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STATE OF ALASKA 1988 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST: _____ Bill Version: CS HB 433 L&C
 Publish Date: 2/25/88

Revision Date: _____ Agency Affected: Alaska Court System
 Title: An act related to a moratorium on foreclosures BRU: Trial Courts
 Sponsor: House Labor & Commerce Components:
 Requestor: _____

EXPENDITURES/REVENUES:	(Thousands of Dollars)					
OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
Personal Services	68.7	68.7	68.7	68.7	68.7
Travel
Contractual	45.0	45.0	45.0	45.0	45.0
Supplies
Equipment	4.3	. . . .	. . . .	. . . .	. . . .
Land & Structures
Grants & Claims
TOTAL OPERATING	0.0	118.0	113.7	113.7	113.7	113.7

CAPITAL
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REVENUE
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FUNDING:	(Thousands of Dollars)					
General Funds	0.0	118.0	113.7	113.7	113.7	113.7
Federal Funds
Other	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
TOTAL	0.0	118.0	113.7	113.7	113.7	113.7

POSITIONS:	(Thousands of Dollars)					
Full-time
Part-time	3.0	3.0	3.0	3.0	3.0
Temporary

ANALYSIS: (Attach a separate page if necessary)

See attached fiscal analysis.

Prepared by: Jan Strandberg, General Counsel Phone: 264-8228
 Division: Alaska Court System Date: 02/26/88

Approved by: Arthur H. Snowden, II, Administrative Director Date: 02/26/88
 Agency: Alaska Court System

- Distribution (by preparer):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management & Budget
 Impacted Agency(ies)
 Senate Secretary

ALASKA COURT SYSTEM FISCAL ANALYSIS

CSHB 433

This fiscal note is based on the assumption that 90 percent of state-wide residential mortgagors in financial distress will request extensions of the redemption period. Based on an estimated number of 4,258 residential non-judicial and judicial foreclosures for 1987, with an estimated hearing time of twenty minutes per request, the court system will need a one half-time standing master in Anchorage and will contract for standing masters' services in Kenai, Palmer and Fairbanks.

This fiscal note is also based on these assumptions:

- (1) the court will not be required to hire appraisers to determine "reasonable economic value";
- (2) no extensive hearings will be held on this issue or on the issues of past-due or anticipated taxes, insurance, amounts due to a payment by the owner of amounts due as principal; and
- (3) these issues will not be contested.

Finally, this fiscal note is based on the assumption that the number of residential foreclosures in 1988 will not change substantially from those for 1987.

Alaska Court SystemCS HB 433 (L&C) - Fiscal ImpactPersonal Services:

	<u>Salary</u>	<u>Benefits</u>	<u>Total</u>
Standing Master, Range 24A, PPT, Anchorage	\$28,122	\$8,299	\$36,421
In-court Clerk, Range 12B, PPT, Anchorage	12,870	4,964	17,834
Court Clerk I, Range 08B, PPT, Anchorage	10,122	4,363	14,485

	Total Personal Services		68,740

Contractual Services

Contractual standing master fees (500 hours at \$90 an hour)	45,000
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Equipment: (one-time cost)

Desk, chair, typewriter, and filing cabinet	4,266

Total First Year Cost	\$118,006
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Original sponsor: Labor and Commerce Committee

1 IN THE HOUSE

BY THE LABOR AND
COMMERCE COMMITTEE

2 CS FOR HOUSE BILL NO. 433 (L&C)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act establishing a moratorium on judicial and
7 nonjudicial foreclosures on residential property; and
8 providing for an effective date."

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

10 * Section 1. LEGISLATIVE DETERMINATION AND FINDINGS. The legislature
11 finds that an economic emergency currently exists in the state that threat-
12 ens to undermine a substantial public investment in residential housing and
13 that is causing residents of the state to be displaced from their homes and
14 has substantially increased insolvencies and bankruptcies among individuals
15 and private and public financial institutions in the state that has brought
16 great harm to the people of the state. The legislature further finds that
17 the compelling public interest requires the legislature to enact legis-
18 lation granting the courts of the state emergency authority to deal with
19 the economic emergency facing the state residential housing market in order
20 to prevent further damage to the public welfare. The legislature further
21 determines that the following legislation does not impair the obligation of
22 contract guaranteed under the Constitution of the United States or of the
23 State of Alaska when it enacts legislation within its police power and
24 within its reserved power to protect its sovereignty, its government, its
25 people, and their welfare against exigencies that may arise in the present
26 great emergency.

27 * Sec. 2. NONJUDICIAL FORECLOSURES. (a) In a nonjudicial foreclosure
28 of a mortgage or deed of trust on residential property where the period for
29 the redemption by the mortgagor or trustor has not expired, the owner of

1 the residential property may apply to the superior court for an order
2 delaying the expiration of the period for redemption or other proceedings
3 related to the foreclosure until one year after the effective date of this
4 Act. Until one year after the effective date of this Act, the owner of the
5 residential property has the exclusive right to redeem the property and is
6 entitled to possession of the property.

7 (b) The superior court, on an application for an extension of the
8 period of redemption or of other proceedings related to the foreclosure of
9 residential property under (a) of this section, shall issue an order delay-
10 ing the expiration of the period for redemption on its determination, after
11 notice and an opportunity for a hearing, that the property is residential
12 property and that the owner of the residential property has agreed to and
13 has made the payment of a reasonable rental for the residential property
14 for the period. The reasonable rental shall be determined by the court
15 based on the reasonable economic value of the residential property on the
16 date of the request, the past-due or anticipated expenses of taxes, insur-
17 ance, amounts due to a common interest community, and other amounts requir-
18 ed to preserve the residential property, and the payment by the owner of
19 the amounts due as principal under the mortgage. In no case may the rea-
20 sonable rental determined by the court be less than 50 percent of the total
21 of the monthly mortgage payment and any amounts due to a common interest
22 community.

23 (c) If the owner of the residential property subject to an order
24 issued under (b) of this section fails to comply with the order, the order
25 extending the period of redemption may be set aside after notice and an
26 opportunity for a hearing.

27 (d) The provisions of (a) - (c) of this section supersede, for one
28 year after the effective date of this Act, the provisions of any other law
29 inconsistent with this section.

1 * Sec. 3. JUDICIAL FORECLOSURES. (a) In a judicial foreclosure of a
2 mortgage or deed of trust on residential property where the period for the
3 redemption by the mortgagor or trustor has not expired under AS 09.35.250,
4 other law, or under the mortgage or deed of trust, the owner of the resi-
5 dential property may apply to the superior court for an order delaying the
6 expiration of the period for redemption or other proceedings related to the
7 foreclosure until two years after the effective date of this Act. Until
8 two years after the effective date of this Act, the owner of the residen-
9 tial property has the exclusive right to redeem the property and is enti-
10 tled to possession of the property.

11 (b) The superior court, on an application for an extension of the
12 period of redemption under (a) of this section, shall issue an order delay-
13 ing the expiration of the period for redemption on its determination, after
14 notice and an opportunity for a hearing, that the property is residential
15 property and that the owner of the residential property has agreed to and
16 has made the payment of a reasonable rental for the residential property
17 for the period. The reasonable rental shall be determined by the court
18 based on the reasonable economic value of the residential property on the
19 date of the request, the past-due or anticipated expenses of taxes, insur-
20 ance, amounts due to a common interest community, and other amounts re-
21 quired to preserve the residential property, and the payment by the owner
22 of the amounts due as principal under the mortgage. In no case may the
23 reasonable rental determined by the court be less than 50 percent of the
24 total of the monthly mortgage payment and any amounts due to a common
25 interest community.

26 (c) If the owner of the residential property subject to an order
27 issued under (b) of this section fails to comply with the order, the order
28 extending the period of redemption may be set aside after notice and an
29 opportunity for a hearing.

1 (d) The provisions of (a) - (c) of this section supersede, for two
2 years following the effective date of this Act, the provisions of any other
3 law inconsistent with this section.

4 * Sec. 4. If the period for the redemption by the mortgagor or trustor
5 of residential property expires within 30 days after the effective date of
6 this Act, the period for the redemption is extended to 30 days after the
7 effective date of this Act.

8 * Sec 5. In this Act, "residential property" includes vessels used for
9 residential purposes.

10 * Sec. 6. This Act is repealed two years after the effective date of
11 this Act.

12 * Sec. 7. This Act takes effect immediately under AS 01.10.070(c).
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RECEIVED
FEB 16 1987

John F. Ellingson
Attorney-at-Law
9 Gray Birch Trail
Madison, Wisconsin 53717
608-833-6261

February 11, 1988

Ref: Alaska HB 433

To: Representative Dave Donley

From: John F. Ellingson

Dear Representative Donley,

I am an attorney representing a number of borrowers from Alaska banks. All of my clients have left Alaska for economic reasons and are now located in the Pacific Northwest. All have suffered severe economic loss because of the poor banking practices in Alaska that resulted in over-inflation of real estate prices followed by the deep decline in prices. This situation has been exacerbated by the actions of the lenders by their auction sales.

Below are my comments on HB 433. Without addressing in detail the potential constitutional challenge such legislation might face, I would point out that similar "breathing space" provisions are included in the United States Bankruptcy Code at 11 USC 362.

COMMENTS: The purposes of the legislation, stated at Sections 1.(a), 1.(b)(1) thru (6) are laudable and necessary. They imply, but do not address directly, the cause of the problem, nor does the legislation provide for a solution. This bill would create a necessary "breathing period" in which an overall solution could be sought and implemented. The cause of this problem was well stated by the president of the National Bank of Alaska, when he recently addressed the State Chamber of Commerce. He said that the sole cause of the present economic plight in the real estate market was the mismanagement of the failed banks. This statement is in line with comments of the FDIC, which pointed to the mismanagement of First Interstate Bank of Alaska in their public statement following the closure of that bank.

The secondary lenders participated in this mismanagement by accepting loan participations and packages that did not meet prudent underwriting requirements. Two well placed FNMA employees have admitted to this writer that FNMA is holding a large number of loans from Alaska that did not meet FNMA underwriting requirements. The over indulgence of the banks in the real estate loan market created unrealistic inflated real estate prices without adding value. The inevitable bursting of this bubble caused the destruction of the real estate market and has depressed prices well below real value. The present circumstance has placed the real estate lenders, the mortgage insurance industry and the economy of Alaska in a precarious position.

There has been no recognition on the part of the secondary lending market of the damage their imprudence has caused. The damage caused by the failed banks and their upstream partners did not stop at the front door of the banks, but like a plague has spread throughout the state. Any solution to the problem must involve a recognition of the damage cause by the lenders. No moratorium, by itself, can solve this problem because it only delays the inevitable. It is not right, fair or just that the borrowers and real property owners of Alaska be asked to bear the burden for the errors of the lending industry. There must be a fair apportionment of the damages. Because Alaska has a bright future and the real estate in Alaska is currently priced below its intrinsic value, there is an upside potential that all should share in. However, the borrowers liability should be fixed at the present market price. That price has not been determined by normal market conditions, but has been solely influenced by the errors of the lending institutions.

The specific provisions of HB 433 address the method of applying to the court for relief by a borrower, who has been foreclosed upon, and now seeks to extend the period of redemption. However, it is not clear what procedure a borrower in default that has not been foreclosed upon should follow. In such a case the period of redemption is not the issue, but the foreclosure is the issue. The Bankruptcy Code provision, mentioned above, provides automatic relief that is triggered by the filing of the initial Bankruptcy petition. The provisions of HB 433 might be similarly triggered by the lender sending the notice of intent to foreclose to the borrower. The underlying cause of the default could well be laid at the feet of the lender, but this bill would allow the foreclosure to proceed under the rules set forth.

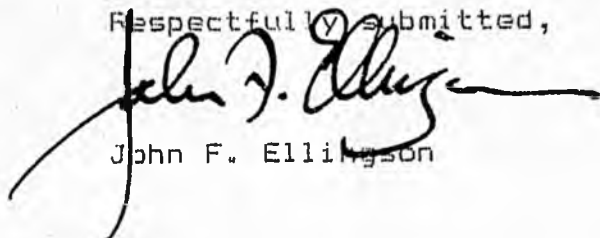
The rules and conditions allowing for the payment of principle fail to address the situation wherein many loan documents allow the lender to allocate any payment to either principle or interest. Under the proposed procedure, a borrower could find himself required to make both reasonable rent payments and loan payments. This combination of payments could exceed the payment required under the defaulted loan. It is hard to imagine a borrower, who cannot make the current loan payment, paying the loan payment plus reasonable rent. The language of the bill should be tightened to set a ceiling on the total payment that could be recovered by a lender or ordered by the court. not
final

One suggestion would be to allow the court to determine the value of the lenders' security interest in the property (similar to the procedure in Bankruptcy) and limit total payments to principal on a thirty year loan at market rates with a normal amortization schedule. The loan amount should be equal to the value of the lenders security interest in the property. The total payment should be this principle amount plus reasonable rent on the property. This procedure would recognize the role of the lender in creating the decline in the price of the real estate that the loan was made on. It would prevent a double recovery. The lender should be prohibited from accruing interest during the period of the moratorium. The decreased value of the property, as determined by the court, should be taken into account in determining the "reasonable rent". Such a provision would prevent the double recovery referenced in section 1. As the bill now stands, the lender could make a double recovery in terms of rent and principle, these new payments could well exceed the payments due under the defaulted loan.

This is by far the best proposal I have seen to date. With some technical corrections it goes a long way toward stopping the bleeding, but it does nothing to provide for the transfusion required to save the economy. Time alone will not solve this problem. It has been estimated that the order of magnitude of this problem is \$3,000,000,000.00. Unless some step is taken to affirmatively address this problem, the \$3,000,000,000.00 deficit in real property values will haunt the economy of Alaska far into the future.

I have submitted to Governor Cowper and Senator Murkowski a sketch of one potential plan for recovery and would be pleased to discuss this plan with you.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John F. Ellingson". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

John F. Ellingson

cc: Charity Kadow
Randall Moen
David Rose