entry permit as security for a loan made under AS 44.81.010 — 44.81.350 for the repair, restoration, or improvement of a commercial fishing vessel or commercial fishing gear, or for the construction or purchase of a commercial fishing vessel, subject to the conditions set out in AS 44.81.230 — 44.81.250 on pledges of limited entry permits.

(b) The provisions of (a)(21) of this section do not authorize the bank to indemnify a director, officer or employee of the bank who is adjudged liable for negligence or misconduct in the performance of official duties. (§ 3 ch 159 SLA 1978; am § 4 ch 53 SLA 1979; am §§ 7—10 ch 51 SLA 1980; am § 6 ch 109 SLA 1981; am § 52 ch 113 SLA 1982; am § 17 ch 67 SLA 1983)

Revisor's notes. — Formerly AS 44.54.210. Renumbered in 1980.

Effect of amendments. — The 1980 amendments in paragraph (1) of subsection (a), inserted "suppliers" following "harvesters, processors" and deleted "primarily" following "or joint ventures" near the beginning and substituted "member" for "shareholder" near the middle and near the end. The amendment also substituted "members of the bank" for "shareholders" and "member" for "shareholder" in paragraph (16) of subsection (a), added paragraph (21) of subsection (a), and added subsection (b).

The 1981 amendment added paragraph (22) of subsection (a).

The 1982 amendment, in subsection (a), added "or for adverse market conditions for Alaskan products" to the end of paragraph (3).

The 1983 amendment, in paragraph (20) of subsection (a) substituted "two years" for "five years" and substituted "the year immediately preceding the date of application and any other two" for "any one" preceding "of the past five years."

Sec. 44.81.220. Transition. Notwithstanding the provisions of AS 10.15.005, upon the repurchase of all the nonvoting, preferred shares initially issued by the bank and purchased by agencies of the state, the provisions of AS 44.81.010 — 44.81.350 lapse and the bank may proceed to operate solely as a private cooperative corporation under the terms of its bylaws and the provisions of AS 10.15.010 — 10.15.600. (§ 3 ch 159 SLA 1978; am § 7 ch 109 SLA 1981)

Revisor's notes. — Formerly AS 44.54.220. Renumbered in 1980.

Effect of amendments. — The 1981 amendment substituted "Notwithstanding the provisions of AS 10.15.005, upon" for "Upon" near the beginning of the section, added "solely" preceding "as a private cooperative corporation," deleted "subject to" preceding "the provisions" and substituted "AS 10.15.010 — 10.15.600" for "AS 10.15.005 — 10.15.600" at the end of the section.

Sec. 44.81.230. Loans for purchase of Alaska limited entry permits. (a) A loan under AS 44.81.210(a)(20) for the purchase of a limited entry permit may be made only upon certification by the commission that the fisherman is a person who qualifies as a transferee for the permit under AS 16.43 and the regulations adopted by the commission.

(b) Upon approval by the bank, the permit to be purchased may be pledged as security for a loan under (a) of this section, if

(1) the certificate for the pledged permit lists the bank as the legal owner of the permit;

(2) the certificate for the pledged permit lists the debtor as the equitable owner of the permit;

(3) all annual permit cards issued under the pledged permit list the name of the debtor;

(4) all obligations and responsibilities of a permit owner are assumed by the debtor;

of official duties.
7—10 ch 51 SLA
.982; am § 17 ch

:nt added paragraph

nt, in subsection (a),
: market conditions
' to the end of para-

nt, in paragraph (20)
;tituted "two years"
ubstituted "the year
; the date of applica-
two" for "any one"
five years."

›rovisions of AS
›referred shares
of the state, the
bank may pro-
ation under the
.0 — 10.15.600.

ing "as a private
1," deleted "subject
·isions" and substi-
10.15.600" for "AS
" at the end of the

limited entry
: purchase of a
ion by the com-
a transferee for
by the commis-

chased may be
. if
nk as the legal

:or as the equi-

permit list the

nit owner are

(5) co-signers or other sureties for performance under the note are not vested with any rights in the pledged permit and their obligation is limited to satisfaction of the note and payment of costs directly incurred by the bank in administering the loan.

(c) Upon satisfaction of the note by the debtor, the bank shall certify to the commission that the note has been satisfied.

(d) Upon certification as provided in (c) of this section, the commission shall amend the permit certificate to list the debtor as the legal owner. (§ 5 ch 53 SLA 1979; am §§ 11—13 ch 51 SLA 1980)

Revisor's notes. — Formerly AS 44.54.230. Renumbered in 1980.

Effect of amendments. — The 1980 amendment substituted "commission" for "Alaska Commercial Fisheries Entry Commission (AS 16.43.020)" in subsection (a), deleted "the executive director of" following "permit lists" in paragraph (1) of subsection (b), and substituted "bank" for "executive director" in subsection (c).

Sec. 44.81.240. Default and foreclosure of loans for limited entry permits. (a) If the debtor defaults upon a note for which a limited entry permit has been pledged as security under AS 44.81.230, the bank shall provide the debtor, by registered or certified mail sent to the debtor's last known address on file with the bank, with a notice of default which includes

(1) a description of the security given for the note including the number assigned to the pledged permit by the commission;

(2) the date upon which the default occurred;

(3) the amount of arrearages as of the date of the notice, the total amount remaining on the note less unearned interest, and the amount of daily interest;

(4) a statement that the debtor may, within 15 days of the postmark date of the notice, request a hearing at which the debtor may submit evidence showing the debtor has not defaulted;

(5) a statement that the note may be reinstated if brought current within 60 days from the postmark date of the notice;

(6) a statement that the note may be paid in full less unearned interest within 90 days from the postmark date of the notice;

(7) the place where reinstatement or payment in full may be made; and

(8) a notice in at least 10-point bold type stating: "IMPORTANT: YOUR FAILURE TO REINSTATE OR PAY THIS NOTE IN FULL BY THE DATE SPECIFIED WILL RESULT IN A FORFEITURE OF ALL RIGHTS TO THE PERMIT AND THE POSSIBILITY OF LEGAL ACTION BEING INSTITUTED AGAINST YOU."

(b) Upon the debtor's failure to reinstate or satisfy the note within the time specified in (a) of this section, the debtor's equitable interest is terminated by operation of law without further notice. Any entry permit cards issued to the debtor under the permit shall be canceled immediately upon receipt by the commission of a certificate of termination containing a copy of the notice required by (a) of this section issued by the bank. (§ 5 ch 53 SLA 1979; am § 14 ch 51 SLA 1980)

Revisor's notes. — Formerly AS 44.54.240. Renumbered in 1980.

Effect of amendments. — The 1980 amendment deleted "the executive director of" preceding "the bank" near the middle of the introductory paragraph of subsection (a) and near the end of subsection (b), and substituted "commission" for "Alaska Commercial Fisheries Entry Commission" at the end of paragraph (1) in subsection (a).

Sec. 44.81.250. Deficiencies and transfer of entry permits after foreclosure. (a) Upon a foreclosure on an entry permit as provided in AS 44.81.240, the bank shall offer the commission a right of first refusal if the permit is subject to a buy-back program under AS 16.43.290 — 16.43.330 at a price equal to the amount outstanding on the note plus any costs the bank directly incurred in administering the loan.

(b) If the commission does not exercise its right of first refusal within 30 days after it receives the offer, or if the permit is not subject to a buy-back program under AS 16.43.290 — 16.43.330, the bank shall promptly notify the debtor of this fact. The debtor has 30 days from the postmark date of the notice to nominate a person qualified to assume the note. The person nominated must qualify under the requirements of AS 44.81.230(a). If qualified, the person nominated may assume all rights and liabilities of the original debtor.

(c) If the debtor is unable to nominate a qualified person to assume the note under (b) of this section, the permit must be made available to a qualified person, chosen as provided in this section, who shall assume the note subject to all rights and liabilities of the original debtor. The commission shall provide the bank with a list of persons chosen by lottery who qualify as transferees of entry permits under AS 16.43 and regulations adopted by the commission and who have met the residency and commercial fishing participation requirements of AS 44.81.210(a)(20). The bank shall then determine, in order of presentation, any remaining qualifications. The bank shall allow the first applicant meeting all qualifications to assume the note.

(d) Nothing in this section affects the right of the bank to institute legal action for a deficiency resulting from a default on a note given under AS 44.81.230. In addition to any deficiency, the debtor is liable for the costs of administering the note and for costs and attorney fees. (§ 5 ch 53 SLA 1979; am §§ 15—17 ch 51 SLA 1980)

Revisor's notes. — Formerly AS 44.54.250. Renumbered in 1980.

Cross references. — As to the reassignment of entry permits taken as security for loans after such permits are revoked see AS 16.43.960(i).

Effect of amendments. — The 1980 amendment, in subsection (a), deleted "the executive director of" preceding "the bank" near the beginning of the subsection and substituted "commission" for "Alaska Commercial Fisheries Entry Commission" near the beginning of the subsection. The

·is section issued
A 1980)

ır the end of subsec-
ed "commission" for
Fisheries Entry
d of paragraph (1) in

y permits after
t as provided in
a right of first
ram under AS
outstanding on
ministering the

t refusal within
not subject to a
the bank shall
0 days from the
ified to assume
e requirements
nay assume all

rson to assume
made available
:ion, who shall
of the original
list of persons
'mits under AS
who have met
irements of AS
in order of
shall allow the
: note.
nk to institute
n a note given
lebtor is liable
attorney fees.

ıts. — The 1980
n (a), deleted "the
preceding "the
of the subsection
sion" for "Alaska
ntry Commission"
e subsection. The

amendment also substituted "commission" for "Alaska Commercial Fisheries Entry Commission" in the second sentence in subsection (c), deleted "executive director of the" preceding "bank shall" in the third sentence in subsection (c), substituted "bank" for "executive director" in the last sentence in subsection (c), and deleted "the executive director of" preceding "the bank" near the beginning of subsection (d).

Sec. 44.81.260. Confidentiality of records; exceptions. (a) Except as provided in (b) of this section, the directors, officers, and employees of the bank shall hold in strict confidence all information regarding the business records of the bank, including information as to the character, credit standing, and property of members and applicants for loans. They shall not exhibit or quote from the bank's business records, including documents regarding personnel of the bank or pertaining to members or applicants for loans.

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

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

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

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

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

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

(6) In litigation between a member (or the member's successor in interest) and the bank, any competent evidence may be introduced with respect to relevant statements made orally or in writing by or to the member or the successor. (§ 8 ch 109 SLA 1981)

Sec. 44.81.270. Audit of bank. The legislative auditor may cause the bank to be audited in the manner and under the conditions prescribed by AS 24.20.271 for audits performed by the legislative audit division. The legislative audit division has free access to all books and papers of the bank that relate to its business and books and papers kept by a director, officer, or employee relating to or upon which a record of its business is kept, and may summon witnesses and administer oaths or affirmations in the examination of the directors, officers, or employees of the bank or any other person in relation to its affairs, transactions, and conditions, and may require and compel the production of records, books, papers, contracts, or other documents by court order if not voluntarily produced. (§ 8 ch 109 SLA 1981)

Sec. 44.81.280. Prohibition on disclosure. The legislative auditor and the auditor's employees may not disclose information acquired by them in the course of an audit of the bank concerning the particulars of the business or affairs of a borrower of the bank or another person, unless the information is required to be disclosed by law or under a court order. (§ 8 ch 109 SLA 1981)

Sec. 44.81.350. Definitions. In this chapter

(1) "bank" means the Alaska Commercial Fishing and Agriculture Bank;

(2) "commission" means the Alaska Commercial Fisheries Entry Commission (AS 16.43.020);

(3) "member of the bank" includes a holder of a share of membership stock of the bank or a patron of the bank with retained patronage earnings of $2,500 or more to the patron's credit;

(4) "supplier" means a person whose main source of income is from providing goods or services that are directly related to commercial fishing or agriculture to individuals, corporations, partnerships or joint ventures engaged in commercial fishing or agriculture. (§ 18 ch 51 SLA 1980)

Revisor's notes. — Formerly AS 44.54.260. Renumbered in 1980.

Chapter 82. Alaska Gas Pipeline Financing Authority.

Cross references. — As to exemption of employees of the Alaska Gas Pipeline Financing Authority from the provisions of the State Personnel Act, see AS 39.25.110(11)(A).

Editor's notes. — As to legislative findings relating to the passage and amendment of AS 44.82, see § 1, ch. 90, SLA 1978, in the 1978 Temporary and Special Acts and Resolutions and § 4, ch. 31,

(prepared by CFAB)

Why the bill is needed:

1. Alaska Commercial Fishing and Agriculture Bank (CFAB) was created in 1978 by the Alaska State Legislature. Its purpose is to provide a source of credit to the Alaska fishing and agriculture industries, with emphasis on the development and broadening of those industries.

2. CFAB is structured under its statute as a cooperative. A cooperative is a corporation whose stockholders and customers are the same individuals or entities. A cooperative is subject to the same business and financial considerations as any other corporation.

3. The State of Alaska provided an initial capital base to CFAB through the purchase of stock; the State presently owns $31.8 million of such stock. CFAB's statute requires that the State stock be repurchased within 20 years from the original investment (1980).

4. CFAB has no organic, structural, operational, or financial relationship with the State except for the capital investment and that two of CFAB's seven directors are appointed by the Governor.

5. CFAB's lending ability is not limited to the amount of the State's investment. CFAB borrows additional funds at "market" rates and terms, pledging its loans and other assets as security. It re-lends those funds to its borrower/owners at rates sufficient to cover its own interest costs, its operating expenses, and to generate capital through earnings. CFAB's outstanding loans to Alaska fishermen and farmers reached a year-end peak of nearly $104 million at December 31, 1983, and had other assets of about $19 million; a total nearly $91 million greater than the State's investment.

6. CFAB's borrowers become owners through a purchase of stock at the time of borrowing and through payment of interest at a level high enough to create retained earnings.

7. Under its statute, CFAB may lend money only to those individuals who are bona fide residents of Alaska. There appears to be no sound and reasonable argument against that limitation.

8. A vast majority of CFAB's loans are to individual fishermen (about 80 to 85 percent by number); most of them are to finance a vessel and/or are secured by a lien on a vessel. This appears to be CFAB's most "natural" market and the credit void which CFAB was most intended to fill.

9. Compared to almost any other type of commercial lending, financing fishing vessels is extremely cumbersome and costly. Alaska geography adds considerable costs. Those factors, in addition to the dangerous concentration of risk, make it extremely difficult for CFAB to maintain a focus on that market without charging interest rates which are unusually burdensome to its borrowers.

10. CFAB has attempted to balance its loan portfolio, and to moderate its total circumstances, through loans to corporations which process seafood and timber. Those loans tend to be relatively large, but do not require servicing costs to a comparable degree. They permit basic operating expenses to be spread over a larger volume of loan dollars, moderating the pressure on smaller individual borrowers.

11. CFAB's statute provides that it can only finance corporations of which the majority ownership and control rests with Alaska residents.

12. A recent survey disclosed that of 22 shorebased Alaska processors having annual sales in excess of $10 million, 17 are ineligible to borrow from CFAB by reason of ownership identity. CFAB has, or has had, lending relationships with four of the five others.

13. Statutory denial of eligibility by reason of ownership is inconsistent with the facts that these processing corporations own facilities in Alaska, pay local taxes in Alaska, provide employment to Alaskans, purchase and add value to Alaska seafoods, pay fish taxes to the State of Alaska, provide a competitive marketing environment for Alaska fishermen, and purchase supplies and services in Alaska. Interest paid on funds borrowed from CFAB (or any other Alaska entity) would be an additional and beneficial increment of Alaska seafoods proceeds within the Alaska economy.

14. While it is clear that the 1978 State Legislature intended to create an institution to serve Alaska interests exclusively, the requirement that the state investment be repurchased evidences the intent that CFAB be operated, and grow, on sound business principles. Removal of the statutory limitation with regard to shorebased processing corporations is consistent with the first intent and greatly enhances the opportunity for fulfillment of the second.

1026V

February 10, 1986

BACKGROUND - SPRING, 1985

In late March and throughout the month of April in 1985, CFAB officers and directors made numerous visits to Juneau to discuss the institution's circumstances with legislators and with administration officials. Those visits, and their substance, were precipitated by a number of factors:

1) Although CFAB's year-end audit by an independent accounting firm (Touche Ross & Company) was not yet complete, it was known with certainty that there had been a loss approaching $10.0 million for 1984; that there was an impairment of stockholders' equity; that CFAB had become illiquid, with no cash or other unencumbered liquid assets available; and that a major portion of the loan portfolio - almost 34 percent (in dollars) of a $94.8 million total - was in a serious default, or non-earning, status.

2) The critical imbalance between CFAB's projected 1985 income (based on the large volume of non-earning loans) and its projected 1985 cash interest expense, and basic operating expenses, foretold the likelihood of another significant loss.

3) CFAB and its staff and Board of Directors had been somewhat traumatized by the relative suddenness and severity of the circumstances (or the realization of them); its chief executive officer had resigned in late February; and it was being managed on an interim basis by an individual who, although familiar with the organization and its pressures, essentially was an unknown factor.

4) CFAB's lender, the Spokane Bank for Cooperatives, had taken increasingly aggressive and obtrusive positions with CFAB. SBC's representatives had expressed strong reservations about CFAB's ability to overcome its immediate difficulties and had indicated that SBC would accept no further deterioration in its position. CFAB's loan commitments from SBC had been reduced to 30-day increments, leaving CFAB constantly on the brink of a forced bankruptcy filing.

The basic thrust of CFAB's efforts in Juneau was to seek consideration of an early investment of an additional $10.0 to $12.0 million of State capital. This was essentially a "time-buying" strategy. The funds, if invested, would have been used to reduce CFAB's borrowings from SBC. This would have lowered CFAB's interest payment requirement to a level which could be met by the interest income from its own performing loans and would, it was intended, be accompanied by SBC agreement that the existing borrowing relationship would not be disturbed for at least two or three years. Relief from those pressures would in turn permit CFAB to address the liquidation or conversion of non-performing loans on rational bases and would also allow the opportunity for internal restructuring and corrections.

CFAB was not successful in obtaining further State investment. This was undoubtedly due in part to the lateness (relative to the legislative session) of the effort and to the somewhat uncoordinated and unprofessional approach, coupled with the "tight money" atmosphere in Juneau. Another factor, at least within the administration, seemed to be that CFAB was an "orphan" with no agency or individual charged with responsibility. In addition, there appeared to be a widespread lack of understanding as to the origin, nature, structure, and constituency of CFAB. Yet another burden was the recollection of some of CFAB's early flamboyance and excesses and attendant unfavorable press exposure. Finally, there seemed to be a perception that the effort was a thinly-disguised attempt to "bail out" the Spokane Bank for Cooperatives; that was an understandable reaction, but it is not supported by the realities of the legal relationships between the State, SBC, and CFAB.

<u>SUBSEQUENT EVENTS</u>

Since the Spring of 1985 CFAB's directors, management, and staff have attempted to address each and all of the negative factors and pressures with all available resources. Although not all objectives have been met, there has been modest success. Some of the efforts have admittedly been augmented by fortuitous events and circumstances external to CFAB. The net effect is that CFAB's condition has today become stabilized to a degree that exceeds the March 1985 expectations of its interim (now permanent) management.

The corrective efforts and measures have fallen into several broad categories, as follows:

<u>Liquidation/Conversion/Prevention of Non-Performing Loans and Other Assets</u> - There has been a major and consistent effort to rationally and realistically deal with non-performing loans and other non-earning assets on an item-by-item, account-by-account, basis. This has required an extensive commitment to developing the analytical and communications skills of loan officers, to the control and direction of legal counsel, and to the education of borrowers. There has been a similar commitment to the creative and efficient marketing or other disposition of acquired assets. Finally, and again through the re-direction of loan officers' attention and energies, there was in 1985 a successful program of early attention to delinquencies on performing loans for the purpose of preventing them from evolving into serious problems

Reduction of Operating Expenses, and Increases in Effectiveness - Beginning in June 1985, there was a determined effort to identify and eliminate excessive operating expenses and other barriers to maximum efficiency. In the four years ending December 31, 1984, CFAB's operating expenses have averaged $3,227,000 annually. 1984 operating expenses had totaled $3,260,000; there was $3,288,000 budgeted for 1985. As of May 31, 1985, actual operating expenses for the year to date had been slightly greater than those budgeted. Management's objective was to reduce those expenses to the necessary minimum for the remainder of 1985 and to position CFAB to enter 1986 with projected expenses of $1.0 million less than the historical $3.2 million level.

Financial Restructuring - While the cash flow deficit, the capital impairment, the excessive debt load, and the projected net income shortfall all represented immediate threats to CFAB's existence and required urgent attention, they also carried severe negative implications for the long term. CFAB has a statutory obligation to repurchase the State's $31.8 million investment by the year 2000. CFAB has absolutely no sources of cash except (1) borrowings, (2) earnings, and (3) investment by owners. Its borrowing capacity had been virtually exhausted in early 1985; there were no bases on which to credibly project net cash earnings in the foreseeable future; and there had never been significant cash investment by owners (other than the State), nor was there any mechanism in place to provide for such investment. It seem imperative in early 1985 that, assuming CFAB's short-term survival, a foundation be laid that would over the long term enhance CFAB's ability to borrow, to earn, and to attract owner investment.

Business Development - The written record suggests clearly that a primary consideration in the conception and establishment of CFAB was to provide greater access to credit for "small" individual fishermen. While the performance over the ensuing five years tends to be obscured by the large dollar volumes associated with fish and timber processing accounts and by the dramatic impact of misadventures and imprudence, a close scrutiny of the number and sizes of loans results in a clear conclusion that it is the body of individual fishermen who have been best served by CFAB. It is they - existing individual borrowers and their non-borrowing peers - who have benefited most from CFAB's existence and who would suffer most severely were CFAB to be liquidated. Unfortunately, it is a costly market to serve, it is a market which represents unusual concentration of nearly uncontrollable risk, and it is a market of individuals whose ability to respond to financial pressures is limited. It is on that body of borrowers that the effect of CFAB's 1984/1985 circumstances fell most harshly (in the form of interest rates maintained at a burdensome level.) One of the results of that was the flight of better, i.e., more creditworthy, borrowers to other lenders; this served only to exacerbate the pressure on remaining borrowers and to further threaten CFAB's stability. That trend continued through 1985, and it became critical to attempt to develop loan programs which would make CFAB more attractive to existing and potential borrowers, particularly those who represented stability and good performance.

<u>1985 RESULTS AND YEAR-END CIRCUMSTANCES</u>

At December 31, 1985, CFAB's fundamental financial circumstances were greatly improved over those of a year earlier or of the Spring of 1985. That improvement can be quantifiably expressed in a number and variety of ways:

1) At December 31, 1984, non-earning loans totaled $31,979,000; at December 31, 1985, the total was $15,653,000. While about $3.5 million of the net reduction was due to charge-offs, the greater portion resulted from liquidations and from re-structurings.

2) At December 31, 1984, CFAB had 189 delinquent loans (including non-earning loans). A year later, the number was 115.

3) During 1985, the book value of acquired assets (which are also non-earning assets) was reduced from $2,361,000 to $1,606,000.

4) CFAB began 1985 with $80,574,000 of interest-bearing debt and only $69,110,000 of earning loans. At year-end those balances stood at $48,268,000 and $55,312,000 respectively.

5) In contrast to the 1984 loss of $9,978,000, CFAB in 1985 had net income of $114,000. Most of the $10,092,000 difference can be attributed to the lack of major new credit losses in 1985. However, another major element was the effective reduction of operating expense. Although the reduction effort was not initiated until June, and although certain of the cost-containment actions involved relatively large one-time costs themselves, CFAB concluded 1985 with operating expenses exactly $400,000 below those budgeted. CFAB has prepared and is committed to a 1986 operating expense budget approximately $1.0 million below the historical $3.2 million average.

6) The Spokane Bank for Cooperatives routinely examines and evaluates CFAB's loan portfolio, which is the basic collateral underlying CFAB's borrowings from SBC. At

April 30, 1985, SBC calculated that, by its (SBC's) standards, the collateral was worth $13,400,000 less than the borrowings it secured. At year-end, CFAB had reduced that collateral deficit - measured by the same standards - to $3,100,000, an improvement of over $10.0 million.

7) The borrowing relationship with SBC has improved in other, less quantifiable, ways. After nearly a year of very limited commitments, CFAB was able in September 1985 to negotiate a six-month SBC loan commitment. Indications are that the next commitment, effective April 1, 1986, will also be for six months or possibly twelve months.

* * * * * * * * * *

As indicated earlier, a critical long-term need for CFAB was to develop a mechanism and structure to attract owner investment. Such investment, over a period of time, would in turn positively influence CFAB's earning prospects and borrowing ability. During the last half of 1985, with the assistance of specialized legal counsel, CFAB developed a new member/borrower equity investment program. That program, which became effective January 1, 1986, requires that each new borrower (including "old" borrowers acquiring new loans) purchase a modest amount - 5 percent of the borrowing - of stock in CFAB. That stock represents a true equity investment, i.e., risk capital. While this new program will have an almost insignificant effect on CFAB's current condition, it does lay the foundation for genuine and long-term capital growth.

Two other significant but unglamorous programs were developed in 1985 and made effective at the beginning of 1986. Each of them is designed to make CFAB financing more attractive and/or more effective, especially to individual fishermen. One program in particular will permit CFAB to be more aggressive and more competitive in seeking and retaining more creditworthy borrowers.

* * * * * * * * * *

It is not unreasonable to assert that CFAB has effectively moved itself back from the brink of imminent disaster and has diffused the air of crisis which influenced the day-to-day activities during much of 1985. However, its most difficult challenges lie ahead of it. The most obvious and most quantifiable is the statutory requirement that the $31.8 million State investment be repurchased in, or by, the year 2000. Perhaps a good illustration of the magnitude of that requirement is to point out that if CFAB were to make 14 annual cash payments to a fund earning eight percent annually, those payments would need to be slightly more than $1,313,000 in order to reach the $31.8 million objective. CFAB does not have a current ability to generate $1,313,000 of cash annually, nor can such an ability be credibly projected for the near future. If such a program were necessarily deferred until there were only ten years remaining, the annual payment amount would be slightly over $2,195,000. Obviously, time is of the essence in the effort to build CFAB's ability to generate cash.

The second major challenge, somewhat more difficult to express than the first, lies in the fact that CFAB is clearly caught in a classic spiral, an "adverse selection" process, which has been the downfall of many lending institutions. The process is not necessarily irreversible but, as the "spiral" descriptor implies, does gain momentum with each passing day. Since, beginning back in late 1983 or early 1984, such a large volume of CFAB's loans have been in a non-earning status, CFAB has had to attempt to maximize its gross income on the remaining portion of its loan portfolio in order to meet its own interest and expense obligations. This has meant maintaining interest rates at a level perceived to be "high" by most borrowers and which, in fact, have generally been higher than those offered by other lenders to more attractive borrowers. Over the past 18 months, many of those attractive borrowers have elected to re-finance their CFAB loans with other lenders. It is not possible to ascribe motivation to every such re-financing, but CFAB's management estimates conservatively that $12.0 to $18.0 million of loan volume has been lost in this way through December 31, 1985, and the trend is continuing. This is alarming. CFAB's loan portfolio is gradually being peeled away to a core of "small" individual borrowers, individuals who have few, if any, alternative sources of financing and who are least able to bear the burdens of increased interest rates, insurance premiums, and other expenses. They are the borrowers who are most costly to serve, and each notch of interest rate (or other) pressure creates a certain number of new problem loan accounts, which cause additional servicing or collection costs for CFAB, which in turn cause a need for greater interest income. Despite the recent success at reducing CFAB operating expenses, it must be recognized that a certain large portion of those expenses are "fixed" and cannot be further reduced no matter how much CFAB's loan volume may shrink. In addition, it must be recognized as axiomatic that if and as CFAB's loan portfolio contains a greater percentage of marginal or problem loans, expenses will actually increase.

The foregoing discussion places emphasis on a context of marginal or problem credit situations. In reality, CFAB - <u>if</u> it is limited by circumstances, statute, or otherwise to financing <u>only</u> those who appear to have the greatest need for its services (the "small" individual fishermen) - may prove to be an economically unfeasible enterprise under the best of conditions. A somehwat oversimplified analysis of a few basic facts illustrate the point:

A. The average CFAB loan to an individual fisherman today has a balance of about $45,000.

B. The average interest "spread" on such loans - that is, the difference between the interest rate CFAB charges and the rate it must pay on its own borrowings - is about 3 1/2 percent.

C. CFAB's annual net interest income on an average loan, then, is $1,575 (3 1/2% X $45,000).

D. In order to cover a basic operating expense budget of $2.2 million (again, $1.0 million below historical levels) CFAB needs the net interest income from 1,397 "average" loans ($2,200,000 divided by $1,575).

The above allows nothing to cover non-operating expenses, accumulation of a reserve for loan losses, capital expenditures, funding of the $31.8 million obligation, etc. It assumes no credit losses, no significant delinquencies, no unusual difficulties of any kind. It is not realistic. CFAB has never had more than 700 "average" fisherman loans and could not make and service 1,397 such loans without a significant and costly increase in staff. The financing of a fisherman, particularly within the context of Alaska's geography, is an expensive, cumbersome, and risky venture. The romance of fishing may tend to obscure the financial implications, but it is a capital-intensive business which is also characterized by nearly uncontrollable major costs (insurance and fuel, for example); it is a business in which its members have no control of the basic resource. Its members at best have only the right to compete with each other for a share of resources controlled by other human, political, natural, and international forces. It is a business in which an unusual - and unpredictable - number of individual failures are inevitable.

The financing of fishermen - which, in most cases, involves vessel security - is cumbersome and therefore costly. The procedures for taking a lien on a vessel are unlike those for any other kind of personal or business asset (at least in the United States). They are the province of a virtually unregulated and unique agency. They are subject to a body of law rooted in centuries past and recognized by the legal profession as a specialty, which again translates into unusual costs. When the inevitable failures occur, the vessel lien foreclosure process represents an additional and inevadable creditor's nightmare. In the best of circumstances, a case in which the vessel owner/borrower is cooperative, the lender will spend about $6,000 in Marshal's fees, court and attorney's costs, insurance, moorage, etc., before it has ownership and possession of the vessel. According to a major Anchorage law firm, a more typical vessel foreclosure cost would be $12,000 to

$16,000 (the annual net interest income on 8 to 10 average loans). When the foreclosure process is complete, the liquidation process becomes one more opportunity for almost certain loss. Again, the scenario is different than for almost any other form of foreclosed collateral. The market for fishing vessels is limited, close-knit, and highly subjective. Because of the unique procedural requirements related to vessel ownership, it is literally impossible to camouflage the nature and circumstances of such a sale. The bottom line is that, except in unusual cases, the proceeds realized from collateral liquidation will be significantly less than the loan balance involved, creating yet another loss which can only be charged against the interests of performing borrowers.

All of the above factors were almost certainly among the primary reasons that the need for "a CFAB" was perceived in the late 1970's; traditional, profit-oriented, and regulated commercial lenders abstained from widescale financing of individual fishermen because it was, and is, a market characterized by limited potential for profit but bearing inordinate risk of loss.

The creation of CFAB was a visionary response to a clear need. Implementation of the unique concept has been characterized by some dramatic errors and misjudgments, the effects of which have been exacerbated by major unforeseeable and uncontrollable external forces. The result, after nearly six years of actual credit operations, is that the institution has significant financial weaknesses which must be, and are being, addressed. The reality of those weaknesses and the appeal of criticizing their existence and causes, however, should not be allowed to overshadow the fact that CFAB <u>has</u> met the financing needs of hundreds of individual fishermen. It has served the interests of countless others simply by its existence in the market; CFAB's presence as an alternative lender has provided the financially stronger and more creditworthy fishermen with additional leverage in their negotiations with other credit sources. In short, that fundamental purpose is being served. While CFAB is in a position, albeit weakened, to continue that service today, a commitment to that purpose without addressing the long-term risks and effects is imprudent to an extreme.

CFAB has the theoretical ability to modify the financial and operational effects discussed in the foregoing through loans to the agriculture and timber industries and to the processing segment of the fishing industry. Ignoring for the moment the realities and other constraints which limit that ability to a theoretical one, and assuming creditworthiness among the processors in general, the potential benefits to CFAB and its individual borrower-members are great. For example, term loans of $2.5 million each to five processors will yield net interest income of $437,500 ($12.5 million X 3.5%) annually; and the servicing demands on CFAB are not significantly greater than those of an equal number of loans to individual fishermen. Numbers of that magnitude translate into increased net earnings and equity growth, which in turn translate into enhanced financial stability and lending capacity.

Of those additional markets cited, the greatest potential opportunity, in dollars, lies among the seafood processors. Under present circumstances, however, the existence of that opportunity is illusory; it must be referred to an "theoretical." This is due to the nature and origin of the capital investment in the Alaska seafood processing industry, coupled with the strictures of AS 44.81.210.(a)(1). That statute provides in part that CFAB may make loans only to those coporations (most major seafood processors are corporate entities) of which the majority ownership and control is vested in Alaska residents.

The statute effectively makes a large part of the industry ineligible to borrow from CFAB. It is not unrealistic to generalize that larger processors tend to be more financially stable and more creditworthy than smaller processors. In some instances, economies of scale are significant - more general positive characteristics, though, are multiple plants and diversified operations; highly developed levels of management, marketing, planning, and budgeting expertise; and broad product mixes.

During 1985, CFAB carried out a survey and analysis of the ownership of Alaska seafood processors. Complete ownership information is difficult to obtain in many cases; however, a variety of sources was consulted, and the findings are believed to be credible. A total of 78 shorebased processors entities (in addition to 43 "floater" processors) was identified, as follows:

Annual Sales	Number
$10.0 million or more	22
$ 1.0 million to $10.0 million	33
Less than $1.0 Million	23
Total	78

The distribution of ownership, in terms of statutory eligibility for CFAB financing, is interesting. Of the 18 processors, 45 of them - slightly over 57 percent - are eligible. Twenty of those 45, however, are in the group with annual sales of less than $1.0 million. They represent limited financing opportunities and requirements. Many of them are privately financed and/or integrated harvesting/processing operations, or are highly specialized and limited operations financed by their market base.

Of the remaining 25 eligible processors, 20 are in the $1.0 million to $10.0 million sales group. It is difficult to generalize about those 20. CFAB has, or has had, credit relationships with 13 of them. Some of them have been extremely good loans; others are, or have been, among CFAB's most grievous credit problems. At best, the group does not appear to offer a broad base of financing opportunities.

The group of 22 larger (sales of $10.0 million or more) processors clearly holds the greatest promise for major CFAB financing opportunities; however, only five of those processors are statutorily eligible. CFAB has, or has had, credit relationships with four of them; they have included some of CFAB's most reliable and highest quality loans. They are viewed as attractive and profitable borrowers by other lenders.

It is not known, and not asserted, that all of those 22 processors are creditworthy. Neither can it be asserted that if CFAB were given access to that group that competition would be readily or immediately overcome. However, the statutory barrier to that market represents a significant handicap to CFAB (within the context of its original and documented legislative intents and purposes); it magnifies the risks of financing concentrated in a very small market; it places strong upward pressure on the costs which must be borne by individual fishermen-borrowers; and it serves no useful purpose with regard to Alaskan interests. Ownership of a corporation - at least as expressed and implied by the statute - is not a valid credit factor.

That group of processors own extensive facilities in Alaska. They purchase, add value to, and market Alaska fish. They pay local taxes. They deal with Alaska fishermen. They purchase supplies in Alaska. They employ Alaska workers. They pay fish taxes to the State of Alaska. When they borrow money for capital investments or to finance operations, the money does not disappear - it is repaid, dollar for dollar, to the lender whether that lender is a Seattle commercial bank, a New York insurance company, or CFAB; and interest is paid to that lender also. That interest obviously can only be taken from the gross proceeds from the marketing of Alaska seafoods. If the interest is paid to CFAB it is a beneficial increment to CFAB and, therefore, its owners which consist of the State of Alaska and Alaska fishermen, farmers, and timber harvesters.

EEC:1021V

Offered: 3/5/86
Referred: Resources and Finance

Original sponsor: Herrmann

IN THE HOUSE — BY THE HOUSE SPECIAL COMMITTEE ON STATE LOANS

CS FOR HOUSE BILL NO. 579 (Loans)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to financing of fish processors and agricultural and timber processors and harvestors by the Commercial Fishing and Agriculture Bank."

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

* Section 1. FINDINGS. The legislature finds that

(1) shore-based fish processing and agricultural and timber processing and harvesting facilities, regardless of ownership, are an essential part of the state economy and provide for the development of a renewable resource tax base vital to many Alaska communities;

(2) shore-based fish processing and agricultural and timber processing and harvesting facilities in the state, regardless of ownership, significantly contribute to the economic development and stability of Alaska's communities; and

(3) shore-based fish processing and agricultural and timber processing and harvesting facilities in the state, regardless of ownership, employ a significant resident work force and contribute substantially to local community economies through the demand for goods and services.

* Sec. 2. AS 44.81.210 is amended by adding a new subsection to read:

(c) Notwithstanding (a)(1) of this section, the bank may make a variable or fixed rate loan to a shore-based fish processor, a timber processor or harvestor, or an agricultural processor or harvestor that does not meet the resident ownership requirements of (a)(1) of this section for capital investment or operating capital if the majority interest in the processor or harvestor is beneficially owned by residents of the United States.

Introduced: 2/14/86
Referred: House Special Committee on
State Loans, Resources and Finance

IN THE HOUSE BY HERRMANN

HOUSE BILL NO. 579

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to financing of fish processors by the Commercial Fishing and Agriculture Bank."

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

* Section 1. FINDINGS. The legislature finds that

(1) shore-based fish processing facilities, regardless of ownership, are an essential part of the state fishing economy and provide for the development of a renewable resource tax base vital to many Alaska coastal communities;

(2) shore-based fish processing facilities in the state, regardless of ownership, significantly contribute to the economic development and stability of Alaska's coastal communities; and

(3) shore-based fish processing facilities in the state, regardless of ownership, employ a significant resident work force and contribute substantially to local coastal community economies through the demand for goods and services.

* Sec. 2. AS 44.81.210 is amended by adding a new subsection to read:

(c) Notwithstanding (a)(1) of this section, the bank may make a variable or fixed rate loan to a shore-based fish processor that does not meet the resident ownership requirements of (a)(1) of this section if at least 50 percent of the employees of the processor during the calendar year immediately preceding application for the loan were residents of the state and if, during the life of the loan, at least 50 percent of the employees of the processor during each calendar year are residents of the state.