

HB

550

HOUSE COMMITTEE REPORT

(11)

Date referred: 4/20/88

FURTHER REFERRALS:

DATE: 4-25-88

The Finance Committee has considered HB 550

"An Act authorizing the Department of Community and Regional Affairs to modify the terms of its mortgage loans; and providing for an effective date."

RECOMMENDS:

- replace with _____ the same title
- attached amendment(s) _____ a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):

- fiscal impact same as previous fiscal note published _____
- zero fiscal note same as previous zero fiscal note published 4/11/88
- zero with analysis

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

Larson Don Larson

Gall John Gall

Swack Al Swack

Boyer Mark Boyer

Brown Ray Brown

Davis Mike Davis

Pouchot Pat Pouchot

Rieger Steve Rieger

Pat Pouchot vice-chair

Chairman's signature

1 IN THE HOUSE

BY THE RULES COMMITTEE BY REQUEST
OF THE HOUSE MEMBERS OF THE JOINT
COMMITTEE ON ECONOMIC RECOVERY

2

HOUSE BILL NO. 550

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6 For an Act entitled: "An Act authorizing the Department of Community and
7 Regional Affairs to modify the terms of its mortgage
8 loans; and providing for an effective date."

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

10 * Section 1. FINDINGS. The legislature finds that

11 (1) some residents of the state who have obtained mortgage loans
12 from the Department of Community and Regional Affairs have mortgages with
13 payment obligations that exceed their present ability to make the required
14 payments;

15 (2) the Department of Community and Regional Affairs does not
16 have statutory authority to reduce interest rates;

17 (3) the costs of foreclosure and resale, including legal ex-
18 penses, publication costs, maintenance costs, repair and renovation costs,
19 sales expenses, closing costs, and costs due to sale in a distressed mar-
20 ket, may be very substantial;

21 (4) it may be in the department's and state's best direct finan-
22 cial interest to avoid foreclosure by modifying loan terms including
23 rescheduling principal payments, reducing interest rates and payment
24 amounts, and adjusting maturity dates to induce existing owners to remain
25 in title to the property and maintain active management of the property.

26 * Sec. 2. AS 44.47 is amended by adding a new section to read:

27 Sec. 44.47.525. MODIFICATION OF LOANS. (a) Notwithstanding
28 AS 44.47.410(a) and (b) and 44.47.520(b), on mortgages that it has
29 financed under AS 44.47.360 - 44.47.560 the department may, by loan

1 modification, reschedule principal payments or reduce interest rates,
2 or both, if the department finds that

3 (1) a loan modification would result in the likelihood that
4 the loan would pay to maturity and induce the borrower to remain in
5 active management and ownership of the property; and

6 (2) the loan modification would be

7 (A) in the best financial interest of the department
8 and the state; and

9 (B) considered prudent by private lending standards
10 taking into account the financial circumstances of the borrower
11 and other costly alternatives such as foreclosure.

12 (b) Rescheduling of the borrower's repayment of principal under
13 (a) of this section provides an interim payment adjustment and is not
14 intended to affect the obligation of the borrower to repay the princi-
15 pal amount on the mortgage loan.

16 (c) The department may reduce the interest rate payable on a
17 mortgage under (a) of this section only if the modification contains
18 an interest rate reopener clause. The interest rate reopener clause
19 must

20 (1) require that, if the interest rate is reduced, the
21 borrower and the department shall renegotiate the rate of interest on
22 the mortgage within five years of the date of an interest rate reduc-
23 tion approved by the department under this section;

24 (2) specify the date by which the borrower and the depart-
25 ment are to renegotiate the rate of interest under (1) of this sub-
26 section;

27 (3) incorporate a call feature reserving to the department
28 the right to demand repayment of the entire principal amount due if
29 the borrower and the department are unable to conclude renegotiation

1 of the rate of interest under () of this subsection; the department
2 may not use the call feature incorporated under this paragraph to
3 demand repayment of the entire principal amount due before the date
4 determined under (2) of this subsection.

5 (d) An interest rate reduction approved by the department under
6 this section cancels the borrower's obligation to pay the amount due
7 that is attributable to the difference between the original interest
8 rate and the interest rate reduction for the period of the rate re-
9 duction.

10 (e) When an interest rate is renegotiated under (c) of this
11 section, the renegotiated rate may not exceed the interest rate orig-
12 inally charged on the loan.

13 (f) The department shall adopt regulations prescribing the terms
14 and conditions of and the procedures applicable to loan modifications
15 made under this section.

16 * Sec. 3. This Act takes effect July 1, 1988.

Alaska State Legislature

STEVE FRANK

DISTRICT 20A
Finance Committee

1125 Sunset Drive
Fairbanks, Alaska 99701



While in Juneau
P.O. Box V
Juneau, Alaska 99811
(907) 465-3709

House of Representatives

TO: The House Finance Committee

FROM: Rep. Steve Frank

RE: House Bill 550 - "An Act authorizing the Department of Community & Regional Affairs to modify the terms of its mortgage loans, and providing for an effective date."

DATE: April 25, 1988

House Bill 550 would give the Department of Community & Regional Affairs (DCRA) the authority to modify the terms on troubled mortgage loans. Unlike other state loan agencies such as AHFC and AIDA, DCRA cannot reduce interest rates on its loans.

This legislation, developed by the Housing and Banking Subcommittee, would charge DCRA to act as a "prudent" lender would in working with borrowers. The idea was to keep the bill language tight while allowing the department the ability to act in its own financial best interest.

The major aspect of this bill is to allow DCRA to reschedule principal payments and/or lower interest rates on mortgages. While the reduction in interest may be forgiven, the principal rescheduling may not. In addition, the bill would give the Department the authority to renegotiate the interest rate after five years; however, the new interest rate cannot be higher than the rate charged on the original note.

DCRA supports this legislation because they see it as a way to protect the integrity of the loan fund.

Thank you for your consideration.

STATE OF ALASKA

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

OFFICE OF THE COMMISSIONER

112 HB 550
STEVE COWPER, GOVERNOR

- P.O. BOX B
JUNEAU, ALASKA 99811-2100
PHONE: (907) 485-4700
- 949 E. 38TH AVENUE, SUITE 400
ANCHORAGE, ALASKA 99508-4302
PHONE: (907) 563-1073

April 4, 1988

POSITION PAPER

RE: House Bill 550

SPONSOR: Rules Committee by request of the House Members of the Joint Committee on Economic Recovery.

Program Effects:

This bill would allow the department, under the Housing Assistance Loan Program, to modify loan terms, such as the interest rate and maturity date, when a borrower is experiencing financial distress. This authority already exists in other State assisted housing loan programs so this legislation would make this program consistent with these other State housing loan programs.

Comments:

This bill would correct an inconsistency between the provisions of the Housing Assistance Loan Program and other State housing loan programs, such as those offered by the Alaska Housing Finance Corporation. This would give the Housing Assistance Loan Program more options when assisting a distressed borrower to maintain his or her home and credit rating. It would help reduce the maintenance, legal, and resale costs that the Housing Assistance Loan Program experiences every time it cannot save a loan and has to accept the security, such as the real property, rather than repayment of the loan amount.

The Housing Assistance Loan Fund has currently about 1400 outstanding loans. Of these, 45 are in foreclosure, and another 100 are delinquent in payments. Of these delinquencies, the department estimates between one third and one half would be able to take advantage of the loan modification provisions proposed by this legislation.

HB 550
April 4, 1988
Page Two

The Housing Assistance Loan program has considered the financial impact on the Housing Assistance Revolving Loan Fund (HARLF) due to the resultant reduction in the average interest rate the portfolio earns brought about by lowering the interest rate charged to the borrowers. This loss in income, when averaged over the total portfolio, will not impact the loan fund. In addition the department feels that any loss in income due to the reduction in interest income may be offset by reducing the number of non-performing loans by turning them into performing loans. When a borrower goes into default and does not make the required loan payments, the HARLF receives no income from that loan. If the department can immediately work with that borrower and renegotiate loan terms which are acceptable to the State and the borrower, the State will suffer a smaller reduction in income than if it becomes necessary to go to foreclosure and liquidate the security.

The department strongly supports this legislation. It is in the best interests of both the state and the borrowers under this program to implement this statutory change.


Marty Rutherford
Acting Deputy Commissioner

② HB 550



Alaska State Legislature

House of Representatives

Committee on Community & Regional Affairs

Pouch V
State Capitol
Juneau, Alaska 99811
(907) 465-4833

April 4, 1988

TO: Rep. Henry Springer, Chariman HCRA

FROM: David C. Harrison, P. A., HCRA *Deft*

SUBJECT: HB 550 "An Act authorizing the Department of Community and Regional Affairs to modify the terms of its mortgage loans; and providing for an effective date." (H Rules Committee by request)

Section 1. Findings by the legislature indicate a need to provide some relief to the distressed real estate market. It is deemed in the interest of the property owners as well as the state to provide reduced interest rates.

Sec. 2 AS 44..47 as amended relates to modification of the interest on loans under AS 44.47.360 - 44.47.560 - please see attached statutes for your references.

Intent of this bill is that DCRA may by loan modification, reschedule principal payments or reduce interest rates or both, if the department finds it creates conditions that the loan would pay to maturity and induce the borrower to remain in active management and ownership of the property and the loan modification would be in the best financial interest of the department and the state; and considered prudent by private lending standards taking into account the financial circumstances of the borrower and other costly alternatives such as foreclosure.

If this bill passes, it would provide conditions for rescheduling of the borrower's repayment of principal under conditions herein which is not intended to affect the obligation of the borrower to repay the principal amount on the mortgage.

Provides that the department (DCRA) may reduce the interest payable on a mortgage if the modification contains an interest rate opener clause whereby if the interest rate is reduced the borrower and the department shall renegotiate the rate of interest on the mortgage within five years of the date of an interest rate reduction approved by the department.. Also to specify the date the parties are to renegotiate the rate of interest per conditions contained herein and to incorporate a call feature reserving DCRA the

right to demand repayment of the entire principal amount due if the borrower and DCRA are unable to conclude renegotiation of the rate of interest.

Conditions are placed on DCRA under the date call feature of this bill.

The interest rate reduction approved by DCRA under this section cancels the borrower's obligation to pay the amount due that is attributable to the difference between the original interest rate and the interest rate reduction for the period of the rate reduction. Benefit is accrued to the borrower because of reduced interest rate as negotiated.

Renegotiated interest rate may not exceed the original interest rate charged on the mortgage.

Regulations prescribing terms, conditions and procedures applicable to loan modification must be made by DCRA.

Effective date of this bill is July 1, 1988.

§ 44.47.560

ment substituted
loan fund" for
"loan fund" in the
ion (b)

ousing. (a) In
director may
ing assistance
t of non-owner

ction may not

aner occupied
it of the total
rural housing

idence or the
existing resi-

nily residence
units, that is
he owner; the
termines that
ng and that a
n to meet that

ure effective
division shall
revolving fund
nting shall be
include a full
payments and
fees, received
year, and all
 (§ 17 ch 102

7.560.
housing assis-

ce;
housing and

es not conform
deral program

§ 44.47.565

STATE GOVERNMENT

§ 44.47.565

(5) "rural" means

(A) a community with a population of 4,500 or less in the first or second judicial district of the state;

(B) a community with a population of 4,500 or less in the third judicial district of the state that is more than 100 nautical miles from the conforming boundary of jurisdiction of the Municipality of Anchorage; or

(C) a community with a population of 4,500 or less in the fourth judicial district of the state that is more than 35 nautical miles from the conforming boundary of jurisdiction of the City of Fairbanks;

(6) "rural housing" means housing, whether or not it is nonconforming housing, that is located in a rural area of the state. (§ 73 ch 106 SLA 1980; am § 50 ch 113 SLA 1982; am § 7 ch 128 SLA 1984)

Effect of amendments. — The 1982 amendment added paragraphs (5) and (6). The 1984 amendment rewrote paragraph (5).

Article 9. Local Boundary Commission.

Section

565. Local boundary commission
567. Powers and duties
569. Meetings and hearings
571. Minutes and records
573. Notice of public hearings

Section

575. Quorum
577. Boundary change
579. Expenses
581. Hearings on boundary changes
583. When boundary change takes effect

Sec. 44.47.565. Local boundary commission. There is in the department a local boundary commission. The local boundary commission consists of five members appointed by the governor for overlapping five-year terms. One member shall be appointed from each of the four judicial districts described in AS 22.10.010 and one member shall be appointed from the state at large. The member appointed from the state at large is the chairman of the commission. (§ 7 ch 64 SLA 1959; am § 5 ch 200 SLA 1972; am § 100 ch 59 SLA 1982)

Revisor's notes. — Formerly AS 44.10.250. Renumbered in 1980.

Cross references. — For further provisions relating to the local boundary commission and to annexation by local action, see AS 29.68.010. As to appointment, qualifications, and terms of office of members of departmental boards, councils, or

commissions, see AS 39.05.060.

Effect of amendments. — The 1982 amendment substituted "judicial districts described in AS 22.10.010" for "major senatorial election districts" and inserted "member shall be appointed" in the third sentence

47.310

ng the
sed fee

ng the
sed fee

d child
urposes

ho has

der AS
enters,
which
adop-

a child
regular

rdance
by the

ty and

retarda-
llectual
ng from

of this

ility to

unified
66 SLA
976; am
56 SLA

§ 44.47.320

STATE GOVERNMENT

§ 44.47.370

Revisor's notes. — This section was reorganized in 1983 to alphabetize the defined terms.

Effect of amendments. — The 1981 amendment added the definition of "child care facility."

The 1983 amendment substituted "a person" for "any person" in the definition of "child," added "or a minor who has a developmental disability" to the end of that definition, and added the definition of "developmental disability."

Secs. 44.47.320 — 44.47.350. The Temperate Social Activities Revolving Loan Fund. [Repealed, § 72 ch 113 SLA 1982.]

Article 8. Division of Housing Assistance.

Section

- 360. Division of housing assistance created
- 365. Director and deputy director
- 370. Powers of director
- 380. Housing assistance loan fund
- 382. Home ownership assistance fund
- 385. Eligible locations
- 390. Limitations on use of housing assistance loan fund
- 395. Operating loss reserve account
- 400. Security for loans
- 410. Interest on loans
- 420. Title
- 430. Restricted title loss reserve account

Section

- 440. Fire insurance
- 460. Loan origination and servicing
- 470. Appraisals
- 475. Energy audit exemption
- 480. Toll-free telephone number
- 490. Assistance by division personnel
- 500. Demonstration projects and information
- 510. Regional allocation
- 520. Loans for non-owner occupied housing
- 530. Annual report
- 560. Definitions

Cross references. — For provisions on the Alaska Housing Finance Corporation, see 18.56.010 — 18.56.210.

Editor's notes. — As to legislative

findings relating to the Division of Housing Assistance, see § 72, ch. 106, SLA 1980, in Temporary and Special Acts and Resolves.

Sec. 44.47.360. Division of housing assistance created. There is created in the department the division of housing assistance. (§ 73 ch 106 SLA 1980)

Sec. 44.47.365. Director and deputy director. The director and deputy director of the division are in the partially exempt service under AS 39.25. (§ 73 ch 106 SLA 1980)

Editor's notes. — For legislative findings relating to the division of housing assistance, see § 72, ch. 106, SLA 1980 in

the 1980 Temporary and Special Acts and Resolves.

Sec. 44.47.370. Powers of director. The director may
(1) adopt regulations in accordance with the Administrative Procedure Act (AS 44.62) to implement AS 44.47.360 — 44.47.560;
(2) make and execute agreements, contracts, and other instruments necessary or convenient in the exercise of the director's powers and functions under AS 44.47.360 — 44.47.560;

(3) purchase or participate in the purchase of nonconforming and rural housing mortgage loans in accordance with AS 44.47.360 — 44.47.560;

(4) purchase or participate in the purchase of loans for building materials for nonconforming and rural housing in accordance with AS 44.47.360 — 44.47.560;

(5) procure insurance against loss in connection with the director's functions under AS 44.47.360 — 44.47.560;

(6) acquire real or personal property, or an interest in real or personal property, by purchase, transfer or foreclosure, when the acquisition is necessary or appropriate to protect a loan in which the division has an interest; sell, transfer and convey that property to a buyer; and, if the sale, transfer or conveyance cannot be effected with reasonable promptness or at a reasonable price, rent or lease the property to a tenant pending the sale, transfer or conveyance;

(7) do all acts necessary, convenient or desirable to carry out the powers expressly granted or necessarily implied in AS 44.47.360 — 44.47.560;

(8) originate and service direct loans made to qualified buyers in accordance with AS 44.47.360 — 44.47.560. (§ 73 ch 106 SLA 1980; am § 15 ch 115 SLA 1981; am §§ 36, 37 ch 113 SLA 1982)

Effect of amendments. — The 1981 amendment added paragraph (8). The 1982 amendment, inserted "and rural" in paragraphs (3) and (4).

Sec. 44.47.380. Housing assistance loan fund. There is created in the department, as a revolving loan fund, the housing assistance loan fund consisting of money appropriated to it by the legislature and repayments of principal on loans made or purchased from the assets of the fund. The director shall administer the housing assistance loan fund in accordance with AS 44.47.360 — 44.47.560 and shall use the money in the housing assistance loan fund to originate, purchase, or participate in the purchase of

(1) nonconforming and rural housing mortgage loans;

(2) loans made for building materials for nonconforming and rural housing;

(3) loans made for renovations or improvements to nonconforming and rural housing;

(4) loans made for the construction of owner-occupied nonconforming and rural housing other than loans to builders or contractors or loans that compensate an owner for the owner's labor or services in constructing the owner's own housing. (§ 73 ch 106 SLA 1980; am § 6 ch 115 SLA 1981; am § 38 ch 113 SLA 1982; am § 12 ch 102 SLA 1983)

44.47.380

rmg and
47.360 —

r building
ce with AS

director's

in real or
the acqui-
re division
uyer; and,
reasonable
perty to a

y out the
47.360 —

buyers in
1980; am

serted "and
4).

is created
assistance
ature and
assets of
ance loan
ll use the
chase, or

and rural

nforming

occupied
ilders or
labor or
106 SLA
§ 12 ch

§ 44.47.382

STATE GOVERNMENT

§ 44.47.385

Effect of amendments. — The 1981 amendment added "originate" preceding "purchase" in the second sentence of the introductory language and added paragraph (4).

The 1982 amendment substituted "housing assistance loan fund" for "nonconforming housing loan fund" in one place in the first sentence and in two

places in the second sentence, and inserted "and rural" in paragraphs (1)-(4).

The 1983 amendment, inserted "as a revolving loan fund" in the first sentence, added the language beginning "and repayments of principal" to the end of that sentence, and deleted the former second sentence concerning deposit of interest on loans.

Sec. 44.47.382. Home ownership assistance fund. (a) There is created in the Department of Community and Regional Affairs, the home ownership assistance fund consisting of money appropriated to it by the legislature. Money in the fund shall be used solely to assist persons of lower and moderate income to purchase or construct single-family homes financed under AS 44.47.360 — 44.47.560 by providing a subsidy to those persons.

(b) The subsidy provided by this section may not exceed the amount that is necessary to reduce the annual interest rate paid on the mortgage loan to six percent.

(c) A mortgage loan that is subsidized from the home ownership assistance fund may not exceed \$20,000.

(d) The division shall adopt regulations that establish maximum income-to-loan payment ratios for persons who apply for a subsidy under this section.

(e) In this section, "persons of lower and moderate income" means individuals considered by the division to require assistance under this section because of inadequate income or other limited personal financial resources, taking into consideration

- (1) the amount of total income available for housing needs;
- (2) the size of the family;
- (3) the cost and condition of available housing;
- (4) standards established in various federal programs for determining eligibility based on income;
- (5) the ability to enter the private housing market and to pay market amounts for decent, safe, and sanitary housing; and
- (6) other factors considered relevant by the division. (§ 13 ch 102 SLA 1983)

Sec. 44.47.385. Eligible locations. Not more than 20 percent of the total amount appropriated to the housing assistance loan fund may be allocated in communities other than those defined in AS 44.47.560(5). (§ 17 ch 115 SLA 1981; am § 39 ch 113 SLA 1982; am § 18 ch 102 SLA 1983)

Effect of amendments. — The 1982 amendment, in subsection (a), substituted "housing assistance loan fund" for "nonconforming housing loan fund" and inserted "and rural" in two places.

The 1983 amendment rewrote this section.

Effect of amendments. — The 1981 amendment added "originated or" preceding "purchased in whole" once in subsection (a) and twice in subsection (b).

Sec. 44.47.410. Interest on loans. (a) The interest rate on a mortgage loan originated or purchased in whole or in part under AS 44.47.380 for a nonconforming housing that is not rural housing is one-quarter percent more than the interest rate, as determined under AS 18.56.098(g)(1) — (4), on a mortgage loan purchased under AS 18.56.098(a) from the proceeds of the most recent applicable issue of taxable bonds before the origination or purchase of the mortgage loan originated or purchased under AS 44.47.380.

(b) The interest rate on a mortgage loan originated or purchased in whole or in part under AS 44.47.380 for rural housing is one percent less than the interest rate, as determined under AS 18.56.098(g)(1) — (4), on a mortgage loan purchased under AS 18.56.098(a) from the proceeds of the most recent applicable issue of taxable bonds before the origination or purchase of the mortgage loan originated or purchased under AS 44.47.380. (§ 73 ch 106 SLA 1980; am § 21 ch 115 SLA 1981; am § 41 ch 113 SLA 1982; am § 16 ch 102 SLA 1983)

Effect of amendments. — The 1981 amendment rewrote this section.

The 1982 amendment designated the former provisions of this section as subsection (a), inserted "for nonconforming housing that is not rural housing" and substituted "AS 18.56.098(a)" for "AS 18.56.098(g)" in that subsection, and added subsection (b).

The 1983 amendment substituted "one-quarter percent more than" for "equal to" in subsection (a) and the language beginning "one percent less than the interest rate" for "10-1/2 percent" at the end of subsection (b).

Sec. 44.47.420. Title. (a) Before the director originates or purchases a nonconforming or rural housing mortgage loan in whole or in part, the director may require a borrower to show marketable title to real property offered as security for the loan to be purchased.

(b) A borrower may show marketable title to real property for the purposes of (a) of this section

(1) by purchasing title insurance from a title insurance company authorized to do business in the state; or

(2) by delivering to the director a copy of a letter of intent signed by an authorized representative of the United States Department of the Interior which shows the transfer of title to the property from the United States government to the borrower if

(A) the borrower is an Alaska Native; and

(B) title to the property was originally transferred from the United States government, directly or indirectly, to the borrower under federal law.

(c) For the purposes of this section, a deed which federal law prohibits or limits the power to transfer or encumber and which would otherwise constitute marketable title to real property is considered

marketable title to real property if the United States Bureau of Indian Affairs or another appropriate federal agency waives immunity under the federal law from foreclosure or other alienation of the real property. (§ 73 ch 106 SLA 1980; am § 22 ch 115 SLA 1981; am § 42 ch 113 SLA 1982)

Effect of amendments. — The 1981 amendment added "originates or" preceding "purchases a nonconforming" in subsection (a). The 1982 amendment inserted "or rural" in subsection (a).

Sec. 44.47.430. Restricted title loss reserve account. (a) There is established in the division the restricted title loss reserve account. The restricted title loss reserve account consists of money appropriated to it by the legislature and shall be administered by the director.

(b) The director may withdraw money from the restricted title loss reserve account in an amount equal to the loss to the division on a nonconforming or rural housing mortgage loan originated or purchased in whole or in part by the division if marketable title to the real property used to secure the loan was shown in accordance with AS 44.47.420(b)(2). Money withdrawn from the restricted title loss reserve account under this section shall be deposited in the housing assistance loan fund. (§ 73 ch 106 SLA 1980; am § 23 ch 115 SLA 1981; am § 43 ch 113 SLA 1982)

Effect of amendments. — The 1981 amendment added "originated or" preceding "purchased in whole" in the first sentence of subsection (b). The 1982 amendment inserted "or rural" in the first sentence and substituted "housing assistance loan fund" for "nonconforming housing loan fund" at the end of the second sentence

The 1982 amendment, in subsection (b).

Sec. 44.47.440. Fire insurance. Before purchasing or participating in the purchase of a nonconforming or rural housing mortgage loan, the director may require the borrower to agree to purchase and maintain fire insurance for the real property for which the loan is made in an amount not less than the outstanding principal balance of the loan. (§ 73 ch 106 SLA 1980; am § 44 ch 113 SLA 1982)

Effect of amendments. — The 1982 amendment inserted "or rural."

Sec. 44.47.460. Loan origination and servicing. (a) Before purchasing or participating in the purchase of a loan, the director shall enter into a loan servicing agreement with the private financial institution from which the loan is to be purchased.

(b) The director may execute service agreements with private lending institutions or with regional native housing authorities established under AS 18.55.996 to service loans originated by the division or loans originated under AS 18.55.997.

financial institution
ster the loan and
-vicing fee on the
private financial
may also charge
d one percent.
tered into under
loans made for
ganized boroughs
a population in
forming housing.
§ 73 ch 106 SLA
3 SLA 1982)

ent. in subsection (b).
ional native housing
shed under AS
l" or loans originated
to the end. In subsec-
ent inserted "or the
ing authority" in two

or purchasing or
or rural housing
e the borrower to
the real property,
the loan is made.
praiser shall give
tion in structures
of the structures.
§ 47 ch 113 SLA

of the first sentence
dment inserted "or
entence.

aking loans under
uirements of AS

The director shall
er for the division
owers may contact
one without a toll

Sec. 44.47.490. Assistance by division personnel. (a) The director may establish field offices under this chapter, may hire one or more lending officers, and may contract for the services of

(1) real property appraisers who are familiar with rural construction; and

(2) engineers who are familiar with engineering problems in arctic and subarctic regions.

(b) The personnel described in (a) of this section may make visits to the regions established under AS 44.47.510(a) to provide preconstruction and post-construction inspections of real property for which loans are originated or purchased by the division in whole or in part under AS 44.47.380 and to provide assistance to private financial institutions and their borrowers in the regions. Authority for final approval of loans may not be exercised by the personnel described in this section. (§ 73 ch 106 SLA 1980; am § 26 ch 115 SLA 1981)

Effect of amendments. — The 1981 amendment substituted "may establish field offices under this chapter, may" for "shall" preceding "hire" deleted "at least" following "hire." added "or more" preceding "lending." substituted "officers" for "officer" following "lending" and substituted "may" for "shall" preceding "contract" in the introductory language of

subsection (a). In subsection (b), the amendment substituted "may" for "shall" following "of this section." deleted "regular" preceding "visits." deleted "each of" preceding "the regions established." added "originated or" preceding "purchased by" and added the second sentence of the subsection.

Sec. 44.47.500. Demonstration projects and information. The director may enter into agreements with public and private agencies to provide demonstration projects and information concerning housing construction in each of the regions established under AS 44.47.510(a). (§ 73 ch 106 SLA 1980)

Sec. 44.47.510. Regional allocation. (a) The commissioner of community and regional affairs, by regulations adopted in accordance with the Administrative Procedure Act (AS 44.62), shall establish and may amend the boundaries of reasonably compact and contiguous regions in the state.

(b) Unless otherwise required by an appropriation, the director shall allocate the money in the housing assistance loan fund among the regions established under (a) of this section for the purpose of originating or purchasing each type of loan described in AS 44.47.380. In making an allocation under this subsection, the director shall consider the past and potential lending activity of private financial institutions in the region as well as the need for loans in the region. The director may reallocate the money among the regions as the director considers necessary. (§ 73 ch 106 SLA 1980; am § 27 ch 115 SLA 1981; am § 48 ch 113 SLA 1982)

Effect of amendments. — The 1981 amendment added "originating or" preceding "purchasing each type" in the first sentence of subsection (b).

The 1982 amendment substituted "housing assistance loan fund" for "nonconforming housing loan fund" in the first sentence of subsection (b).

Sec. 44.47.520. Loans for non-owner occupied housing. (a) In addition to the powers authorized by AS 44.47.370 the director may adopt regulations allowing the use of money in the housing assistance loan fund to make loans for the purchase or development of non-owner occupied housing in rural areas of the state.

(b) The rate of interest on a loan authorized by this section may not exceed 10-1/2 percent.

(c) The principal amount of loans made for non-owner occupied housing under this section may not exceed 20 percent of the total principal amount of loans made for nonconforming and rural housing under AS 44.47.360 — 44.47.560.

(d) In this section

(1) "development" means the construction of a new residence or the repair, remodeling, rehabilitation, or expansion of an existing residence;

(2) "non-owner occupied housing" means a single-family residence or a multi-family residence having up to eight dwelling units, that is not nonconforming housing, and is not occupied by the owner; the director may modify this definition if the director determines that there is a special need for non-owner occupied housing and that a change in the definition is necessary to enable the division to meet that need. (§ 49 ch 113 SLA 1982)

Sec. 44.47.530. Annual report. To further ensure effective budgetary decision making by the legislature, the division shall present a complete accounting of the housing assistance revolving fund to the legislature by January 10 of each year. The accounting shall be audited by an independent outside auditor and shall include a full description of all mortgage loan interest and principal repayments and program receipts, including mortgage loan commitment fees, received by or accrued to the division during the preceding fiscal year, and all income earned on assets of the division during that period. (§ 17 ch 102 SLA 1983)

Sec. 44.47.560. Definitions. In AS 44.47.360 — 44.47.560,

(1) "director" means the director of the division of housing assistance;

(2) "division" means the division of housing assistance;

(3) "housing" means owner-occupied, single-family housing and owner-occupied duplexes;

(4) "nonconforming housing" means housing that does not conform to minimum building standards under any state or federal program that provides loans for housing purchases;

③ HB 550

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465-3800

MEMORANDUM

February 29, 1988

SUBJECT: Authority to restructure mortgage loans
(Work order 5-2012)

TO: Representative Steve Frank
ATTN: Rick Solie

FROM: Jack Chenoweth
Legislative Counsel

You have asked for a review of the ability of the state agencies that manage residential mortgage lending programs to restructure those loans under current law.

The sources of the principal residential mortgage loan programs are:

-- loans made under one of the various housing assistance programs by the Alaska Housing Finance Corporation under authority of AS 18.56; 1/

-- loans made from the Housing Assistance Loan Fund and the Homeownership Assistance Funds by the Division of Housing Assistance of the Department of Community and Regional Affairs under the authority of AS 44.47.360 - 44.47.560. 2/

Though their total numbers are significantly below the numbers of loans made by each of the entities mentioned above, loans for residential purposes may also be made by

-- the Alaska Permanent Fund Corporation;

-- the commissioner of revenue, acting in the capacity of treasurer of the state's retirement systems for the pension fund surpluses of the Public Employment Retirement System and the Teachers' Retirement System.

"Restructuring of mortgage loans" is usually understood to mean at least one of the following:

-- forbearance arrangements or agreements, authorizing the borrower to reduce or suspend regular mortgage payments for a stated period; or,

- modification of the terms of a mortgage, including
 - reduction of payments of principal
 - without affecting the total debt obligation of the mortgagor on the mortgage loan; or
 - accompanied by a concomitant reduction in the total debt obligation of the mortgagor on the mortgage loan;
 - reduction of the interest payment payable on the loan; or
 - delay or postponement of the due date of the mortgage obligation.

Alaska Housing Finance Corporation mortgage loans:

The Alaska Housing Finance Corporation enjoys wide latitude as to how it may address delinquent loans and those that may become delinquent. In the enumeration of the general powers of the corporation, AS 18.56.090(11) provides that the corporation may, "for its . . . corporate purposes":

consent to the modification of the rate of interest, time of payment of any installment of principal or interest, or any other terms, of the mortgage loan, mortgage loan commitment, construction loan, temporary loan, contract or agreement of any kind to which the corporation is a party;

While this statutory language sets no limits, there are some practical constraints.

AHFC principally finances its programs through the use of bond proceeds. AS 18.56.110 generally prescribes limitations applicable to the bonds and notes of the corporation. AS 18.56.110(f)(3) authorizes the corporation to "covenant as to the use and disposition of any and all payments of principal and interest received by the corporation on mortgage loans . . . or other investments held by the corporation." Under AS 18.56.120,

The pledge of assets or revenue of the corporation to the payment of the principal or interest on any obligations of the agency is valid and binding from the time the pledge is made and the assets or revenue are

immediately subject to the lien of the pledge without physical delivery or further act. . . .

So it is to the covenants that support the underlying bond issues rather than to provisions of state law that one must look to determine whether AHFC's various mortgage loan programs permit restructuring of outstanding loans. One must also consider the agreements between AHFC and, on the one hand, agreements entered into with the Federal National Mortgage Association (and similar entities) covering sales of mortgages and loans and, on the other hand, agreements with the corporation's own mortgage seller/servicers. Each of these groups of agreements may include provisions limiting the corporation's flexibility in responding to defaults and potential defaults by the borrowers.

These agreements notwithstanding, AHFC does authorize loan modifications under certain circumstances. The corporation's seller/servicer manual identifies those as limited to instances in which the mortgagor's income has been permanently affected by accident or illness, or in which the mortgagor's income has been reduced or eliminated altogether for a temporary period and which has not recovered sufficiently to maintain the current mortgage. The corporation will also consider a modification "if the servicer [of the mortgage] feels that changing the terms of the mortgage would not only cure [a] present delinquency but also prevent future delinquencies." AHFC must give prior approval and "will consider . . . reamortizing the debt to include the delinquent payments or extending the term of the loan by the number of past due installments." AHFC Seller/Servicer Manual sec. 9002.06.

In summary, current state law generally appears to provide sufficient latitude for the Alaska Housing Finance Corporation to modify loans and loan provisions for loans that are delinquent or may become delinquent. Legislative initiatives to amend the law to redefine or extend AHFC's authority need to be concerned with possible claims against impairment of contracts entered into by the corporation, particularly with bond underwriters, federal government agencies that purchase the mortgages, and the corporation's seller/servicers.

Department of Community and Regional Affairs mortgage loans:

State law applicable to management of the department's mortgage loan programs does not specifically provide the department latitude to restructure repayment of principal and interest on its loans. The department's own regulations are also silent on the point.

The department has asserted to you that it may not reduce interest payable. Its assertion seems to be borne out by the following:

-- the interest rate payable by a borrower under the rural owner-occupied housing program is, by statute (AS 44.47.410(b)), tied to the rate based on the most recent AHFC bond sale;

-- the interest rate payable by a borrower under the rural non-owner-occupied housing program is set by statute (AS 44.47.520(b)) as an amount not to exceed $10\frac{1}{2}$ percent; the department advertises that the rate is $10\frac{1}{2}$ percent;

-- the interest rate payable by a borrower under the homeownership assistance housing program, the interest-subsidy assistance program, directs by statute (AS 44.47.382(b)) that, for qualifying borrowers, the subsidy allowable shall be sufficient to reduce the actual interest rate paid on the mortgage to six percent.

The net effect of the three statutes cited suggests that the department is without discretion to adjust or reduce interest payable by a borrower under any of the three programs.

The department has also represented to you that, while it may adjust payments of principal on outstanding housing program loans, its authority to adjust the payments is limited to modifying current principal payments without reducing the mortgagor's total debt obligation under the mortgage loan. In other words, the department believes that it may reduce monthly payments, but the reductions correspondingly serve to extend the repayment obligation to an additional period; the department may not cancel or forgive a portion of the borrower's indebtedness.

The source of the department's mortgage lending activity is the housing assistance loan fund. That fund is established by statute (AS 44.47.380) and was, by a 1983 amendment, made

a revolving loan fund. 3/ A revolving loan fund is commonly thought of, and in Alaska legislation has been nearly universally treated, as a fund that is continually expended and replenished, from which withdrawals are made as loans but with a corresponding obligation to repay the fund in order to keep it intact. 4/ Legislative appropriations for state revolving loan funds are typically treated as non-lapsing appropriations, and any repayments of principal on loans purchased or originated with these appropriations should be deposited into the fund and made available from the fund for subsequent expenditure.

In my judgment, the department's representation to you seems to be fully consistent with its duty to maintain the integrity of the housing assistance loan fund as a revolving fund. A reduction in principal payments accompanied by a cancellation of a portion of a borrower's indebtedness would compromise the fund balance and the ability of the agency to use the fund balance as a source of loans in subsequent years.

Investments of the Alaska Permanent Fund Corporation:

Under authority granted in AS 37.13.120(g)(16), the corporation may invest in

notes secured by mortgages granting a first lien on commercial or residential real estate improved by completed buildings [subject to specific mortgage insurance requirements];

Like the Alaska Housing Finance Corporation, the Alaska Permanent Fund Corporation enjoys broad authority to manage investments. The corporation is authorized to "enter into and enforce all contracts necessary, convenient, or desirable for purposes of the corporation." (AS 37.13.120(f)). The residential mortgages purchased by the corporation as investments become assets of the corporation subject to the corporation's general asset management policies.

Since the Permanent Fund Corporation regularly receives income from sources other than those that support the mortgage lending activities of AHFC or the Housing Assistance Division, it is not constrained by the same considerations that circumscribe loan management practices of those two entities. Within the broad authority of the statutes directing its activities, the Permanent Fund

Representative Steve Frank
Page 6
February 29, 1988

Corporation appears to have ample legal authority to structure or restructure loans that are potentially or actually delinquent.

Retirement Funds investments:

The commissioner of revenue may invest the surpluses of the Public Employees' Retirement System and the Teachers' Retirement System in, among other permissible investments specified by law, residential mortgages. AS 39.35.-110(a)(10) (for the Public Employees' Retirement System) and AS 14.35.180(b)(10) (for the Teachers' Retirement System) authorize the commissioner to invest in "first lien real estate mortgages guaranteed by the federal Veterans Administration." AS 39.35.110(a)(11) and (12) and AS 14.35.-180(b)(11) and (12) authorize investments involving other kinds of residential mortgages, subject to specific limitations set out in those paragraphs and in AS 39.-35.110(e) and AS 14.25.180(e), respectively.

As to each of the two retirement programs, the commissioner is authorized by law to "do all acts whether or not expressly authorized which are considered necessary or proper for the protection of the investments held in the pension fund." AS 39.35.110(d); AS 14.25.180(d).

JBC:bb
wkb3/047

FOOTNOTES

1/ The loans of the Alaska Housing Finance Corporation may be classified among the following specific loan programs:

-- home ownership assistance program (a program to provide mortgage subsidies to persons of low and moderate income);

-- mobile home loan purchase program (a program to provide low-cost financing for mobile homes);

-- pledged account mortgage program (a program to assist persons with sufficient assets but whose income does not meet the minimum monthly income requirements generally applicable to the corporation's loan programs);

-- second mortgage loan program (a program to provide low-interest loans for home improvements or rehabilitation in order to make the units more habitable, and to finance second mortgages in order to allow home purchases);

-- taxable mortgage program conventional loan (the principal AHFC homeowner assistance program, applicable to owner-occupied units);

-- tri-plex and four-plex mortgage loan program (a program to allow the purchase of owner-occupied tri- and four-plex units);

-- veterans' mortgage program (a program to provide additional assistance to qualifying veterans through a reduced interest rate);

2/ The Department of Community and Regional Affairs' loans involve the following specific programs:

-- rural owner-occupied housing (a program to provide financing to qualified borrowers for the construction, purchase, or rehabilitation of a housing unit, limited to single family units and duplexes, for use as the borrower's principal residence);

-- rural non-owner-occupied housing (a program to provide financing to qualified borrowers for the construction, purchase, or rehabilitation of a multiple unit housing project, generally two to eight units, though larger under extraordinary circumstances);

Representative Steve Frank
Page 8
February 29, 1988

-- home ownership assistance housing (a program to provide assistance to persons of lower and moderate income to purchase or construct single-family, owner-occupied dwellings, through the use of subsidized interest payment support).

3/ A January 23, 1984, Opinion of the Attorney General provides guidance to the Department of Community and Regional Affairs as to the proper handling of the repayments of principal and interest earnings on loans made from the loan fund before and after the 1983 amendment establishing it as a revolving fund.

4/ "Revolving loan funds provide for the return to the fund of repayments by borrowers of the principal (and frequently the interest on that principal) which was loaned to them from the fund so that new loans can be made on a continuing basis." 1982 Opinions of the Attorney General #13, November 30, 1982, at page 12.

JBC:bb
wkb3/047