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1 return to the state and shall require that the parcels of land that
2 are composed primarily of cropland soils be restricted to agricultural
3 uses.

4 * Sec. 2. RESTRUCTURE OF AGRICULTURAL DEBT. (a) To increase the
5 return to the state, the Agricultural Revolving Loan Fund Board may re-
6 structure loans in existence on June 25, 1987, made by the board or by the
7 Alaska Agricultural Action Council based upon guidelines approved by the
8 board. The restructuring may only include reduction of interest to rates
9 below those specified by AS 03.10.030, an extension of the term of the
10 loan, and an improvement to the security interest of the state. It may not
11 reduce the amount of principal and interest owed before the loan is re-
12 structured.

13 (b) The maximum term of a loan modified under (a) of this section is
14 30 years from the date of restructuring.

15 (c) Notwithstanding any other provision of this section, the Agricul-
16 tural Revolving Loan Fund Board may approve an application for restructur-
17 ing under this section only upon

18 (1) the applicant's written release of the state, including the
19 Alaska Agriculture Action Council, the agricultural revolving loan fund,
20 and the University of Alaska, from all potential liability for actions and
21 omissions occurring before the date of restructuring that relate in any way
22 to a state farm project, land sale, land sale relinquishment, farm loan, or
23 loan application or loan modification application, whether granted or
24 denied by the state; and

25 (2) assignment by the applicant to the board of the proceeds
26 from the federal government under 7 U.S.C. 1442 (Conservation Reserve
27 Program) and P.L. 88-26 (Feed Grain Act of 1963), as amended.

28 (d) In order to provide an incentive and opportunity to continue milk
29 production, the board shall restructure the debt of any dairy farm that has

8
-1- 30th
2
4
2

1 produced at least 30,000 pounds of milk a month since November 15, 1985,
2 and continues to produce 30,000 pounds of milk a month and uses a majority
3 of Alaskan grown grain and forage. If milk production falls below 30,000
4 pounds a month, the restructured debt shall become immediately due and
5 payable. Restructure under this section is subject to the same limitations
6 and conditions as provided in (a), (b), and (c) of this section.

7 * Sec. 3. Section 2 of this Act is retroactive to June 25, 1987.

8 * Sec. 4. This Act takes effect immediately under AS 01.10.070(c).

HOUSE RESOURCES COMMITTEE

LETTER OF INTENT

HCS CSSB 484 (Res)

It is the intent of the Legislature that the board of the Agricultural Revolving Loan Fund will restructure loans when the applicant is able to make a reasonable showing of the need for a restructuring. The Legislature strongly urges the Board to adopt a restructuring policy that will show the sensitivity needed for the agricultural industry to grow stronger over the long term.

recovers restructuring

The loans of more farmers who would have

been

*Adopted
Name
Number
463 232*

STATE OF ALASKA

SB 484

STEVE COWPER, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

400 WILLOUGHBY AVE.
JUNEAU, ALASKA 99801-1796
PHONE: (907) 465-2400

Land and Clearing Debt Restructuring Completed to Date

- (a) Nelson Not in CRP or any other federal program
- (b) Schultz CRP, land and clearing and ARLF debt
 restructured (no write down of ARLF
 debt)
- (c) Green CRP on other parcel
- (d) Carlyle Clearing debt only restructured
- (e) Strong Clearing debt only restructured

-All actions including waiver of the leasing step and including CRP have been suspended.

-No more relinquishments will be processed except in strict compliance with SB 349, which will sunset on June 30, 1988.

-All actions on land and clearing debt will be reported to the Senate Finance Committee.

HOUSE CALENDAR:

HOUSE ACTION:

HOUSE JOURNAL MAY 4, 1988

COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 484 (Finance)
amended, by the Finance Committee, entitled:

"An Act relating to the powers of and loans made
by the Agricultural Revolving Loan Fund Board; and
providing for an effective date."

was read the first time and referred to the Resources and
Finance Committees.

HOUSE JOURNAL MAY 6, 1988

The Resources Committee has considered:

CS FOR SENATE BILL NO. 484 (Finance) amended
"An Act relating to the powers of and loans made
by the Agricultural Revolving Loan Fund Board; and
providing for an effective date."

and recommends it be replaced with the following committee
substitute:

HOUSE CS FOR CS FOR SENATE BILL NO. 484
(Resources)
(same title)

Recommending do pass (5): Cotten (Co-chairman), Navarre,
Sund, Pearce, Shultz

No recommendation (1): Herrmann

*A zero fiscal note was published May 6, 1988. *(On following page)*

CSSB 484(Fin)am was referred to the Finance Committee.

HOUSE ACTION MAY 7, 1988

The Finance Committee referral was waived.

CSSB 484(FIN) was referred to the Rules Committee for placement on the
calendar.

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: HCS CSSB 484 (RES)
PUBLISH DATE: HOUSE 5/6/88

FISCAL NOTE

REQUEST:

Revision Date: May 5, 1988
Title: Powers of ARLF Board

Agency Affected: Natural Resources
BRU: Ag Management

Sponsor: House Resources Committee
Requestor: House Resources Committee

Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
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REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
---------	-----	-----	-----	-----	-----	-----

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

[Empty box for analysis]

Prepared by: Carol Wilson Phone: 465-2400
Division: Commissioner's Office Date: 5/5/88

Approved by Commissioner: Judith M. B... Date: 5/5/88
Agency: Natural Resources

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

REPRESENTATIVE
SAM COTTEN
DISTRICT 15

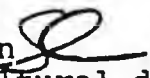


P.O. BOX 296, EAGLE RIVER, AK 99577
P.O. BOX V, JUNEAU, AK 99811

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES

M E M O R A N D U M

May 7, 1988

TO: House members
FROM: Rep. Sam Cotten 
SUBJECT: SB 484 (Agricultural debt)

This bill is enormously important to the continued administration of Alaska's agricultural program. Under an Attorney General's opinion issued in late April (attached), it turns out that the Department of Natural Resources and the Agricultural Revolving Loan Fund (ARLF) may have lacked authority for recent loan restructurings. The litigation and financial burden that could result from this finding would be expensive and draining, as well as counterproductive.

Under Sec. 2 of the bill, the authority to restructure failing agricultural loans is clearly conferred. Several dozen loans that would have been referred to the AG's Office for collection can instead remain paying and in compliance, with no reduction in the aggregate interest and principal payable to the state. A list of the loans that have been sent to the AG's Office for collection is attached.

Sec. 1 of the bill does several related things: it allows the ARLF Board to hire a financial analyst (paragraph (d)) subject to appropriation, it establishes an incentive program for prompt payers (paragraphs (e) and (f)), and it sets conditions for the disposal of property taken by the state in foreclosure actions (paragraph (g)).

Sec. 3 of the bill allows DNR and the ARLF Board to convey the Mat Maid dairy to the Alaska dairy farmers' cooperative if, after two years of participating in managing the dairy, the cooperative is financially and administratively capable of acquiring the creamery. My attached correspondence with the commissioner sets out some of the anticipated conditions for the eventual conveyance. This, by the way, could be a major step forward for the Alaska dairy industry.

Sec. 4 of the bill repeals a section of SLA 1986 Ch. 109 that prohibited restructuring the loans of certain farmers receiving federal payments for keeping land out of

production. Instead, under Sec. 2 (paragraphs (c)(2) and (d)) of this bill, the farmers may apply for restructuring but must assign their federal payments to the state inasmuch as the proceeds are necessary to cover the payments of the restructured loans.

Sec. 5 makes the authority to restructure loans retroactive.

Sec. 6 provides an immediate effective date.

attachments

MEMORANDUM

E.
State of Alaska

DEPARTMENT OF LAW

TO: Judith M. Brady, Commissioner
Department of Natural Resources
Mark Weaver, Director
Division of Agriculture
Board of Directors
Agricultural Revolving Loan Fund

DATE: April 25, 1988

FILE NO: 661-87-0376

TELEPHONE NO: 276-3550

THRU: SUBJECT: ARLF Restructuring Guidelines

Bonnie Robson

FROM: Bonnie Robson
Assistant Attorney General
Commercial Section-Anchorage

The issue addressed by this memorandum is whether the Department of Natural Resources (DNR), Division of Agriculture (DOA), or Agriculture Revolving Loan Fund Board of Directors (ARLF Board) has authority to adopt and implement a program that extends the terms for, reduces the interest rates on, and forgives part of the principal of delinquent ARLF loans. The specific program giving rise to the need for this letter is described in the June 25, 1987 ARLF Board Guidelines for Restructuring (the Guidelines). ^{1/} For the reasons discussed below, DNR, DOA, and ARLF Board do not have authority to adopt and implement the Guidelines.

I. BACKGROUND INFORMATION

The Agriculture Revolving Loan Fund (the fund) was created by statute "to promote the more rapid development of agriculture as an industry . . . by means of long-term low-interest loans" for farm development, irrigation, farm product processing, land clearing, purchase of chattels, and operating expenses. AS 03.10.010, AS 03.10.030. DNR, in conjunction with the ARLF Board, made these types of farm loans under AS 03.10.010 et seq. from the fund's inception to present. Seventy-five percent of the loans became delinquent. In an effort to maximize return to the fund and minimize the number of farm foreclosures, DNR, DOA, and the ARLF Board conducted public hearings statewide, then adopted the Guidelines. Most notably, the Guidelines allow a delinquent borrower to: (1) aggregate loan balances, then repay 1/20th of the aggregate in each of the next 20 years; (2)

^{1/} A copy of the Guidelines is attached.

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pay 8 percent interest per year on 1/20th of the aggregate, but no interest on the remaining balance; and (3) have 1 percent of the aggregate forgiven for repaying the rewritten debt in 19 years instead of 20 years (2 percent forgiven for repayment in 18 years, 3 percent for 17 years, etc.).

Former Assistant Attorney General Joan Travostino issued an unpublished memorandum of advice on December 7, 1987 approving adoption and implementation of the Guidelines. Between December 7, 1987 and April 11, 1988, the ARLF Board approved 19 applications submitted under the Guidelines, finalized six of the 19 approved, and denied 22 applications. Another 60 applications remain to be considered.

II. THE STATUTES

The Alaska Agricultural Loan Act (AS 03.10.010 et seq.) authorizes making loans for farm development, irrigation, farm product processing, land clearing, purchase of chattels, and operating expenses. Farm development and irrigation loans "may not exceed a term of 30 years" and "shall bear interest at a rate that may not be less than 8 percent" AS 03.10.030(a)(4). Farm product processing loans "may not exceed a term of 30 years or bear interest that is less than 8 percent a year." AS 03.10.030(f). Land clearing loans "may not ... have a term in excess of 20 years" and "may not ... bear interest that is less than 8 percent." AS 03.10.030(g). "[A] chattel loan may not exceed a term of seven years" (AS 03.10.030(a)(1)) and "shall bear interest at a rate that may not be less than 8 percent" (AS 03.10.030(a)(4)). Operating loans are "to be amortized within one year" (AS 03.10.030(c)); no interest rate is specified by statute for operating loans.

There are only two statutory provisions for deviation from the maximum terms of loans or minimum interest rates for loans. A one-year operating loan "may be extended for up to three years by the Agricultural Revolving Loan Fund Board, in the discretion of the Board." AS 03.10.030(c). And DNR may "establish amortization plans for repayment of loans, which may include delayed payments of principal and interest for not to exceed five years." AS 03.10.020(a)(4).

III. STATUTORY INTERPRETATION AND APPLICATION

Three principles of statutory interpretation are pertinent: (a) "shall" and "may not" are mandatory, (b)

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administrative bodies have only those powers given them by the legislature, and (c) inclusion of specific powers presumptively excludes those not enumerated.

A. "Shall" And "May Not" Are Mandatory

By statute, each farm loan "shall bear interest at a rate that may not be less than 8 percent." And, depending on the type of loan, each farm loan "may not exceed a term of [X] years," where X is 1, 7, 20, or 30. AS 03.10.030 (emphasis added).

According to the Alaska Supreme Court, "the use of the word 'shall' in a statute denotes mandatory intent." Fowler v. City of Anchorage, 583 P.2d 817, 820 (Alaska 1978). 2/

The Alaska Supreme Court has not interpreted the words "may not." However, 2A C. Sands, Sutherland Statutory Construction, § 57.09 (4th ed. 1984) states:

One of the strongest indications of what construction should be given a statutory provision may be found in the use of negative [or] prohibitory ... words. Where statutory restrictions are couched in negative terms they are usually held to be mandatory.

"May not" is negative or prohibitory, and hence mandatory.

Applying these rules of statutory construction to AS 03.10.030, one must conclude that the maximum loan terms of 1, 7, 20, and 30 years are mandatory, as is the minimum interest rate of 8 percent per year. Being mandatory, DNR, DOA, and the ARLF Board cannot extend a loan's term beyond the statutory maximum or reduce its interest rate below the statutory minimum.

B. Administrative Bodies Have Only Those Powers Given Them By The Legislature

DNR, DOA, and the ARLF Board are administrative

2/ Unless the context otherwise indicates, which is not the case here.

Judith M. Brady
Mark Weaver
ARLF Board of Directors

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agencies or boards. Administrative bodies are purely creatures of legislation without inherent or common law powers. As a general rule, administrative bodies are entitled to exercise only those powers as are conferred on them by the legislature, expressly or by necessary implication. 2A C. Sands Sutherland Stat. Const. § 65.01 (4th ed. 1984).

The federal Agricultural Credit Act of 1978 provides an example of an express grant of power from a legislature to an administrative body to extend the term of a loan, reduce its interest rate, and forgive principal (among other things). 7 USC § 1981(d) states:

The Secretary [of Agriculture] may ... compromise, adjust, reduce, or charge-off claims, and adjust, modify, subordinate, or release the terms of security instruments, leases, contracts, and agreements entered into or administered by the Farmers Home Administration under any of its programs, as circumstances may require The Secretary may release borrowers or others obligated on a debt incurred under this chapter from personal liability with or without payment of any consideration at the time of the compromise, adjustment, reduction, or charge-off of any claim, except that no compromise, adjustment, reduction, or charge-off of any claim may be made or carried out ... on terms more favorable than those recommended by the appropriate county committee

Unlike the federal Agricultural Credit Act, the Alaska Agricultural Loan Act (AS 03.10.010 et seq.) does not expressly confer powers on any administrative body to extend the term of a loan, reduce its interest rate, or forgive principal, except that: (1) the ARLF Board may extend a one-year operating loan for up to three years (AS 03.10.030(c)), and (2) DNR may establish amortization plans which may include delayed payments of principal and interest for up to five years (AS 03.10.020(a)(4)).

Whether or not the Alaska Agricultural Loan Act vests DNR, DOA, or the ARLF Board with the powers in question by implication is a more difficult issue.

[T]o authorize the supplying of a power by implication . . . it is not sufficient that the act is

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advantageous or convenient to the major power conferred, or even effectual in the exercise of it. The power to be supplied by such process must be practically indispensable and essential in order to execute the power actually conferred.

2A C. Sands, Sutherland Stat. Const., § 55.03 (4th ed. 1984).

The ARLF Board has by implication the power to draft and require fund borrowers to sign promissory notes and security instruments, as this power is "practically indispensable and essential in order to execute" its express power to make farm loans. However, extending the terms of loans beyond the mandatory maximum, reducing interest rates below the mandatory minimum, and forgiving principal ^{3/} would be contrary to the express statutory language. Furthermore, these powers are not "practically indispensable and essential in order to execute" the express power to make farm loans. Consequently, the power to make these changes cannot be implied. This remains true even though the powers in question are advantageous and convenient to the power to lend, and effectual in the exercise of the power to lend.

C. Inclusion Of Specific Powers Excludes Those Not Enumerated

In Burrell v. Burrell, 696 P.2d 157, 165-166 (Alaska 1984), the Alaska Supreme Court interpreted an Alaska statute unrelated to agriculture. Nonetheless, the rule of interpretation established in Burrell is controlling here:

The court's power to modify a final judgment in a divorce suit is limited by the terms of AS 09.55.220 to those arrangements providing for the support and care of minor children, alimony and maintenance payments. It is an accepted rule of statutory construction that to include specific terms presumptively excludes those which are not

3/ Whether or not DNR or the ARLF Board has authority to forgive principal is answered in the negative by the January 31, 1986 memorandum of advice of Assistant Attorney General John McDonagh. A copy of that memorandum is attached.

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enumerated. 2A C. Sands, Sutherland Statutory Construction §§ 47.23-47.24 (4th ed. 1973). In keeping with this precept, we have held that "AS 09.55.220 does not give a court authority to modify a decree as it relates to property rights" Allen v. Allen, 645 P.2d 774, 776 (Alaska 1982); Stone v. Stone, 647 P.2d 582, 584-585 (Alaska 1982).

(Emphasis added, footnote omitted.)

The Alaska Agricultural Loan Act expressly grants administrative bodies certain powers to vary terms of repayment. AS 03.10.030(c), AS 03.10.020(a)(4). Under the most liberal interpretation, these provisions allow the ARLF Board to extend an operating loan from one to three years, and allow DNR to delay the due dates for principal and interest on farm development, irrigation, farm product processing, land clearing, and chattel loans for five years. Under the Burrell, supra, rule of statutory construction, the legislature's inclusion of language allowing administrative bodies to extend the terms of operating loans by an additional two years beyond the otherwise mandatory maximum of one year, and to delay for up to five years the due dates for other farm loans, presumptively excludes related but not enumerated powers, such as powers to extend the terms of 7 year chattel loans and 20 year land clearing loans beyond those maximum periods, respectively, reduce interest rates from 8 percent to an effective rate of less than 1 percent, and forgive principal.

IV. PRIOR OPINION APPROVING ADOPTION AND IMPLEMENTATION OF GUIDELINES

As noted earlier, former Assistant Attorney General Joan Travostino's December 7, 1987 unpublished memorandum of advice approved adoption and implementation of the Guidelines. A copy of that memorandum is attached.

The approval contained in that memorandum was reached by reviewing federal regulations on servicing farm loans, noting that extending terms and reducing interest rates are labelled as "loan servicing functions," and concluding that the Alaska Agricultural Loan Act implicitly grants ARLF the power to perform these "loan servicing functions" where necessary to maximize returns on loans.

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As noted in Part III, above, by statute Congress expressly granted DNR's federal counterpart authority to extend terms, reduce interest rates, and forgive principal. 7 U.S.C. § 1981(d). This federal statute enabled promulgation of those "loan servicing" regulations which allow term extension and interest rate reduction. The statute, and not the "loan servicing function" label, provides authority. To the extent inconsistent with this opinion, the December 7, 1987 memorandum is superceded.

V. INTERPRETATION OF STATE REGULATION

Regulations have been promulgated under the Alaska Agricultural Loan Act. One regulation specifically addresses modification of loan terms. 11 AAC 39.311 states:

OTHER LOAN ACTIONS BY BOARD. (a) ... [A] change in loan terms will not be granted without the approval of a majority of the board

(b) A change in loan terms includes, but is not limited to, a change in interest rate, loan amount, maturity date, amortization schedule, payment date, or collateral

A regulation is valid only if consistent with the statute under which it was promulgated. AS 44.62.030. See Kalmakoff v. State Commercial Fisheries, 693 P.2d 844, 853 (Alaska 1985); 1A C. Sand Sutherland Stat. Const. ¶ 31.02 (4th ed. 1985). Therefore, 11 AAC 39.311 must be read in conjunction with the Alaska Agricultural Loan Act and interpreted so as to be consistent with that act. When so read and interpreted, we believe 11 AAC 39.311 allows the ARLF Board to reduce a theoretical borrower's interest rate from, say, 10 percent to the minimum statutory rate of 8 percent, or extend the maturity date of a five-year chattel loan to the maximum statutory term of seven years. 4/ However, it cannot be read to permit the ARLF Board to change the term of a loan in a manner which would be inconsistent with express statutory limitations on the various loan terms. Also 11 AAC 39.311

4/ These powers are of little practical value since all farm loans have been made at the minimum interest rate, and almost all at the maximum term.

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may not be interpreted to allow a "change in ... loan amount" through principal forgiveness, since statutory authority to forgive principal is lacking. 5/

VI. CONSEQUENCE OF LACK OF AUTHORITY

Whether DNR, DOA, and the ARLF Board possess authority to implement the Guidelines may be the subject of litigation. Three potential formats for litigation are discussed below; others may exist. The discussion below is included only to reveal potential losses and liabilities; it should not be interpreted as an endorsement of allegations that could be made by adverse parties or as an admission of liability.

A. ARLF Sues Borrower on Restructured Debt

ARLF has already restructured six borrowers' debts. Should one of these borrowers stop making payments on the debt as restructured, the Attorney General's Office would file a debt collection action on behalf of ARLF to enforce the restructured note and security instruments. The borrower might raise as a defense the administrative bodies' lack of statutory authority to execute the restructured note and security instruments.

Contracts that violate statutes might be unenforceable. Were the restructured note and security instruments entered into by two private parties, an Alaska court would apply the Restatement (Second) of Contracts § 178 to determine enforceability. Brown v. Baker, 688 P.2d 943 (Alaska 1984). The Restatement provides:

§ 178. When a Term is Unenforceable on Grounds of Public Policy

(1) A promise or other term of an agreement is unenforceable on grounds of public policy if legislation provides that it is unenforceable or the interest in its enforcement is clearly outweighed in the circumstances by a public policy against the enforcement of such terms.

5/ See footnote 3.

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- (2) In weighting the interest in the enforcement of a term, account is taken of
- (a) the parties' justified expectations,
 - (b) any forfeiture that would result if enforcement were denied, and
 - (c) any special public interest in the enforcement of the particular term.
- (3) In weighing a public policy against enforcement of a term, account is taken of
- (a) the strength of that policy as manifested by legislation or judicial decisions,
 - (b) the likelihood that a refusal to enforce the term will further that policy,
 - (c) the seriousness of any misconduct involved and the extent to which it was deliberate, and
 - (d) the directness of the connection between that misconduct and the term.

However, the parties to restructuring are not both private. The highest courts of other states hold that contracts between a governmental entity and private party which violate a statute are not subject to a balancing test, but are void and unenforceable. Chemical Bank v. Washington Public Power Supply System, 666 P.2d 329, appeal after remand 691 P.2d 524, certiorari denied Haberman v. Chemical Bank, 105 S.Ct. 2140, 471 U.S. 1065, 85 L.Ed.2d 497 and 105 S.Ct. 2154, 471 U.S. 1075, 85 L.Ed.2d 510; Noel v. Cole, 655 P.2d 245 (Washington 1982); First Equity Corp. of Florida v. Utah State Univ., 544 P.2d 887 (Utah 1975); Martin v. City of Corning, 101 Cal. Rptr. 678 (Cal. App. 1972).

The Alaska Supreme Court has not clearly stated whether it will apply Restatement (Second) of Contracts §178 or the rule employed by other states' courts when one of the parties to an illegal contract is a governmental entity. However, a recent opinion suggests the latter, which would render void the restructured notes and security instruments. McBirney &

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Associates v. State of Alaska, ___ P.2d ___, Op. No. 3298 (Alaska, April 15, 1988) ("The state has an established procurement process which includes competitive bidding McBirney's conduct violated the state's procurement process and the resulting contract was void.") See also King v. Alaska State Housing Authority, 512 P.2d 887, 891 (Alaska 1973). ("A public corporation cannot bind itself to any contract which is beyond the scope of its powers.")

Should the restructured notes and security instruments be held void, then ARLF could only sue delinquent borrowers on their original notes and security instruments. However, claims on many of the notes and instruments might soon be barred by the applicable statutes of limitations. There will be no recovery on claims barred.

B. ARLF Sues Borrower On Original Debt

Should ARLF sue a restructured borrower on his original notes and security instruments, the borrower will claim that, in reliance on ARLF's representation that his debt has been restructured, he rearranged his financial affairs so that he is no longer to pay the original notes according to their terms. This defense will: (1) increase the expense of litigation, (2) delay the entry of any judgment against the borrower, (3) possibly reduce the amount of any judgment, and (4) possibly result in court imposition of "equitable" repayment terms.

C. Taxpayer Sues

Restructuring reduces the amount of ARLF's claim against a borrower, although it is intended to increase the amount of ARLF's recovery from the borrower. A taxpayer might sue to prevent reductions in claims.

To sue, a taxpayer must have standing. Important considerations in determining whether a taxpayer has a sufficient personal stake in the outcome of such a suit to vest the taxpayer with standing are: (1) whether specific constitutional provisions have been violated, (2) the potential economic impact on the state treasury, and (3) whether there is anyone in a better position to litigate the issue. Hoblit v. Commissioner of Natural Resources, 678 P.2d 1337, 1340-1341 (Alaska 1984).

Here: (1) specific constitutional prohibitions may not be implicated, but specific statutory prohibitions are, (2) the

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maximum potential economic impact on the Agricultural Revolving Loan Fund is to reduce claims by \$21,156,000, 6/ and (3) a potential ARLF borrower is probably in a better position to litigate the issue than a taxpayer. Because the farm loan fund is a revolving fund, the potential ARLF borrower stands to lose more than the taxpayer if the net effect of implementation of the Guidelines is to reduce the fund. Consequently, while a taxpayer may not have standing to challenge the implementation of the Guidelines, a potential ARLF borrower might. A successful challenge could invalidate the Guidelines and void agreements entered into under the Guidelines.

VII. CONCLUSION

In our view, DNR, DOA, and the ARLF Board are without authority to adopt or implement the June 25, 1987 Restructuring Guidelines. The legislature may grant this authority to DNR, DOA, or the ARLF Board, but has not yet done so.

BR:cmh

Enclosures

6/ Balances outstanding on delinquent ARLF loans total approximately \$30,000,000. Eight percent (8%) interest on \$30,000,000 payable over 20 years is \$31,116,000. Interest calculated under the Guidelines on \$30,000,000 payable over 30 years equals \$9,960,000. \$31,116,000 minus \$9,960,000 is \$21,156,000. \$21,156,000 is the maximum potential reduction of claims. However, since roughly half of the applications for restructuring considered to date have been denied, the actual reduction in claims would be less.

ARLF FILES IN THE ATTORNEY GENERALS OFFICE

Alamasu, Inc. *	\$ 731,148.98	Jurgens, *	\$ 16,062.00
Alaska Fur Farms	\$ 236,038.17	Kachelmeier	\$ 47,277.75
AK Golden Nugget Pot. Chip	\$ 363,593.41	Karr, Richard	\$ 180,180.00
Anchor Renewable Farms	\$ 198,111.60	Keaster, Charles *	\$ 235,080.29
Arden Farms	\$ 250,186.00	Kelley, Laura	\$ 23,293.00
Bannon, Jesse and Wesley	\$2,285,175.57	Kilmurray, Brendon	\$ 300,509.58
Bearson, Myron	\$ 430,805.00	Kratzer, Donald	\$ 77,425.36
Beaver, Roy	\$ 128,386.52	Lasley, Jimmy	\$ 308,726.42
Blyth, James	\$ 40,259.22	Mays, Wm. David *	\$ 22,304.00
Bradley,	\$ 29,695.01	Mead	\$ 5,000.00
Brehmer, Gerald *	\$ 655,262.97	Melin	\$ 19,320.00
Brown, Victor	\$ 101,412.84	Melton, Len	\$ 886,096.75
Buck and Kirsch *	\$ 270,177.01	Miller, Terry	\$ 334,780.02
Cange, Charles	\$ 76,921.00	Mitchell, Earl	\$ 459,686.46
Carlson, Charles	\$ 56,085.29	Mulligan, Patrick	\$ 962,274.11
Carlson, Lyle	\$ 113,547.19	Muth and Sons, Inc.	\$ 182,891.88
Crook	\$ 83,452.34	Olson, Arnold	\$ 3,500.00
Crowson	\$ 454,929.65	Olson, Manvil	\$ 533,819.57
Dairy West *	\$1,252,305.00	Orcutt Farms	\$ 460,973.35
Delta K	\$ 133,226.78	Peninsula Grnhs	\$ 935,202.50
Ditchen, Carl	\$ 650,150.00	Peterson, Alan	\$ 651,131.83
Eberhardt, Bernard	\$ 86,453.00	Petty, Larry *	\$ 88,564.52
Engellant	\$ 603,559.23	Porter,	\$ 19,034.29
Evans, Dorothy	\$ 3,732.97	Richards, Ronald	\$ 15,000.00
Far North Apiary	\$ 27,912.00	Roberts, Bruce *	\$ 30,290.00
Fett, Lee and Marie	\$ 275,051.00	Ruitt, John	\$ 690,396.65
Fielding, Thomas	\$ 93,167.42	Saylor	\$ 333,722.19
Fretwell,	\$ 48,000.00	Schade, Lloyd	\$ 163,078.34
Gentz, Wayne and Patricia	\$ 395,129.37	Schenk, Neil	\$ 504,891.41
Gerstle River Farms	\$ 667,700.00	Schmidt	\$ 239,086.12
Gilliland (Gold n Honey)	\$ 52,996.25	Schweigert	\$ 41,482.18
Golden Valley	\$ 454,002.86	Smith, Evander	\$ 550,198.00
Green, Dennis *	\$ 823,613.61	Smith, Howard	\$ 45,600.00
H & R Farms *	\$1,028,280.52	Snowcrest Farms	\$ 740,742.97
Hartman, Albert	\$ 130,324.49	Spears/OHM	\$ 227,456.00
Heather Farms	\$ 268,771.00	Stromberg, Gary	\$ 30,852.53
Heaton, Richard	\$ 968,464.13	Taggo	\$ 43,914.66
Hendershot, Ed	\$ 211,871.00	Thom, Robert	\$ 553,466.70
Holcomb, Steve *	\$ 252,246.91	Thomas, Alvin	\$ 6,056.00
Ingalls, Gayland	\$ 40,723.33	Vickaryous, James	\$ 7,309.05
Jacobson, Doug & Shirley	\$ 146,118.00	Wassink, Harry	\$ 668,917.63
Jenn, Eugene	\$1,023,465.00	Wener,	\$ 29,812.00
Johnson, David *	\$ 14,413.00	Willard, Bruce	\$ 70,718.52
Johnson, Elvin "Bud" *	\$ 939,125.00	Wright, Sande	\$ 985,075.77
Joyce, Mickey	\$ 29,625.97	Zimmerman, Ed	\$ 659,783.44

* Board Action of 4/13/88

OVER 30 MILLION IN DELINQUENT
LOANS - WE ARE TAKING ACTION

REPRESENTATIVE
SAM COTTEN
DISTRICT 15



P.O. BOX 296, EAGLE RIVER, AK 99577
P.O. BOX V, JUNEAU, AK 99811

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES

May 7, 1988

The Hon. Judy Brady
Commissioner
Department of Natural Resources
P.O. Box M
Juneau, AK 99811

Dear Commissioner Brady:

I am writing about the Mat Maid creamery now in the state's possession. I appreciate the participation of you and your staff in recent discussions about the future of the creamery and the Alaska dairy industry, and naturally I share your interest in seeing both succeed over the long term. I also recognize your interest in getting the state out of the creamery management business.

After the Resources Committee's review of SB 484 on ag debt restructuring and SB 472 on transferring the dairy, I am interested in pursuing several concepts with you.

The dairy farmers' largest concern (which led to the introduction of SB 472) appears to be that the Alaska dairy industry needs security, or assurance, about its future stake in the creamery. They point out that most creameries nationwide are coop-owned and that the Alaska industry needs to be able to control prices and marketing at the creamery.

The Department of Natural Resources has successfully managed the creamery and the Alaska industry seems to be on the verge of stability and success. Still, I understand the Department's concerns about the proposal to transfer the creamery to the coop: first, that the coop should be able to gain control gradually in a way that doesn't destabilize the farmers' other operations or debt and which provides some time to gain management experience; and second, that the Department cannot sell the creamery to a selected buyer under existing law.

SB 484 now contains language that should give the Department of Natural Resources two years during which to sell or lease-purchase the creamery to the coop and give the coop the opportunity to gain the experience necessary to own and

manage the creamery unilaterally. It also provides DNR with authority to sell the creamery to the dairy coop noncompetitively, and at below market value if such a sale would be in the state's interests.

I am hopeful, after discussions with your staff, that the Department will agree to amend the pending creamery oversight agreement between the coop and the Department to include an option for the coop to purchase or lease-purchase the creamery within two years if the coop meets existing quality standards and demonstrates both financial stability and the management capability to take over the creamery.

SB 484 has been written to allow a transaction at less than market value in case the 1990 appraisal of the creamery should show that the coop would not be able to meet the payments for the creamery. If the Department determines in 1990 that a below-value sale is in the public interest (which it may be), there should be flexibility to sell the creamery to a functioning, successful coop at a price that can be fairly paid.

Some of the farmers have been concerned about paying the 1990 value for the creamery. They don't want to have to pay twice for improvements made over the next two years at their own expense. I understand that under ordinary circumstances the Department writes its leases so that rental adjustments and conveyances are based on value not reflecting improvements made at the expense of the lessee. I believe the same approach should be taken in valuing the creamery for sale to the coop.

I hope that the Department and the ARLF Board will recognize, in 1990 or before if the coop appears ready, that the Legislature enacted a special provision for the creamery transfer in hopes that the Alaska industry could be fostered and enhanced. This does not mean that the language included in SB 484 encourages a below-market sale of the creamery, nor that the coop should be guaranteed the conveyance unconditionally. However, if the Department in 1990 determines that the coop has met quality standards and conveyance criteria, and if the coop can afford to purchase the creamery at some reasonable price, I would hope to see the Department and the ARLF Board proceed with the sale.

Some of the farmers have also been concerned because they lack discrete authority, under the proposed agreement, to establish milk prices. However, from my reading of the

The Hon. Judy Brady

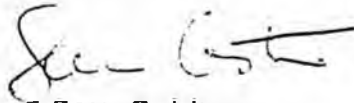
- 3 -

May 7, 1988

agreement, the coop will have important influence over the milk price, and of course should have complete control over the milk price in two years after the creamery conveyance is made.

In conclusion, I hope that the Department will be able to commit to rewriting the proposed creamery management agreement 1) to remove references to assignment, and 2) to include the option for the coop to purchase or lease-purchase the creamery in two years if quality and conveyance criteria have been met. A commitment by the Department to these two points will go a long way toward stabilizing Alaska's dairy industry and allowing the careful and fair transfer of the creamery to the coop.

Sincerely,

A handwritten signature in dark ink, appearing to read "Sam Cotten", with a stylized flourish at the end.

Rep. Sam Cotten

STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

400 WILLOUGHBY AVE.
JUNEAU, ALASKA 99801
PHONE: (907) 465-2400

OFFICE OF THE COMMISSIONER

May 7, 1988

The Honorable Sam Cotten
Co-Chair, House Resources Committee
Alaska State House of Representatives
P.O. Box V
Juneau, AK 99801

Dear Representative Cotten:

This letter is to confirm the department's commitment to sell the Matanuska Maid creamery to an Alaskan dairy farmer's cooperative before June 30, 1990, if practical and equitable terms of sale or lease/purchase can be negotiated, if the sale or lease/purchase would help ensure the future of Alaska's dairy industry, and if the sale or lease/purchase is determined to be in the best interests of the state.

As you know, the department intends to implement a one year agreement with Alaska Dairy Inc. (ADI). The agreement will provide ADI with management oversight of the Matanuska Maid land and buildings at 814 Northern Lights Boulevard in Anchorage. The purpose of this agreement is to provide local dairy producers with an opportunity to participate in and learn to manage the creamery business. If necessary, the agreement will be extended for one additional year.

I assure you that the department will not sell the creamery to a purchaser other than a cooperative of Alaska dairy producers prior to June 30, 1990, provided that the cooperative demonstrates financial stability and the management capacity to participate successfully in the operation of the business, and that existing creamery quality standards are met. In recognition of this, references to assignment will be dropped from the written agreement and an option for sale or lease purchase will be included.

Should the HCSCSSB 484 (Resources) be enacted, a sale of Matanuska Maid creamery assets at fair market value to the cooperative of Alaska dairy producers will include a dis-

May 7, 1988

count for capital improvements made and equipment purchased by contributions from members of the cooperative, during the term of the management agreement. If a cooperative of Alaska dairy farmers is unable to successfully execute the creamery purchase by June 30, 1990, the department may offer the business at a competitive bid sale to other prospective buyers. It is not the intention of the department to retain long term ownership of the creamery.

We appreciate your interest in the continuation of Alaska's agricultural industry. Please let me know if I may provide additional information or assistance.

Sincerely,

Jennie Gorsuch

for
Judith M. Brady
Commissioner

cc: Rod Swope
Bob Evans
Mark Weaver
Hal Ward

SB 489

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AN ACT

Relating to the reorganization of private debt at a
Delta Project.

* Section 1. LEGISLATIVE FINDINGS. The legislature finds that the large grain farms that were developed on state agricultural land in the Delta Projects are subject to a personal debt load that is unmanageable because of a coincidence of unique and unforeseen circumstances:

- (1) the unforeseen difficulties with the limited growing seasons including the extremely short period in which the crops may be planted;
- (2) conflicts with the herds of bison located in the area;
- (3) the inadequate agricultural infrastructure in the area of the Delta Projects and in the state;
- (4) the depressed grain prices nationwide;
- (5) the unexpected problems with economic farm size.

* Sec. 2. (a) The commissioner of natural resources shall, at the request of an individual who holds agricultural rights to land purchased from the state in a Delta Project,

- (1) accept the relinquishment of agricultural land purchased from the state in a Delta Project and credit the percentage of the debt owed to the state on land purchased and land clearing loans that equals the percentage of land relinquished under this section, either by acreage or by value, as determined by the commissioner;
- (2) enter into an agreement with the individual for the lease for agricultural purposes only of a portion of or all of the land

Chapter 109

1 relinquished for a term of 20 years at the full fair market value of the
2 land; a survey under this paragraph, if required, shall be at the expense
3 of the individual.

4 (b) If an individual who has relinquished land under this section
5 applies before July 1, 1987 for a lease on all or part of the land relin-
6 quished, the lease shall provide the lessee an option to purchase the land
7 leased under (a)(2) of this section at full fair market value at the time
8 of purchase without reduction to reflect the remaining lease term.

9 (c) The commissioner of natural resources in consultation with the
10 Agricultural Revolving Loan Board may renegotiate with the individual loans
11 for chattels or farm improvements located on the agricultural land in a
12 Delta Project if the commissioner determines that renegotiation is neces-
13 sary to minimize financial losses to the state and that it is in the best
14 interest of the state.

15 * Sec. 3. The provisions of this Act are not available to an individual
16 participating in a federal farm program that provides monetary or other
17 incentives for keeping agricultural land in a Delta Project out of produc-
18 tion.

19 * Sec. 4. This Act is repealed July 1, 1988.

Eff. 9/5/86

SENATE ACTION:

SENATE JOURNAL FEBRUARY 29, 1988

SENATE BILL NO. 484 by the Judiciary Committee by request, entitled:

"An Act restructuring the debt of certain dairy farmers; and providing for an effective date."

was read the first time and referred to the Resources Committee and the Finance Committee.

SENATE JOURNAL APRIL 6, 1988

The Resources Committee considered SENATE BILL NO. 484 "An Act restructuring the debt of certain dairy farmers; and providing for an effective date" and recommended it be replaced with

CS FOR SENATE BILL NO. 484(Resources), entitled:
"An Act restructuring agricultural debt;
and providing for an effective date."

Senator Coghill, Chairman, signed "do pass." Senators Duncan, Fischer, Zharoff and Sturgulewski signed "no recommendation."

Fiscal note published today from Department of Natural Resources.

SENATE BILL NO. 484 was referred to the Finance Committee.

SENATE JOURNAL APRIL 30, 1988

The Finance Committee considered SENATE BILL NO. 484 "An Act restructuring the debt of certain dairy farmers; and providing for an effective date" and recommends it be replaced with

CS FOR SENATE BILL NO. 484(Finance), entitled:
"An Act relating to the powers of and loans made by the Agricultural Revolving Loan Fund Board; and providing for an effective date."

and reports it back without recommendation. The report was signed by Senator Halford, Co-chairman, and concurred in by Senators Zharoff, Fischer, Duncan, Uehling, Hensley and Binkley.

Fiscal note published today from Senate Finance Committee.

SENATE BILL NO. 484 was referred to the Rules Committee.

SENATE JOURNAL MAY 3, 1988

The Rules Committee considered SENATE BILL NO. 484 "An Act

restructuring" the debt of certain dairy farmers; and providing for an effective date" and recommended calendar. The report was signed by Senator Eliason, Chairman and concurred in by Senators Hensley, Binkley, Faiks and Jones.

SENATE BILL NO. 484 is on today's calendar.

SENATE JOURNAL MAY 3, 1988

SENATE BILL NO. 484 "An Act restructuring the debt of certain dairy farmers; and providing for an effective date" was read the second time.

Senator Halford moved and asked unanimous consent for the adoption of the Finance Committee Substitute offered on page 3301. Without objection, CS FOR SENATE BILL NO. 484 (Finance) "An Act relating to the powers of and loans made by the Agricultural Revolving Loan Fund Board; and providing for an effective date" was adopted.

CS FOR SENATE BILL NO. 484 (Finance) was read the second time.

Senator Coghill offered Amendment No. 1:

Page 1, line 24: Delete "Director of Agriculture shall"
Insert "Commissioner may"

Senator Coghill moved and asked unanimous consent for the adoption of Amendment No. 1. Senator Halford objected.

Senator Kelly called the Senate.

President Faiks stated the call was satisfied.

Senator Josephson moved and asked unanimous consent that he be allowed to abstain from voting. There were objections.

Senator Coghill requested that the question be divided.

Senator Coghill moved to adopt Amendment No. 1, Part 1, that part being:

Delete "Director of Agriculture"
Insert "Commissioner"

The question being: Shall Amendment No. 1, Part 1 be adopted? The roll was taken with the following result:

CSSB 484 FIN PART 1 AM 1

Yeas: 10 Abood, Coghill, Faiks, Fanning,
Fischer, Jones, Josephson, Kelly,
Sturgulewski, Uehling

Nays: 10 Binkley, Duncan, Eliason,
Fahrenkamp, Halford, Hensley,
Kerttula, Rodey, Szymanski,
Zharoff

Senator Faiks changed from "nay" to "yea".

and so, Amendment No. 1, Part 1 failed.

Senator Coghill moved to adopt Amendment No. 1, Part 2, that part being:

Delete "shall"
Insert "may"

The question being: Shall Amendment No. 1, Part 2 be adopted? The roll was taken with the following result:

CSSB 484 FIN PART 2 AM 1

Yeas: 3 Coghill, Josephson, Uehling

Nays: 17 Abood, Binkley, Duncan, Eliason,
Fahrenkamp, Faiks, Fanning,
Fischer, Halford, Hensley, Jones,
Kelly, Kerttula, Rodey,
Sturgulewski, Szymanski, Zharoff

and so, Amendment No. 1, Part 2 failed.

Senator Coghill offered Amendment No. 2:

Page 2, line 27: After "amended"
Insert "; to the extent that the
proceeds assigned exceed payments due each calendar year,
the excess shall be refunded to the applicant."

Senator Coghill moved and asked unanimous consent for the adoption of Amendment No. 2. Senator Halford and Uehling objected.

The question being: Shall Amendment No. 2 be adopted? The roll was taken with the following result:

CSSB 484 FIN AM 2

Yeas: 4 Coghill, Fahrenkamp, Josephson,
Sturgulewski

Nays: 16 Abood, Binkley, Duncan, Eliason,
Faiks, Fanning, Fischer, Halford,
Hensley, Jones, Kelly, Kerttula,
Rodey, Szymanski, Uehling,
Zharoff

and so, Amendment No. 2 failed.

Senator Coghill offered Amendment No. 3:

Page 3, line 7: Insert a new Section 3 to read:
"Section 3 of SLA 1986, Chapter
109, is repealed"

Re-number accordingly.

Senator Coghill withdrew Amendment No. 3.

Senator Coghill offered Amendment No. 4:

Page 2, line 29: Delete "may"
Insert "shall"

Page 3, line 2: After "month"
Insert "and purchases a majority of
Alaskan grown grain and forage"

Senator Coghill withdrew Amendment No. 4.

Senator Kerttula offered Amendment No. 5:

Page 2, line 29: After "the board"
Delete "may"
Insert "shall"

Senator Kerttula moved and asked unanimous consent for the adoption of Amendment No. 5. Senator Coghill objected.

Senator Kerttula withdrew Amendment No. 5.

Senator Coghill re-offered Amendment No. 4, that amendment being sponsored by Senators Coghill and Kerttula.

Senator Coghill moved and asked unanimous consent for the adoption of Amendment No. 4. Senator Fischer objected.

Senator Coghill offered an amendment to Amendment No. 4:

Page 3, line 2: Delete "purchases"
Insert "uses"

Senator Coghill moved and asked unanimous consent for the adoption of the amendment to Amendment No. 4. Senator Fischer objected, then withdrew his objection. There being no further objections, amendment to Amendment No. 4 was adopted.

Senator Coghill moved and asked unanimous consent for the adoption of Amendment No. 4 as amended. Without objection, it was so ordered.

Senator Eliason moved and asked unanimous consent that CS FOR SENATE BILL NO. 484(Finance) am be considered engrossed, advanced to third reading and placed on final passage. Without objection, it was so ordered.

CS FOR SENATE BILL NO. 484(Finance) am was read the third time.

The question being: Shall CS FOR SENATE BILL NO. 484 (Finance) am "An Act relating to the powers of and loans made by the Agricultural Revolving Loan Fund Board; and providing for an effective date" pass the Senate? The roll was taken with the following result:

CSSB 484 FIN AM 3RD

Yeas: 18 Abood, Coghill, Duncan, Eliason, Fahrenkamp, Faiks, Fanning, Fischer, Halford, Jones, Josephson, Kelly, Kerttula, Rodey, Sturgulewski, Szymanski, Uehling, Zharoff

Nays: 0

Absent: 2 Binkley, Hensley

and so, CS FOR SENATE BILL NO. 484(Finance) am passed the Senate.

Senator Eliason moved and asked unanimous consent that the vote on the passage of the bill be considered the vote on the effective date clause. Without objection, it was so ordered.

SENATE JOURNAL MAY 3, 1988

SB 484 cont'd

Senator Eliason moved and asked unanimous consent that the vote on the passage of the bill be considered the vote on the effective date clause. Without objection, it was so ordered.

Senator Uehling gave notice of reconsideration on CS FOR SENATE BILL NO. 484(Finance) am "An Act relating to the powers of and loans made by the Agricultural Revolving Loan Fund Board; and providing for an effective date" and moved and asked unanimous consent that it be taken up at this time. Without objection, it was so ordered.

CS FOR SENATE BILL NO. 484(Finance) am was before the Senate in third reading on reconsideration.

The question to be reconsidered is: Shall CS FOR SENATE

BILL NO. 484 (Finance) am "An Act relating to the powers of and loans made by the Agricultural Revolving Loan Fund Board; and providing for an effective date" pass the Senate? The roll was taken with the following result:

CSSB 484 FIN AM RECONSIDERATION

Yeas: 16 Abood, Coghill, Eliason,
Fahrenkamp, Faiks, Fanning,
Fischer, Halford, Hensley, Jones,
Josephson, Kelly, Kerttula,
Sturgulewski, Szymanski, Uehling

Nays: 0

Absent: 4 Binkley, Duncan, Rodey, Zharoff

and so, CS FOR SENATE BILL NO. 484(Finance) am passed the Senate on reconsideration.

Senator Eliason moved and asked unanimous consent that the vote on the passage of the bill be considered the vote on the effective date clause. Without objection, it was so ordered.

CS FOR SENATE BILL NO. 484(Finance) am was referred to the Secretary for engrossment.

CS FOR SENATE BILL NO. 484(Finance) am "An Act relating to the powers of and loans made by the Agricultural Revolving Loan Fund Board; and providing for an effective date" was engrossed, signed by the President and Secretary and transmitted to the House for consideration.

COWPER

FOR GOVERNOR

Anchorage Headquarters
2605 Denali #101
(907) 276-1150

REC'D
5/4/89
SL

P.O. Box 100019
Anchorage, Alaska 99510

Steve Cowper on Alaska Agriculture

Agriculture in Alaska is a productive industry with enormous potential. It is an essential component of a diversified Alaska economy and, with proper management, can employ several thousand Alaskans and feed many thousands more. For example, it is projected that sales of certain agriculture products in Alaska could reach \$60 million annually by 1990 compared to only \$18 million in 1983. Agriculture in Alaska therefore, merits serious consideration in state planning decisions, a voice in state government and the benefit of stable long-range policies.

For the most part, past state agricultural policies have emphasized large projects characterized by high costs and risks and sometimes unrealistic production goals. These policies have often obscured the vital role of small-farming operations which are oriented toward local markets.

Alaska's agriculture industry should strive for an integrated system whose first goal is to provide food and other products for Alaskans. We should encourage the development of small operations independent of massive state subsidies. At the same time, we cannot ignore the plight of some large project farmers who began with state commitments that have since been withdrawn.

The Problem

Alaska's agriculture policies have changed nearly as quickly as the weather, with one group of politicians promising a new commitment to agricultural development while others pull the rug out from under Alaska's farmers. After several years of struggle by Alaska's burgeoning agriculture industry, the current administration has reneged on promises and turned its back on Alaska's farmers.

For example, candidate Bill Sheffield promised farmer representation on state boards. But within two months of taking office, Gov. Sheffield abolished the Alaska Agricultural Action Council. Candidate Sheffield vowed to split the Department of Natural Resources into two departments to focus more attention on agriculture. As governor, Sheffield has failed to live up to his pledge. As a candidate, Sheffield also pledged to develop agriculture infrastructure. But as governor, he mothballed the Seward grain export facility after the state had already spent \$8.2 million.

The Solution

• Realistic market goals. It is senseless to produce crops that can't be sold at a profit. Therefore, we must establish market goals for crops and products with proven production records and demonstrated potential. In most cases, production should be oriented toward local markets except where the economics of export are proven. Crops and products should include: vegetables, dairy products, animal feed, meat including hogs, beef, poultry and reindeer, small grains and speciality horticulture materials.

• Improved marketing. A proper role of state government is helping farmers market their products, much like the state currently does with the Alaska Seafood Marketing Institute. Marketing techniques should include promotion campaigns, the use of surplus state facilities as marketing outlets and encouraging preferential use of Alaska agricultural products by state agencies including school districts and prisons. The state should adopt a law permitting and encouraging the formation of cooperative marketing groups within the industry.

• Streamline loan programs. Accumulated debt is one the biggest problems facing some Alaska farmers, especially those involved in the Delta I and II projects. Confusing changes in regulations and procedures and under-funding have contributed to that problem. While the state can't flatly forgive loans to farmers, it should act to both improve the lending climate and the operations of the Agriculture Revolving Loan Fund. We must investigate methods for restructuring farm debt through reduced farm parcel size and with lease preferences on land returned to the state by current owners. We also must give the ARLF more flexibility to meet modern farm requirements, provide for greater contact between loan examiners and borrowers and assist proven producers with good credit records.

• Improve government operations. Since the Sheffield administration abolished the Alaska Agriculture Action Council, Alaska's farmers have had little voice in state government. That must change. Officials of the Division of Agriculture should be experts in agriculture with experience in Alaska farming, and not political cronies. We must rely on agriculture groups for advice on policy issues, and their voice should not be buried under cumulative levels of government bureaucracy. For example, we should establish an Agriculture Advisory Board to the governor and reactivate the Milk Advisory Board.

• Stable state regulations. Alaskans in the agriculture business, as well as other fields, must have a clear and stable set of regulations which are enforced without favoritism. Unnecessary delays and time-consuming paperwork can and should be minimized through the use of modern information systems. Alaska agriculture officials should undertake a review of state statutes and regulations and recommend modifications to favor local production, where constitutionally feasible.

• Research and technology. Alaska's future depends on our ability to become experts in marketing and to employ the best technology available. We must rely on and, when necessary, redirect the activities of the UA Agriculture Experiment Station, the Cooperative Extension Service, the Soil Conservation Service and the Plant Materials Center to provide technical assistance to commercial growers. Those agencies should emphasize the development of vegetables, potatoes and seed crops especially suited to Alaska.

• Rural agriculture. There is great potential for the development of small-scale agriculture in certain areas of rural Alaska which could provide inexpensive products for local residents. These efforts should be encouraged through state land use and disposal policies.

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

April 11, 1988

The Honorable John Binkley
Co-Chairman, Senate Finance Committee
Fifteenth Alaska Legislature
Second Session
P.O. Box V
Juneau, Alaska 99811

APR 11 1988

STEVE COWPER, GOVERNOR

REPLY TO:

1031 W 4th AVENUE
SUITE 200
ANCHORAGE, ALASKA 99501-1994
PHONE (907) 276-3550

1st NATIONAL CENTER
100 CUSHMAN ST
SUITE 400
FAIRBANKS, ALASKA 99701-4679

P O BOX K—STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE (907) 465-3600

Re: CSSB 484(Res)

Dear Senator Binkley:

The Senate Resources Committee Substitute for Senate Bill 484 ("CSSB 484(Res)") has been referred to the Senate Finance Committee. We would like to alert you to some possible legal problems with the bill.

CSSB 484(Res) would forgive any interest and penalties due to the agricultural revolving loan fund on July 1, 1988. In the absence of substantial justification, preferably in the form of legislative findings of fact, such a blanket forgiveness would appear to be nothing more than a gratuitous gift to the borrowers of funds legally due the state. Such gratuitous gifts would probably violate the requirement of article IX, section 6, of the Alaska Constitution that public funds must be expended only for public purposes.

In addition, the bill presents a question of fairness which may rise to constitutional dimension. Borrowers who are current on their loan payments, regardless of the hardships they may have endured in order to remain current, receive no relief with respect to interest and penalties they have already paid. On the other hand, those who have not remained current -- whether as a result of circumstances or by choice -- would receive a substantial benefit by forgiveness of the interest and penalties. Indeed, the greatest benefits would be given to the borrowers most in arrears. In addition to the obvious policy question presented -- i.e., should the state in effect reward people who have not lived up to their legal obligations while not rewarding those who have? -- there also may be a constitutional equal protection question: is it constitutionally permissible to grant forgiveness to borrowers who are in arrears while not granting an equivalent benefit to borrowers who are current on their obligations?

The Honorable John Binkley
Co-Chairman, Senate Finance Committee

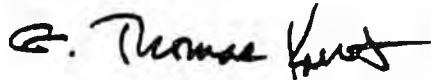
April 11, 1988
Page 2

Part of the problem is that no distinction is made between borrowers who may be solvent, and in a position to discharge their financial obligations with no additional relief, and those who are not in a position to do so. To the extent that debt restructuring may serve a public purpose in a given instance, you may wish to consider giving the Agricultural Revolving Loan Board the discretionary authority to do so on a case-by-case basis. Such authority may be appropriate simply from a prudent business standpoint.

We bring this matter to your attention in case the Senate Finance Committee might wish to consider a different approach to addressing the problem that prompted the bill.

Sincerely,

GRACE BERG SCHAIBLE
ATTORNEY GENERAL

By: 
G. Thomas Koester
Assistant Attorney General

GTK:d1m
cc: Senator Jack Coghill
Senator Jalmar Kerttula

HOUSE LETTER OF INTENT
HCS CSSB 484 (Res)

It is the intent of the Legislature that the Board of the Agricultural Revolving Loan Fund will give all possible consideration to restructuring of loans when the applicant is able to make a reasonable showing of the need for a restructuring. The Legislature strongly urges the Board to give immediate attention to the loans of farmers who are substantially delinquent and who have some promise of being able to meet the demands of a restructured loan.

The Legislature also intends that "persons who are residents of the state" will include corporations whose ownership is more than 50% ALaskan.

Cortner

~~MASTER~~

Original sponsor: Judiciary Committee
by Request

DNR comments

1 IN THE SENATE

BY THE FINANCE COMMITTEE

2

CS FOR SENATE BILL NO. 484 (Finance) am

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IN THE LEGISLATURE OF THE STATE OF ALASKA

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FIFTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

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For an Act entitled: "An Act relating to the powers of and loans made by
the Agricultural Revolving Loan Fund Board; and
providing for an effective date."

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

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* Section 1. AS 03.10.050 is amended by adding new subsections to read:

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(d) To facilitate execution of its duties, the Agricultural
Revolving Loan Fund Board may appoint, supervise, and remove a finan-
cial analyst.

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(e) To encourage the prompt payment of loans, the department may
establish a program of credits for persons who have a loan from the
agricultural revolving loan fund and maintain good financial standing.
The credits may be applied against no more than two percentage points
a year of the interest due on agricultural revolving loan fund loans.

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(f) A credit may not be granted under (e) of this section to
reduce interest due on a loan if the borrower has an agricultural loan
in default, has a loan that has been rewritten, restructured, rolled
over, or otherwise had its term extended or interest rate reduced, or
has had a land payment or land clearing loan restructured.

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(g) ~~The director of agriculture shall~~ dispose of property ac-
quired by the Agricultural Revolving Loan Fund Board or by the commis-
sioner through foreclosure, default, or other action arising out of
agricultural loans or the sale of agricultural land. Disposals shall
be conducted under regulations approved by the board. [The regulations

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~~shall ensure that the property is disposed of so as to maximize the~~

Handwritten: 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29

fee parcel in Valley -
Jerry G. Oakes - Mulligan's farm
Kertula -

KERTULA

~~return to the state and shall require that the parcels of land that
are composed primarily of cropland soils be restricted to agricultural
uses.] 120 ac 80/40~~

* Sec. 2. RESTRUCTURE OF AGRICULTURAL DEBT. (a) To increase the
return to the state, the Agricultural Revolving Loan Fund Board may re-
structure loans in existence on June 25, 1987, made by the board or by the
Alaska Agricultural Action Council based upon guidelines approved by the
board. The restructuring may only include reduction of interest to rates
below those specified by AS 03.10.030, an extension of the term of the
loan, and an improvement to the security interest of the state. It may not
reduce the amount of principal and interest owed before the loan is re-
structured.

(b) The maximum term of a loan modified under (a) of this section is
30 years from the date of restructuring.

(c) Notwithstanding any other provision of this section, the Agricul-
tural Revolving Loan Fund Board may approve an application for restructur-
ing under this section only upon

(1) the applicant's written release of the state, including the
Alaska Agriculture Action Council, the agricultural revolving loan fund,
and the University of Alaska, from all potential liability for actions and
omissions occurring before the date of restructuring that relate in any way
to a state farm project, land sale, land sale relinquishment, farm loan, or
loan application or loan modification application, whether granted or
denied by the state; and

HALFED (2) assignment by the applicant to the board of the proceeds
from the federal government under 7 U.S.C. 1442 (Conservation Reserve
Program) and P.L. 88-26 (Feed Grain Act of 1963), as amended.

(d) In order to provide an incentive and opportunity to continue milk
production, the board shall restructure the debt of any dairy farm that has

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M E M O R A N D U M

May 7, 1988

TO: House members
FROM: Rep. Sam Cotten
SUBJECT: SB 484 (Agricultural debt)

This bill is enormously important to the continued administration of Alaska's agricultural program. Under an Attorney General's opinion issued in late April (attached), it turns out that the Department of Natural Resources and the Agricultural Revolving Loan Fund (ARLF) may have lacked authority for recent loan restructurings. The litigation and financial burden that could result from this finding would be expensive and draining, as well as counterproductive.

Under Sec. 2 of the bill, the authority to restructure failing agricultural loans is clearly conferred. Several dozen loans that would have been referred to the AG's Office for collection can instead remain paying and in compliance, with no reduction in the aggregate interest and principal payable to the state. A list of the loans that have been sent to the AG's Office for collection is attached.

Sec. 1 of the bill does several related things: it allows the ARLF Board to hire a financial analyst (paragraph (d)) subject to appropriation, it establishes an incentive program for prompt payers (paragraphs (e) and (f)), and it sets conditions for the disposal of property taken by the state in foreclosure actions (paragraph (g)).

Sec. 3 of the bill allows DNR and the ARLF Board to convey the Mat Maid dairy to the Alaska dairy farmers' cooperative if, after two years of participating in managing the dairy, the cooperative is financially and administratively capable of acquiring the creamery. My attached correspondence with the commissioner sets out some of the anticipated conditions for the eventual conveyance. This, by the way, could be a major step forward for the Alaska dairy industry.

Sec. 4 of the bill repeals a section of SLA 1986 Ch. 109 that prohibited restructuring the loans of certain farmers receiving federal payments for keeping land out of

production. Instead, under Sec. 2 (paragraphs (c)(2) and (d)) of this bill, the farmers may apply for restructuring but must assign their federal payments to the state inasmuch as the proceeds are necessary to cover the payments of the restructured loans.

Sec. 5 makes the authority to restructure loans retroactive.

Sec. 6 provides an immediate effective date.

attachments

RESTRUCTURED ARLF LOANS APPROVED BY BOARD

THROUGH 4/14/88

AREA	NAME	AMOUNT RESTRUCTURED
Matanuska	Jenn	\$1,023,465
Delta	Miller, S.	175,462
Matanuska	Boyd	224,718
Delta	Karr	180,180
Delta	Moritz	64,606
Delta	Ditchen, C.	650,150
Delta	Golden Valley	454,003
Delta	Mertz	702,067
Delta	Carpenter	28,957
Delta	Shultz	480,263
Tanana	O'Donnell	21,244
Other	Mercer	31,526
Tanana	Shoen	193,626
Delta	Thuerenger	178,933
Matanuska	Baskin	813,838
Delta	Bradley	39,851
Delta	Alamasu	911,310
Matanuska	P&M Gardens	332,712
Matanuska	Williams, T.	418,119
Matanuska	Pherson	22,000
Delta	Robertson	106,138

Total 6,873,013

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

400 WILLOUGHBY AVE.
JUNEAU, ALASKA 99801
PHONE: (907) 465-2400

May 7, 1988

The Honorable Sam Cotten
Co-Chair, House Resources Committee
Alaska State House of Representatives
P.O. Box V
Juneau, AK 99801

Dear Representative Cotten:

This letter is to confirm the department's commitment to sell the Matanuska Maid creamery to an Alaskan dairy farmer's cooperative before June 30, 1990, if practical and equitable terms of sale or lease/purchase can be negotiated, if the sale or lease/purchase would help ensure the future of Alaska's dairy industry, and if the sale or lease/purchase is determined to be in the best interests of the state.

As you know, the department intends to implement a one year agreement with Alaska Dairy Inc. (ADI). The agreement will provide ADI with management oversight of the Matanuska Maid land and buildings at 814 Northern Lights Boulevard in Anchorage. The purpose of this agreement is to provide local dairy producers with an opportunity to participate in and learn to manage the creamery business. If necessary, the agreement will be extended for one additional year.

I assure you that the department will not sell the creamery to a purchaser other than a cooperative of Alaska dairy producers prior to June 30, 1990, provided that the cooperative demonstrates financial stability and the management capacity to participate successfully in the operation of the business, and that existing creamery quality standards are met. In recognition of this, references to assignment will be dropped from the written agreement and an option for sale or lease purchase will be included.

Should the HCSCSSB 484 (Resources) be enacted, a sale of Matanuska Maid creamery assets at fair market value to the cooperative of Alaska dairy producers will include a dis-

May 7, 1988

count for capital improvements made and equipment purchased by contributions from members of the cooperative, during the term of the management agreement. If a cooperative of Alaska dairy farmers is unable to successfully execute the creamery purchase by June 30, 1990, the department may offer the business at a competitive bid sale to other prospective buyers. It is not the intention of the department to retain long term ownership of the creamery.

We appreciate your interest in the continuation of Alaska's agricultural industry. Please let me know if I may provide additional information or assistance.

Sincerely,

Jeanne Gorsuch
for
Judith M. Brady
Commissioner

cc: Rod Swope
Bob Evans
Mark Weaver
Hal Ward

May 5, 1988

Jan Faiks
President, Alaska State Senate
P. O. Box V
Juneau, Alaska

Re: Senate Bill 472 & 484

Dear Jan,

I know of no words which can adequately express the appreciation which all Point MacKenzie farmers feel because of your tremendous efforts during the session in moving the various agriculture bills. We shall always be grateful for your dedicated and genuine efforts.

But as often times occurs in life and more often than not in the political world what is right does not prevail. Today Sam Cotten destroyed SB 472 by taking the detailed language in SB 472 and adding some language in SB 484 which was very weak and vague, his intent being to destroy the intent and purpose of SB 472. Therefore all of the efforts of so many have been for naught.

But even though the dairy farmers may have lost in their effort to effect the privatization of the creamery I would ask that you continue to give SB 484 priority treatment. Although SB 484 has no benefit to me I do believe strongly that it's passage in ANY FORM is critical to the future of the Point MacKenzie dairy project.

I would therefore ask that you continue to do everything you can to see that SB 484 becomes law. I would ask that when the bill passes the House that you appoint pro-agriculture Senators to the conference committee. I believe that Senators Kerttula, Halford, and Josephson would be excellent appointments because of their prior efforts and work on the agriculture issues.

I am returning to the real world today and although I am saddened by the dairy farmer's defeat today I believe that the benefits to all agriculture are so important to the state that I will not let my personal animosity supersede what is in the public interest.

Thank you again for all of your assistance.

Your friend,

Joseph Patrick Cange

cc: Senator Halford
Senator Josephson
Senator Kerttula
Commissioner Brady

May 7, 1988

The Honorable Sam Cotten
Co-Chair, House Resources Committee
Alaska State House of Representatives
P.O. Box V
Juneau, AK 99801

Dear Representative Cotten:

This letter is to confirm the department's commitment to sell the Matanuska Maid creamery to an Alaskan dairy farmer's cooperative before June 30, 1990, if practical and equitable terms of sale or lease/purchase can be negotiated, if the sale or lease/purchase would help ensure the future of Alaska's dairy industry, and if the sale or lease/purchase is determined to be in the best interests of the state.

As you know, the department intends to implement a one year agreement with Alaska Dairy Inc. (ADI). The agreement will provide ADI with management oversight of the Matanuska Maid land and buildings at 814 Northern Lights Boulevard in Anchorage. The purpose of this agreement is to provide local dairy producers with an opportunity to participate in and learn to manage the creamery business. If necessary, the agreement will be extended for one additional year.

I assure you that the department will not sell the creamery to a purchaser other than a cooperative of Alaska dairy producers prior to June 30, 1990, ^{and will transfer to the creamery} provided that a majority of cooperative members are performing satisfactorily on loan payments, existing creamery quality standards are met, the cooperative demonstrates the management capacity to successfully participate in the operation of the creamery and ~~has~~ sufficient working capital to operate the creamery consistent with parameters developed for other businesses of this type. In recognition of this, references to assignment will be dropped from the written agreement and an option for sale or lease purchase will be included.

Handwritten notes:
Care
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Should the HCSCSSB 484 (Resources) be enacted, a sale of Matanuska Maiu creamery assets at fair market value ^{for below market value if determined it meet} to the cooperative of Alaska dairy producers will include a discount for capital improvements made and equipment purchased by contributions from members of the cooperative, during the term of the management agreement. If a cooperative of Alaska dairy farmers is unable to successfully execute the creamery purchase by June 30, 1990, the department may offer the business at a competitive bid sale to other prospective buyers. It is not the intention of the department to retain long term ownership of the creamery.

Handwritten note:
state's interest and it justified under the Circ. 1112

We appreciate your interest in the continuation of Alaska's agricultural industry. Please let me know if I may provide additional information or assistance.
Sincerely,

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

400 WILLOUGHBY AVE.
JUNEAU, ALASKA 99801-1796
PHONE: (907) 465-2400

Land and Clearing Debt Restructuring Completed to Date

- (a) Nelson Not in CRP or any other federal program
- (b) Schultz CRP, land and clearing and ARLF debt
restructured (no write down of ARLF
debt)
- (c) Green CRP on other parcel
- (d) Carlyle Clearing debt only restructured
- (e) Strong Clearing debt only restructured

-All actions including waiver of the leasing step and including CRP have been suspended.

-No more relinquishments will be processed except in strict compliance with SB 349, which will sunset on June 30, 1988.

-All actions on land and clearing debt will be reported to the Senate Finance Committee.

~~SAM~~
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Gave Malford
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DNR
to calm
Re SB 484
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STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

SB 484

STEVE COWPER, GOVERNOR

400 WILLOUGHBY AVE.
JUNEAU, ALASKA 99801-1796
PHONE: (907) 465-2400

May 5, 1988

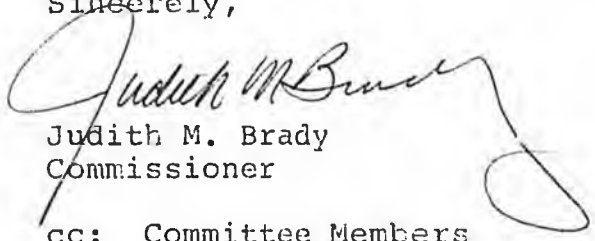
The Honorable Sam Cotten
Co-Chair, House Resources Committee
P.O. Box V
Juneau, AK 99811

Dear Representative Cotten:

I appreciate the House Resources Committee's consideration of agricultural problems and support the committee's substitute of SB 484. I assure you that the Department of Natural Resources and the Agricultural Revolving Loan Fund Board will not sell the Matanuska Maid Creamery during the one-year term of the creamery management agreement with Alaska Dairy, Inc. We hope that in one year Point MacKenzie farm operations will have stabilized to the point where dairy farmers are able to take on the obligation of a creamery purchase.

Please let me know if you would like additional information about the creamery.

Sincerely,



Judith M. Brady
Commissioner

cc: Committee Members
Rod Swope
Ron Clarke
Bob Evans
Mark Weaver
Senator Kerttula
Senator Szymanski
Representative Menard
Representative Larson

FISCAL NOTE

REQUEST:

Revision Date: 3/31/88
Tide: Transfer Matanuska Maid Assets

Agency Affected: Natural Resources
BRU: Agricultural Management

Sponsor: Sen. Resources Committee
Requestor: Senate Finance Committee

Components: ADRF

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	(3222.2)	(222.2)	(222.2)	(222.2)	(222.2)

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

This fiscal note adjusts the revenue loss to the state related to transfer of the creamery to a dairy cooperative because the cash, accounts receivable, inventory and prepaid expenses will not be included in the transfer. (See attached explanation).

Prepared by: Hal Ward Phone: 745-7200
Division: Division of Agriculture Date: 3/31/88

Approved by Commissioner: *L. Gorman* Date: 3/31/88
Agency: Natural Resources

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

Explanation for Revised Fiscal Note

CSSB 472 (Resources)

<u>FY 89</u>		<u>FY 90-93</u>
156.0	Lease Income	156.0 Lease Income
(148.2)	Loss of Opportunity for Sale	(148.2) Loss of Opportunity
(230.0)	Depreciation	(230.0) Depreciation
(3000.0)	Loss of Capital Improvements	
<hr/>		
(3222.2)	Loss for FY 89	(222.2) Loss per year FY 90-93

Lease payment income is projected to be \$156,000 per year (\$13,000 per month). The loss in income from immediate sale of the land and buildings in Anchorage over 20 years at 8% for the current tax value (March, 1988) is \$1,475,500 (\$148,200 per year). The loan fund would receive no repayment for the contribution of over \$3,000,000 in operating capital and plant improvements during the last three years.

The recently incorporated cooperative that is seeking to lease/purchase the creamery has no assets and no financial capacity to provide operating capital or plant maintenance. The exposure to the State of Alaska as owner of the facility would include working capital of 3,000,000 and replacement of equipment based on depreciation of \$230,000 per year for 15 years to offset obsolescence and provide for future expansion.

Draft

AGREEMENT

This Agreement is made among Alaska Dairy, Inc. (hereafter "ADI"), the State of Alaska, Department of Natural Resources, Agricultural Revolving Loan Fund (hereafter "ARLF"), and the Alaska Quality Dairy Cooperative, Inc. to provide management oversight for the creamery located in Anchorage, Alaska, and the feedmill and store located in Palmer, Alaska, both formerly owned by Matanuska Maid, Inc. (hereafter "the creamery"), and other rights and duties.

RECITALS

1. ARLF commenced its operation of the creamery on November 16, 1984.
2. ARLF completed its acquisition of the creamery assets in December, 1985.
3. The Department of Natural Resources and ARLF have concluded that the creamery should receive management oversight from a corporation which has representation from the dairy farming community, the State of Alaska, and the Alaska business community.

TERMS

1. ARLF, with the consent of the Commissioner of the Department Natural Resources, ADI, and the Alaska Quality Dairy Cooperative, Inc. enter into this Agreement for ADI to provide management oversight for the creamery for the period January 1, 1988 to December 31, 1988, and other rights and duties. ARLF may extend this Agreement for one year.

2. ADI will receive no fee for its services under this Agreement. ADI is willing to enter into this contract because the members of its parent corporation are dairy farmers. The dairy farmers desire an agreement that allows the farmers to participate in the management oversight for the creamery, which is currently the only entity which will purchase the milk produced on their farms. ADI and Alaska Quality Dairy Cooperative, Inc. agree that the ability to participate in management oversight has economic value to them. The State agrees that participation from the farmers in management oversight has economic value to the State.
3. ADI agrees that it will at all times faithfully, industriously, and to the best of its ability, experience, and talents perform the oversight management for production, finance, and marketing in the ordinary course of business for the creamery as it existed on the date of this agreement, except when its oversight management authority is limited by other terms of this Agreement. Management decisions outside the ordinary course of business for the creamery as it existed on the date of this Agreement require ARLF Board approval.

The directors of ADI acknowledge they have a fiduciary duty to ARLF arising out of their responsibility to manage ARLF assets.

4. ADI agrees that in performing its duties under section 3 above that it will not permit any combination of payable accounts to exceed \$5,000.00 for longer than 45 days.
5. The members of the Board of Directors of ADI are:

Thomas Tatka, an ARLF Board representative
Karen Lee —
John Seawell
Paul Huppert —
Joseph VanTreeck —
John Cairns
Augie Heibert
Ron Bosi
Chris Swalling
Joseph C. Cange —
Harvey Baskin —
Robert Havemeister —
Director of the Division of Agriculture or
his designee

The members of the executive committee of the Board of Directors are:

John L. Seawell
Thomas Tatka, an ARLF Board representative
Karen O. Lee
Joseph P. Cange
Paul Huppert
Director of the Division of Agriculture or
his designee

The Director of the Division of Agriculture will serve as a non-voting member of the executive committee; unless there is a tie vote among the executive committee members attending.

If the Director of the Division of Agriculture chooses to designate another state employee to act on his behalf, he shall do so in writing. Karen Lee will serve as President

of ADI, Paul Puppert will serve as Vice-President of ADI, and Joseph P. Cange will serve as Treasurer of ADI. Any change in the members of board of directors or the executive committee requires ARLF Board approval.

6. ADI agrees to the terms of the ARLF professional services contract with Joe Van Treeck dated August 26, 1987. ADI may not alter or terminate the Van Treeck professional services contract without ARLF board approval.
7. The ARLF board may terminate this Agreement for cause, including but not limited to, breach of this Agreement, with 30-days written notice. The ARLF board may terminate this agreement on five days written notice in the event that there is \$5,000.00 cumulative in any payable accounts more than 45 days past due. ADI and the Alaska Quality Dairy Cooperative, Inc. waive damages arising out of termination.
8. As further consideration for the opportunity given to the dairy farmers to participate in the management oversight for the creamery, ADI and the Alaska Quality Dairy Cooperative, Inc. (hereafter in this section 8 referred to as "Indemnitors") agree to hold harmless and indemnify the State of Alaska, the directors of ADI, and the ARLF Board members (hereafter in this section 8 referred to as "Indemnitees") from any and all liability, damage, loss, cost and expense which may accrue to or be sustained by Indemnitees on account of any claim, action, complaint

and/or suit arising out of or related to the business of the creamery. Indemnitors agree that Indemnitees, in the sole discretion of Indemnitees, may hire attorneys to defend each of the Indemnitees. Indemnitors agree to pay directly to the attorneys the costs and expenses for attorney services as such costs and expenses are incurred. The obligations of Indemnitors continue after the termination of this Agreement as to any claim, action, complaint and/or suit arising out of or related to the business of the creamery during the term of this Agreement.

As further consideration for the opportunity given to the dairy farmers to participate in the management oversight for the creamery, ADI, the Alaska Quality Dairy Cooperative, Inc. and all directors of ADI who have an interest in a dairy farm, or an interest in a partnership or corporation which operates a dairy farm waive, for itself, themselves, and on behalf of any partnership or corporation in which they have an interest, all claims, actions, complaints and/or suits arising out of or related to the State's ownership, or operation of the creamery occurring during the term of this Agreement. The directors of ADI who have an interest in a dairy farm, or an interest in a partnership or corporation which operates a dairy farm warrant that they have the authority to bind the partnership or corporation.

9. Title to all real and personal property of the creamery remains in ARLF's name. ADI may not dispose of or in any way encumber property without ARLF Board approval.

The ARLF board reserves the right to sell any real or personal property of the creamery that is not essential to the operation of the creamery. Without limiting the preceding sentence, the ARLF Board reserves the right to change the product line of, sell, lease, or otherwise dispose of the feed mill and store provided the ARLF board makes a written decision of its intended action and notifies ADI by July 1, 1988.

10. ADI may not borrow money from any source for the operation of the creamery without ARLF approval, except ADI may allow the day-to-day creamery manager to bind the ARLF to trade credit terms that were in effect prior to the date of this agreement.
11. All profits and/or losses generated by the creamery operation belong to ARLF. Net profits may not be spent without ARLF Board approval. The ARLF Board will review the financial statements as of June 30, 1988 and December 31, 1988 to determine whether cumulative net profits for the prior six months exist. ARLF may withdraw cumulative net profits after the review of financial statements described in the preceding sentence, but may not withdraw cumulative

net profits more than once in a six-month period or withdraw cumulative net profits prior to the review of financial statements.

ARLF desires to limit monthly operating losses of the creamery. ARLF will provide up to a maximum of \$60,000 a month for January 1988, February 1988, March 1988, April 1988, May 1988, and June 1988 to cover operating losses at the creamery upon written request by ADI. The money available for any month will not exceed the operating loss for the prior month and in any event will not exceed the amounts stated in the preceding sentence. The loan manager for ARLF is directed to disburse money consistent with this paragraph after receipt of the ADI written request. ADI may not increase the price of milk as it exists on November 1, 1987 paid to dairy farms if the creamery shows an operating loss. ADI may lower the price of milk paid to dairy farms at any time, however, ADI will lower the price of milk paid to dairy farms if the operating loss exceeds \$60,000 in any one month during the period January 1, 1988 to June 30, 1988. After July 1, 1988, ADI will adjust the price of milk paid to dairy farms to prevent operating losses. If ADI fails to lower the price of milk paid to dairy farms as required in this paragraph, ARLF, at its option, may adjust the price of milk, terminate this Agreement, or take other

action that ARLF deems appropriate.

12. ADI may not discriminate against any employee or applicant for employment because of race, religion, color, national origin, or because of age, physical handicap, sex, or marital status, change in marital status, pregnancy or parenthood when the reasonable demands of the position do not require distinction on the basis of age, physical handicap, sex, or marital status, change in marital status, pregnancy, or parenthood. ADI shall take affirmative action to insure that the applicants are employed and that employees are treated during employment without regard to their race, color, religion, national origin, ancestry, age, sex, or marital status. This action must include, but need not be limited to the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training including apprenticeship. ADI shall post in conspicuous places, available to employees and applicants for employment, notices setting out the provisions of this paragraph.

ADI shall state, in all solicitations or advertisements for employees, that it is an equal opportunity employer and that all qualified applicants will receive consideration for employment without regard to race, religion, color, national

origin, age, physical handicap, sex, or marital status.

ADI shall send to each labor union or representative of workers with which ADI has a collective bargaining agreement or other contract or understanding a notice advising the labor union or workers' representative of ADI's commitments under this article and post copies of the notice in conspicuous places available to all employees and applicants for employment.

ADI shall include the provisions of this article in every contract, and shall require the inclusion of these provisions in every contract entered into by any of its subcontractors, so that those provisions will be binding upon each subcontractor. For the purpose of including those provisions in any construction, maintenance, or service contract or subcontract, as required by this contract, "contractor" and "subcontractor" may be changed to reflect appropriately the name or designation of the parties of the contract or subcontract.

ADI shall cooperate fully with the office or agency of the State of Alaska which seeks to deal with the problem of unlawful discrimination, and with all other State efforts to

guarantee fair employment practices under this contract, and promptly comply with all requests and directions from the State Commission for Human Rights or any of its officers or agents relating to prevention of discriminatory employment practices.

Full cooperation in the preceding paragraph includes, but is not limited to, being a witness in any proceeding involving questions of unlawful discrimination if that is requested by any official or agency of the State of Alaska; permitting employees of ADI to be witnesses or complainants in any proceeding involving questions of unlawful discrimination, if that is requested by any official or agency of the State of Alaska; participating in meetings; submitting periodic reports on the equal employment aspects of present and future employment; assisting in inspection of ADI's facilities; and promptly complying with all state directives considered essential by any office or agency of the State of Alaska to insure compliance with all federal and state laws, regulations, and policies pertaining to the prevention of discriminatory employment practices.

13. ADI and the Alaska Quality Dairy Cooperative, Inc. agree that they will not discriminate between members and non-members in the purchase or sale by the creamery of raw material or products. Alaska Quality Dairy Cooperative,

Inc. will offer membership on equal terms to all dairy farmers whose farms are located south of the Alaska Range.

14. ADI, through the creamery employees, will provide quarterly financial reports and quarterly written narrative reports to the ARLF Board in a form determined by the ARLF Board, within 30 days after the end of the quarter. ADI, through the creamery employees, will prepare monthly financial reports of the creamery operation within 20 days of month end.
15. ADI may not arrange for or begin plant and/or equipment expansions without ARLF Board approval. ADI may not arrange for or perform repairs on the plant and/or equipment if the cost will exceed \$30,000 except in an emergency.
16. ADI will arrange to add itself as a named insured to the following insurance policies and any successor policies:

Industrial Indemnity
Policy No. CN882-7673

Insurance Co. of North America
Policy No. D1416425A

Chubb Group of Insurance Company
Policy No. B78316110

F.B. Beatties
Policy No. FBB 3143

17. ADI agrees that any action of indulgence or delay, failure to act, or failure to exercise any right or remedy by ARLF shall not affect or impair the obligations of ADI, or be construed as a waiver by ARLF or, otherwise affect ARLF's rights under this Agreement.

18. ARLF may assign this agreement after written notice to ADI.
19. This agreement will be construed by the laws of the State of Alaska.
20. ADI and ARLF agree that if any of the provisions hereof should be invalid or unenforceable, such unenforceability or invalidity shall void this Agreement in its entirety.
21. The date of this Agreement is _____.

DATED: _____

ALASKA DAIRY INC.

By: _____

Its: _____

DATED: _____

ALASKA QUALITY DAIRY
COOPERATIVE INC.

By: _____

Its: _____

DATED: _____

STATE OF ALASKA
AGRICULTURAL REVOLVING
LOAN FUND

By: _____

Its: _____

Consented To: _____
Commissioner of
Natural Resources

DRAFT

May 6, 1988

The Hon. Judy Brady
Commissioner
Department of Natural Resources
P.O. Box M
Juneau, AK 99811

Dear Commissioner Brady:

I am writing about the Mat Maid creamery now in the state's possession. I appreciate the participation of you and your staff in recent discussions about the future of the creamery and the Alaska dairy industry, and naturally I share your interest in seeing both succeed over the long term. I also recognize your interest in getting the state out of the creamery management business.

After the Resources Committee's review of SB 484 on ag debt restructuring and SB 472 on transferring the dairy, I am interested in pursuing several concepts with you.

The dairy farmers' largest concern (which led to the introduction of SB 472) appears to be that the Alaska dairy industry needs security, or assurance, about its future stake in the creamery. They point out that most creameries nationwide are coop-owned and that the Alaska industry needs to be able to control prices and marketing at the creamery.

The Department of Natural Resources has successfully managed the creamery and the Alaska industry seems to be on the verge of stability and success. Still, I understand the Department's concerns about the proposal to transfer the creamery to the coop: first, that the coop should be able to gain control gradually in a way that doesn't destabilize the farmers' other operations or debt and which provides some time to gain management experience; and second, that the Department cannot sell the creamery to a selected buyer under existing law.

SB 484 now contains language that should give the Department of Natural Resources two years during which to lease the creamery to the coop and give the coop the opportunity to gain the experience necessary to own and manage the coop unilaterally. It also provides DNR with authority to sell the creamery to the dairy coop noncompetitively, and at

below market value if such a sale would be in the state's interests.

I am hopeful, after discussions with your staff, that the Department will agree to amend the pending lease agreement between the coop and the Department to include an option for the coop to purchase the creamery after two years' lease if the coop has met existing quality and production standards and appears to be ready to take over the creamery.

SB 484 has been written to allow a transaction at less than market value in case the 1990 appraisal of the creamery should show that the coop would not be able to meet the payments for the creamery. If the Department determines in 1990 that a below-value sale is in the public interest (which it may be), there should be flexibility to sell the creamery to a functioning, successful coop at a price that can be fairly paid.

Some of the farmers have been concerned about paying the 1990 value for the creamery. I understand that under ordinary circumstances the Department writes its leases so that rental adjustments and conveyances are based on value not reflecting improvements made at the expense of the lessee. I believe the same approach will be taken in valuing the creamery for sale to the coop.

I hope that the Department and the ARLF Board will recognize, in 1990 or before if the coop appears ready, that the Legislature enacted a special provision for creamery transfer in hopes that the Alaska industry could be fostered and enhanced. This does not mean that the language included in SB 484 encourages a below-market sale of the creamery, nor that the coop should be guaranteed the conveyance unconditionally. However, if the Department in 1990 determines that the coop has met quality and production standards, and if the coop can afford to purchase the creamery at some reasonable price, I would hope to see the Department and the ARLF Board proceed with the sale.

Some of the farmers have also been concerned because they lack discrete authority, under the proposed lease, to establish milk prices. However, from my reading of the agreement, the coop will have important influence over the milk price, and of course should have complete control over the milk price in two years if the creamery conveyance is made.

I hope that the Department will be able to commit to rewriting the proposed lease agreement 1) to remove references to assignment, and 2) to include the option for the coop to purchase the creamery in two years if quality and production standards have been maintained. A commitment by the Department to these two points will go a long way

toward stabilizing Alaska's dairy industry and allowing the careful and fair transfer of the creamery to the coop.

Sincerely,

Rep. Sam Cotten

5-1589T ✓
Bradley
5/5/88

Original sponsors: Josephson, Szymanski,
Halford, et al.

1 IN THE SENATE

BY THE RESOURCES COMMITTEE

2 HOUSE CS FOR CS FOR SENATE BILL NO. 472 (Resources)

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 commissioner of natural
7 resources to transfer the creamery formerly owned by
8 Matanuska Maid, Inc."

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

10 Section 1. LEGISLATIVE INTENT. It is the intent of the legislature
11 that the authority granted by sec. 2 of this Act be exercised to

12 (1) promote development of a stable, profitable, and unsub-
13 sidized Alaskan dairy industry;

14 (2) encourage innovative and efficient management of dairy farms
15 and processing facilities by the private sector;

16 (3) encourage production and marketing of competitively-priced
17 Alaskan dairy products in lieu of imported products; and

18 (4) use past investments of public money in the dairy industry
19 to further the objectives described in (1) - (3) of this section without
20 depleting the agricultural revolving loan fund.

21 * Sec. 2. LEASE-PURCHASE AGREEMENT AUTHORIZED. The commissioner of
22 natural resources may enter into a one-year lease-purchase agreement with a
23 cooperative composed of Alaska dairy product producers for the ownership,
24 management and operation of the former Matanuska Maid Creamery at 814
25 Northern Lights Boulevard, in Anchorage. The commissioner and the coopera-
26 tive shall agree on the composition and membership of the board of direc-
27 tors that manages the Matanuska Maid Creamery unless the commissioner
28 chooses not to retain veto authority over the composition and membership of
29 the board. The lease-purchase agreement is renewable annually for 14 years

1 if the lessee has complied with health, product quality, and other terms
2 and conditions of the lease-purchase agreement and has managed the former
3 Matanuska Maid Creamery economically, profitably, and efficiently under
4 the terms of the lease-purchase agreement. The lease-purchase agreement
5 shall require the lessee to treat each producer of dairy products equally.
6 The lease-purchase agreement may be negotiated by the commissioner of
7 natural resources at any time before July 1, 1989, but it is the intent of
8 the legislature that the lease-purchase agreement be in effect on July 1,
9 1989. The lease-purchase payment due from the lessee is an amount equal to
10 \$.50 per hundredweight of milk processed per month at the creamery or
11 \$13,000 per month, whichever is greater, and the lease-purchase payment
12 shall be applied to the purchase price. If the cooperative composed of
13 dairy product producers has continuously operated the former Matanuska Maid
14 Creamery under a lease-purchase agreement authorized under this section
15 through June 30, 1999, the commissioner of natural resources shall, at the
16 request of the lessee at any time after June 30, 1999, but before June 30,
17 2004, transfer the creamery to the lessee. In valuing the assets of the
18 former Matanuska Maid Creamery for the purposes of a transfer under this
19 section, the building shall be valued at its fair market value at the ini-
20 tiation of the lease-purchase agreement and the land shall be valued at its
21 fair market value on the date of the request by the lessee for a transfer
22 under this section.
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SB 484
See FINE

SECTION 1:

If, and only if, determined necessary by the Agricultural Revolving Loan Fund Board of Directors to maximize return on loans, the Board may modify the terms of notes and security instruments entered into or administered by the Agricultural Revolving Loan Fund.

SECTION 2:

Modification may reduce interest to rates below, and increase terms beyond, those specified in AS 03.10.030.

SECTION 3:

The terms of any modification under this Act shall be calculated to return not less than the amount of the original principal debt to the fund except as a credit for prepayment.

SECTION 4:

The maximum term of any modified loan shall be 30 years.

SECTION 5:

The effective date of this Act is retroactive to June 25, 1987.

What will the people do if their restrictions aren't legal?
1. state will sue for part
2. they'll counter-sue.

220 brms. \$40m total debt
30m due/default
~100 pass not in default
defaulter 180 days
1/3 delinq 90 days
70 current - small balances / other income -
who's in default now? - 90 days
can id'g -
very few foreclosures - none in the
whole system in past two yrs.
now he ~ 90 foreclosures in AGO

SECTION 1:

If, and only if, determined necessary by the Agricultural Revolving Loan Fund Board of Directors to maximize return on loans, the Board may modify the terms of notes and security instruments entered into or administered by the Agricultural Revolving Loan Fund.

SECTION 2:

Modification may reduce interest to rates below, and increase terms beyond, those specified in AS 03.10.030.

SECTION 3:

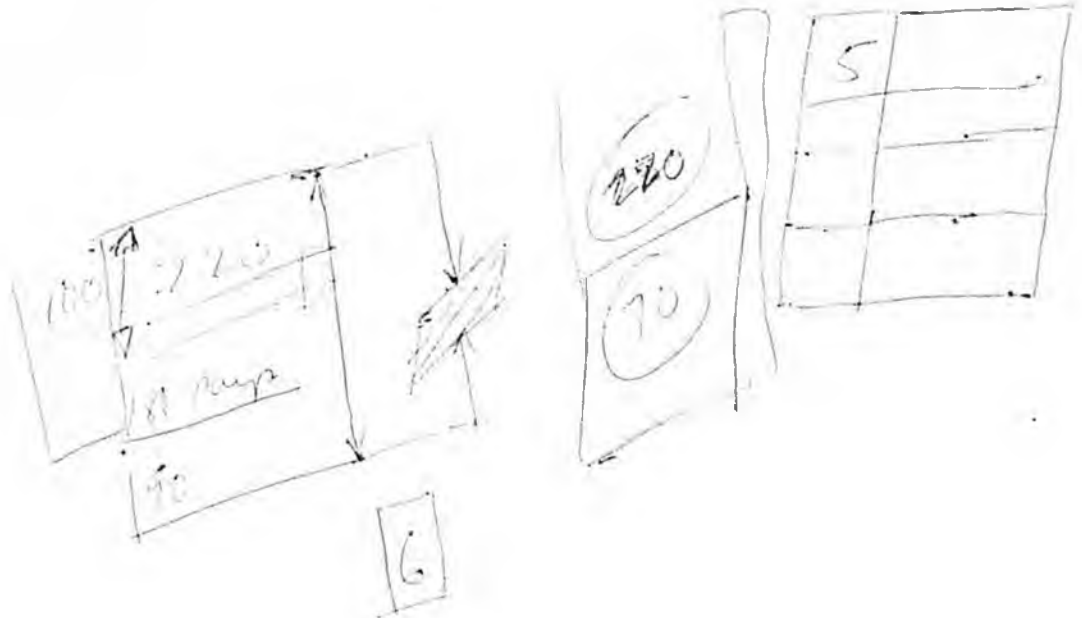
The terms of any modification under this Act shall be calculated to return not less than the amount of the original principal debt to the fund except as a credit for prepayment.

SECTION 4:

The maximum term of any modified loan shall be 30 years.

SECTION 5:

The effective date of this Act is retroactive to June 25, 1987.



RESTRUCTURED ARLF LOANS APPROVED BY BOARD

THROUGH 4/14/88

<u>ARFA</u>	<u>NAME</u>	<u>AMOUNT RESTRUCTURED</u>
Matanuska	Jenn	\$1,023,465
Delta	Miller, S.	175,462
Matanuska	Boyd	224,718
Delta	Karr	180,180
Delta	Moritz	64,606
Delta	Ditchen, C.	650,150
Delta	Golden Valley	454,003
Delta	Mertz	702,067
Delta	Carpenter	28,957
Delta	Shultz	480,263
Tanana	O'Donnell	21,244
Other	Mercer	31,526
Tanana	Shoen	193,626
Delta	Thuerenger	178,933
Matanuska	Baskin	813,838
Delta	Bradley	39,851
Delta	Alamasu	911,310
Matanuska	P&M Gardens	332,712
Matanuska	Williams, T.	418,119
Matanuska	Pherson	22,000
Delta	Robertson	106,138
	<u>Total</u>	<u>6,873,013</u>

HOUSE COMMITTEE REPORT

(9)

Date referred: 5/4/88

FURTHER REFERRALS: Finance

DATE: 5-5-88

The Resources Committee has considered CSSB 484 (Fin) am

"An Act relating to the powers of and loans made by the Agricultural Revolving Loan Fund Board; and providing for an effective date."

RECOMMENDS:

- replace with HCS CSSB 484 (Res) 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 _____
- zero with analysis

SIGNING DO PASS:

Sen GT

Gyula Havasi

[Signature]

[Signature]

SIGNING OTHER RECOMMENDATIONS:

Adelheid Herrmann No Rec.

Sen GT

Chairman's signature

FISCAL NOTE

REQUEST:

Revision Date: May 5, 1988
Title: Powers of ARLF Board

Agency Affected: Natural Resources
BRU: Ag Management

Sponsor: House Resources Committee
Requestor: House Resources Committee

Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
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REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Carol Wilson
Division: Commissioner's Office

Phone: 465-2400
Date: 5/5/88

Approved by Commissioner: [Signature]
Agency: Natural Resources

Date: 5/5/88

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

Original sponsor: Judiciary Committee
by Request

1 IN THE SENATE BY THE RESOURCES COMMITTEE
2 HOUSE CS FOR CS FOR SENATE BILL NO. 484 (Resources)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the powers of and loans made by
7 the Agricultural Revolving Loan Fund Board; and
8 providing for an effective date."

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

10 * Section 1. AS 03.10.050 is amended by adding new subsections to read:

11 (d) Subject to an appropriation for the position and to facili-
12 tate execution of its duties, the Agricultural Revolving Loan Fund
13 Board may appoint, supervise, and remove a financial analyst.

14 (e) To encourage the prompt payment of loans, the department may
15 establish a program of credits for persons who have a loan from the
16 agricultural revolving loan fund and maintain good financial standing.
17 The credits may be applied against no more than two percentage points
18 a year of the interest due on agricultural revolving loan fund loans.

19 (f) A credit may not be granted under (e) of this section to
20 reduce interest due on a loan if the borrower has an agricultural loan
21 in default, has a loan that has been rewritten, restructured, rolle
22 over, or otherwise had its term extended or interest rate reduced, o
23 has had a land payment or land clearing loan restructured.

24 (g) The director of agriculture may dispose of property acquire
25 by the Agricultural Revolving Loan Fund Board or by the commissio
26 through foreclosure, default, or other action arising out of agricul
27 tural loans or the sale of agricultural land. Disposals shall b
28 conducted under regulations approved by the commissioner. The regu
29 lations shall ensure that the property is disposed of so as t

05150

1 maximize the return to the state and shall require that the parcels of
2 land that are composed primarily of cropland soils be restricted to
3 agricultural uses and disposed of only to persons who are residents of
4 the state.

5 * Sec. 2. RESTRUCTURE OF AGRICULTURAL DEBT. (a) To increase the
6 return to the state, the Agricultural Revolving Loan Fund Board may re-
7 structure loans in existence on January 1, 1987, made by the board or by
8 the Alaska Agricultural Action Council based upon guidelines approved by
9 the board. The restructuring may only include reduction of interest to
10 rates below those specified by AS 03.10.030, an extension of the term of
11 the loan, and an improvement to the security interest of the state. It may
12 not reduce the amount of principal and interest owed before the loan is re-
13 structured.

14 (b) The maximum term of a loan modified under (a) of this section is
15 30 years from the date of restructuring.

16 (c) Notwithstanding any other provision of this section, the Agricul-
17 tural Revolving Loan Fund Board may approve an application for restructur-
18 ing under this section only upon

19 (1) the applicant's written release of the state, including the
20 Alaska Agriculture Action Council, the agricultural revolving loan fund,
21 and the University of Alaska, from all potential liability for actions and
22 omissions occurring before the date of restructuring that relate in any way
23 to a state farm project, land sale, land sale relinquishment, farm loan, or
24 loan application or loan modification application, whether granted or
25 denied by the state; and

26 (2) assignment by the applicant to the board of the proceeds
27 from the federal government under 7 U.S.C. 1442 (Conservation Reserve
28 Program) and P.L. 88-26 (Feed Grain Act of 1963), as amended.

29 (d) If the board receives proceeds under (c)(2) of this section that

1 exceed the amount owed and credited to the loan during the year, the board
2 shall refund the extra proceeds to the applicant.

3 * Sec. 3. Notwithstanding AS 36.30, the commissioner of natural re-
4 sources may negotiate with a cooperative composed of Alaska dairy farmers
5 for the purchase by the cooperative of the assets of a foreclosed agricul-
6 tural revolving loan fund loan that consists of the former Matanuska Maid
7 Creamery, land, and building at 814 Northern Lights Boulevard in Anchorage.
8 The same terms may include a lease-purchase arrangement. The goal of the
9 sale is to provide long-term stability and strength for the Alaska dairy
10 industry and for private ownership of the dairy. The commissioner may sell
11 the creamery, land, and building including assets at less than fair market
12 value if the commissioner determines that the sale would serve the best
13 interest of the state. The authority provided by this section expires
14 June 30, 1990.

15 * Sec. 4. Section 3, ch. 109, SLA 1986, is repealed.

16 * Sec. 5. Section 2 of this Act is retroactive to January 1, 1987.

17 * Sec. 6. This Act takes effect immediately under AS 01.10.070(c).
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REDUCED FISCAL NOTE 21A

5-1984P
Bradley
4/29/88

Original sponsor: Judiciary Committee
by Request

1 IN THE SENATE

BY THE FINANCE COMMITTEE

2 CS FOR SENATE BILL NO. 484 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the powers of and loans made by
7 the Agricultural Revolving Loan Fund Board; and
8 providing for an effective date."

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

10 * Section 1. AS 03.10.050 is amended by adding new subsections to read:

OK

11 (d) To facilitate execution of its duties, the Agricultural
12 Revolving Loan Fund Board may appoint, supervise, and remove a finan-
13 cial analyst.

*difficult
to do
but
OK
doing*

14 (e) To encourage the prompt payment of loans, the department may
15 establish a program of credits for persons who have a loan from the
16 agricultural revolving loan fund and maintain good financial standing.
17 The credits may be applied against no more than two percentage points
18 a year of the interest due on agricultural revolving loan fund loans.

19 (f) A credit may not be granted under (e) of this section to
20 reduce interest due on a loan if the borrower has an agricultural loan
21 in default, has a loan that has been rewritten, restructured, rolled
22 over, or otherwise had its term extended or interest rate reduced, or
23 has had a land payment or land clearing loan restructured.

24 (g) The director of agriculture shall dispose of property ac-
25 quired by the Agricultural Revolving Loan Fund Board or by the commis-
26 sioner through foreclosure, default, or other action arising out of
27 agricultural loans or the sale of agricultural land. Disposals shall
28 be conducted under regulations approved by the board. The regulations
29 shall ensure that the property is disposed of so as to maximize the

1 return to the state and shall require that the parcels of land that
2 are composed primarily of cropland soils be restricted to agricultural
3 uses.

4 * Sec. 2. RESTRUCTURE OF AGRICULTURAL DEBT. (a) To increase the
5 return to the state, the Agricultural Revolving Loan Fund Board may re-
6 structure loans in existence on June 25, 1987, made by the board or by the
7 Alaska Agricultural Action Council based upon guidelines approved by the
8 board. The restructuring may only include reduction of interest to rates
9 below those specified by AS 03.10.030, an extension of the term of the
10 loan, and an improvement to the security interest of the state. It may not
11 reduce the amount of principal and interest owed before the loan is re-
12 structured.

13 (b) The maximum term of a loan modified under (a) of this section is
14 30 years from the date of restructuring.

15 (c) Notwithstanding any other provision of this section, the Agricul-
16 tural Revolving Loan Fund Board may approve an application for restructur-
17 ing under this section only upon

18 (1) the applicant's written release of the state, including the
19 Alaska Agriculture Action Council, the agricultural revolving loan fund,
20 and the University of Alaska, from all potential liability for actions and
21 omissions occurring before the date of restructuring that relate in any way
22 to a state farm project, land sale, land sale relinquishment, farm loan, or
23 loan application or loan modification application, whether granted or
24 denied by the state; and

25 (2) assignment by the applicant to the board of the proceeds
26 from the federal government under 7 U.S.C. 1442 (Conservation Reserve
27 Program) and P.L. 88-26 (Feed Grain Act of 1963), as amended. *in SB 359*

28 (d) In order to provide an incentive and opportunity to continue milk
29 production, the board shall restructure the debt of any dairy farm that has

CSSB 484(Fin)

1749
mass imp t

*Halford is tracked sec. in SB 359
discuss in Finance last year
the Lt. said don't allow CRP
recipients to repay restr.*

1 produced at least 30,000 pounds of milk a month since November 15, 1985,
2 and continues to produce 30,000 pounds of milk a month. If milk production
3 falls below 30,000 pounds a month, the restructured debt shall become
4 immediately due and payable. Restructure under this section is subject to
5 the same limitations and conditions as provided in (a), (b), and (c) of
6 this section.

7 * Sec. 3. Section 2 of this Act is retroactive to June 25, 1987.

8 * Sec. 4. This Act takes effect immediately under AS 01.10.070(c).

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Jerry Weiland

745-3071

APR 05 '88 09:46 TDS RICHIE

Original sponsor: Judiciary Committee
by Report

1 IN THE SENATE

2 CS FOR SENATE BILL NO. 100 ()

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the restructure of AS 03.10 the
7 the agricultural revolving loan fund; granting the
8 Agricultural Revolving Loan Fund Board authority to
9 hire ~~an employee~~ ^{a financial analyst}
10 and providing for an effective date."

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

12 * Section 1. AS 03.10.050 is amended by adding new subsection (d) as follows:

13 (d) To facilitate execution of its duties, the Agricultural
14 Revolving Loan Fund Board may

15 (1) appoint, supervise, and remove ~~an employee~~ ^{an analyst}
16 analyst, ~~and maintain good financial standing.~~

17 ~~and maintain good financial standing.~~

18 (e) To encourage the prompt payment of loans, the ~~Department~~ ^{Department}
19 shall establish a program of credits for persons who have a loan from
20 the agricultural revolving loan fund ^{and maintain good financial standing.} The credits shall be applied
21 against ~~two~~ two percentage points a year of the interest due
22 on agricultural revolving loan fund loans.

23 (f) A credit may be granted under (e) of this section to reduce
24 interest due on a loan only if that loan is not in default and has not been
25 rewritten, restructured, rolled over, or otherwise had its term extended or
26 interest rate reduced.

27 * Sec. 2. RESTRUCTURE OF AGRICULTURAL DEBT. (a) ~~in the findings of the Department of Natural Resources and~~

28 ~~in the findings of the Department of Natural Resources and~~

The Agricultural Revolving Loan Fund Board may restructure loans, subject upon guidelines approved by the Department, for a term not to exceed 30 years from the date of restructuring. Restructuring may include extension and modification of loan terms and conditions, ~~including and~~ reduction of interest to rates below those specified by AS 03.10.030, but not less than the amount of principal to be repaid.

If determined necessary by the Board to maximize return on loans, the Board may compromise, adjust, reduce, or charge-off claims, and adjust, modify, subordinate, or release the terms of contracts, agreements, leases, and security instruments entered into or administered by the Agricultural Revolving Loan Fund. This authority shall be in addition to the Board's authority to restructure loans.

The maximum term of any compromised, adjusted, reduced, or modified loan shall be 30 years.

The Agricultural Revolving Loan Fund Board shall restructure over a 30-year term the debt of an applicant who has produced raw milk in the state at an average monthly rate of 30,000 pounds or more of raw milk since November 16, 1986.

(c) ~~(b)~~ Recognizing that claims have been made against the state that arise out of the formulation and implementation of state farm projects or the granting or denial of farm loans, but without making a finding on the merits of these and related claims, the Agricultural Revolving Loan Fund Board shall condition approval of an application for restructuring under this section upon the applicant's release of the state, including the Alaska Agriculture Action Council, the agricultural revolving loan fund,

and the University of Alaska, from all liability for actions and omissions occurring before the date of restructuring that relate in any way to a state farm project, land sale, land sale relinquishment, farm loan, or loan application or loan modification application, whether granted or denied by the state.

* Sec. 3. The authority granted in sec. 2 of this Act ~~is~~ shall be in addition to that granted by AS 03.10.020(a)(4) and AS 03.10.020(c), and is retroactive to June 25, 1987.

* Sec. 4. Section 4, ch. 109, SLA 1986, is amended to read:

Sec. 4. This Act is repealed July 1, 1990 [1988].

* Sec. 5. This Act takes effect immediately under AS 01.10.070(c).

5-1984M

Bradley
5/4/88

Original sponsor: Judiciary Committee
by Request

1 IN THE SENATE BY THE RESOURCES COMMITTEE
 2 HOUSE CS FOR CS FOR SENATE BILL NO. 484 (Resources)
 3 IN THE LEGISLATURE OF THE STATE OF ALASKA
 4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the powers of and loans made by
 7 the Agricultural Revolving Loan Fund Board; and
 8 providing for an effective date."

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

10 * Section 1. AS 03.10.050 is amended by adding new subsections to read:

11 (d) Subject to an appropriation for the position and to facili-
 12 tate execution of its duties, the Agricultural Revolving Loan Fund
 13 Board may appoint, supervise, and remove a financial analyst.

14 (e) To encourage the prompt payment of loans, the department may
 15 establish a program of credits for persons who have a loan from the
 16 agricultural revolving loan fund and maintain good financial standing.
 17 The credits may be applied against no more than two percentage points
 18 a year of the interest due on agricultural revolving loan fund loans.

19 (f) A credit may not be granted under (e) of this section to
 20 reduce interest due on a loan if the borrower has an agricultural loan
 21 in default, has a loan that has been rewritten, restructured, rolled
 22 over, or otherwise had its term extended or interest rate reduced, or
 23 has had a land payment or land clearing loan restructured.

24 *DP* (g) *AK may* The director of agriculture may dispose of property acquired
 25 by the Agricultural Revolving Loan Fund Board or by the commissioner
 26 through foreclosure, default, or other action arising out of agricul-
 27 tural loans or the sale of agricultural land. Disposals shall be
 28 conducted under regulations approved by the commissioner. The regu-
 29 lations shall ensure that the property is disposed of so as to

1 maximize the return to the state and shall require that the parcels of
2 land that are composed primarily of cropland soils be restricted to
3 agricultural uses.

4 * Sec. 2. RESTRUCTURE OF AGRICULTURAL DEBT. (a) To increase the
5 return to the state, the Agricultural Revolving Loan Fund Board may re-
6 structure loans in existence on January 1, 1987, made by the board or by
7 the Alaska Agricultural Action Council based upon guidelines approved by
8 the board. The restructuring may only include reduction of interest to
9 rates below those specified by AS 03.10.030, an extension of the term of
10 the loan, and an improvement to the security interest of the state. It may
11 not reduce the amount of principal and interest owed before the loan is re-
12 structured.

13 (b) The maximum term of a loan modified under (a) of this section is
14 30 years from the date of restructuring.

15 (c) Notwithstanding any other provision of this section, the Agricul-
16 tural Revolving Loan Fund Board may approve an application for restructur-
17 ing under this section only upon

18 (1) the applicant's written release of the state, including the
19 Alaska Agriculture Action Council, the agricultural revolving loan fund,
20 and the University of Alaska, from all potential liability for actions and
21 omissions occurring before the date of restructuring that relate in any way
22 to a state farm project, land sale, land sale relinquishment, farm loan, or
23 loan application or loan modification application, whether granted or
24 denied by the state; and

25 (2) assignment by the applicant to the board of the proceeds
26 from the federal government under 7 U.S.C. 1442 (Conservation Reserve
27 Program) and P.L. 88-26 (Feed Grain Act of 1963), as amended.

28 (d) If the board receives proceeds under (c)(2) of this section that
29 exceed the amount owed and credited to the loan during the year, the board

1 shall refund the extra proceeds to the applicant.

2 * Sec. 3. Section 3, ch. 109, SLA 1986, is repealed.

3 * Sec. 4. Section 2 of this Act is retroactive to January 1, 1987.

4 * Sec. 5. This Act takes effect immediately under AS 01.10.070(c).

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add a new

Sec. 3 and renumber.

Sec. 3 Notwithstanding Art 36.30, the commissioner of natural resources may negotiate with the dairy farmers' cooperative for the sale of the ^{assets} ~~estate~~ Matakuska Maid ~~estate~~ creamery, land, and building at 814 Northern Lights Boulevard, in Anchorage. The sale terms may include a lease-purchase arrangement. The objective of the sale should be to provide long-term stability and strength for the Alaskan dairy industry, and private ownership of the dairy. The commissioner may sell the creamery, land, and building at less than fair market value as long as the sale would serve the best interest of the state. The authority provided by this section shall expire on June 30, 1990.

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#1

~~POST~~

add a new

Sec. 3 and renumber.

Sec. 3 Notwithstanding AS 36.30, the commissioner of natural resources may negotiate with the dairy farmers' cooperative for the sale of the ^{former} Matanuska Maid ~~creamery~~ creamery, land, and building at 814 Northern Lights Boulevard, in Anchorage. The sale terms may include a lease-purchase arrangement. The objective of the sale should be to provide long-term stability and strength for the Alaska dairy industry, and private ownership of the dairy. The commissioner may sell the creamery, land, and building at less than fair market value as long as the sale would serve the best interest of the state. This authority provided by this section shall expire on June 30, 1990.

Drue's comment

p. 2 - top - All purchasers only - land.

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

SB 484 files
STEVE COWPER, GOVERNOR

400 WILLOUGHBY AVE.
JUNEAU, ALASKA 99801-1796
PHONE: (907) 465-2400

May 5, 1988

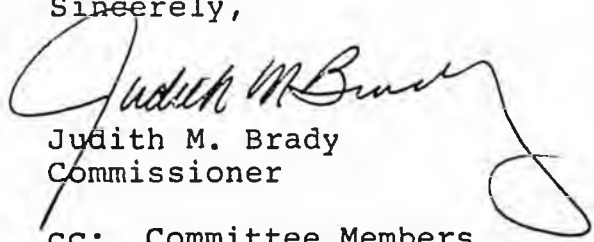
The Honorable Sam Cotten
Co-Chair, House Resources Committee
P.O. Box V
Juneau, AK 99811

Dear Representative Cotten:

I appreciate the House Resources Committee's consideration of agricultural problems and support the committee's substitute of SB 484. I assure you that the Department of Natural Resources and the Agricultural Revolving Loan Fund Board will not sell the Matanuska Maid Creamery during the one-year term of the creamery management agreement with Alaska Dairy, Inc. We hope that in one year Point MacKenzie farm operations will have stabilized to the point where dairy farmers are able to take on the obligation of a creamery purchase.

Please let me know if you would like additional information about the creamery.

Sincerely,


Judith M. Brady
Commissioner

cc: Committee Members
Rod Swope
Ron Clarke
Bcb Evans
Mark Weaver
Senator Kerttuia
Senator Szymanski
Representative Menard
Representative Larson

Explanation for Revised Fiscal Note

from Joe Cuye

CSSB 472 (Resources)

<u>FY 89</u>		<u>FY 90-93</u>
156.0	Lease Income	156.0 Lease Income
(148.2)	Loss of Opportunity for Sale	(148.2) Loss of Opportunity
(230.0)	Depreciation	(230.0) Depreciation
(3000.0)	Loss of Capital Improvements	
<hr/>		
(3222.2)	Loss for FY 89	(222.2) Loss per year FY 90-93

Lease payment income is projected to be \$156,000 per year (\$13,000 per month). The loss in income from immediate sale of the land and buildings in Anchorage over 20 years at 8% for the current tax value (March, 1988) is \$1,475,500 (\$148,200 per year). The loan fund would receive no repayment for the contribution of over 3,000,000 in operating capital and plant improvements during the last three years.

The recently incorporated cooperative that is seeking to lease/purchase the creamery has no assets and no financial capacity to provide operating capital or plant maintenance. The exposure to the State of Alaska as owner of the facility would include working capital of 3,000,000 and replacement of equipment based on depreciation of \$230,000 per year for 15 years to offset obsolescence and provide for future expansion.

Alternative Fiscal Note - April 30, 1988

	<u>FY'89</u>	<u>FY'90-93</u>
Lease-purchase payment	156.0	156.0
Reduction of state investment in plant	230.0	230.0
Loss of opportunity for sale*	(192.0)	(192.0)
	<hr/>	
Cash flow benefit to ARLF	194.0	194.0

* Based upon 8% interest rate and estimate value of \$2,400,000

Mr. Joseph P. Cange
P.O. Box 90647
Anchorage, Alaska 99509

April 30, 1988

The Honorable Sam Cotten
Co-Chair
House Resources Committee
Alaska House of Representatives
P.O. Box V
Juneau, Alaska 99811

RE: Senate Bill 472, An Act Authorizing the Department of
Natural Resources to Transfer the Creamery Formerly
Owned by Matanuska Maid, Inc.

Dear Representative Cotten:

Enclosed for your reference and review, please find a summary of my March 24 presentation to the Senate Finance Committee. In the summary, I have shown the reasons why this bill is critical for the survival of the Alaska dairy industry and, at the same time, I have detailed the cost benefits of SB 472 to Alaska and all Alaskans.

At minimum, SB 472 means jobs for Alaskans and it removes government from business. It provides for the dairy cooperative to lease the real estate and purchase the operating assets from the ARLF for 100% of the value of inventory, receivables, etc.; thus, the ARLF recoups its past investment in the creamery.

There are perhaps other ways to accomplish the transfer of the creamery but, I honestly believe, that there is no better way for the ARLF, Alaskans or dairy farmers than SB 472.

I believe that three and a half years of state control is more than enough and that now it is time to permit the farmers, whose very livelihood is dependent upon this creamery, to have an opportunity to "control their own destiny." Not unlike the thirteen colonies which "believed that their destiny should not be controlled by arbitrary dictation by bureaus in England, too far off to decide rightly and too little interested to have genuine concern,"

The Honorable Sam Cotten
April 30, 1988
Page Two

these twelve dairy farmers should have the right to self-determination. I believe that history will prove that in passing SB 472 you will have made the right decision.

I have also enclosed an "alternative fiscal note" which shows that there is a cash flow benefit to the ARLF of \$194,000 per year. This is submitted to refute the fiscal note prepared by DNR which showed a \$3,222,200 fiscal cost during 1989.

SB 472 is a fair, objective and equitable bill and, therefore, I ask your support.

Thank you very much for your time and consideration. I would be pleased to answer any questions that you have regarding this issue.

Sincerely,

Joseph Patrick Cange

Enclosure
cc: Members, House Resources Committee

RESTRUCTURE EXAMPLE

Restructure \$1,000,000 30 year term \$36,000/yr.
under ARLF Guidelines 8% \$1,080,000 Total

Restructure \$1,000,000 30 year term \$35,333/yr.
under ARLF Guidelines with Credit 2% \$1,059,999 Total

Rewrite \$1,000,000 30 year term \$80,000/yr.
standard payments 8% \$2,640,000 Total

Rewrite \$1,000,000 30 year term \$71,946.12/yr.
standard payments 8% with 2% Credit \$2,158,383.60 Total



Alaska State Legislature

HOUSE OF REPRESENTATIVES
COMMITTEE ON RESOURCES

POUCH V
JUNEAU, ALASKA 99811
(907) 465-3715

HOUSE RESOURCES COMMITTEE

LETTER OF INTENT

HCS CSSB 484 (Res)

It is the intent of the Legislature that the board of the Agricultural Revolving Loan Fund will restructure loans when the applicant is able to make a reasonable showing of the need for a restructuring. The Legislature strongly urges the Board to adopt a restructuring policy that will show the sensitivity needed for the agricultural industry to grow stronger over the long term. Farmers now substantially delinquent deserve the Board's immediate attention toward restructuring.

ADOPTED: _____, Co-Chair

DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: Powers of & loans made by
Aq Revolving Loan Fund Board
 Sponsor: Senate Judiciary/Request
 Requestor: Senate Finance Committee

Agency Affected: Dept of Natural Resources
 BRU: Agricultural Management
 Components: ARLF

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES		57.6	57.6	57.6	57.6	57.6
TRAVEL		3.0	3.0	3.0	3.0	3.0
CONTRACTUAL		-0-	-0-	-0-	-0-	-0-
SUPPLIES		1.0	1.0	1.0	1.0	1.0
EQUIPMENT		-0-	-0-	-0-	-0-	-0-
LAND & STRUCTURES		-0-	-0-	-0-	-0-	-0-
GRANTS, CLAIMS		-0-	-0-	-0-	-0-	-0-
MISCELLANEOUS		-0-	-0-	-0-	-0-	-0-
TOTAL OPERATING		61.6	61.6	61.6	61.6	61.6

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER		61.6	61.6	61.6	61.6	61.6
TOTAL		61.6	61.6	61.6	61.6	61.6

POSITIONS:

FULL-TIME		1	1	1	1	1
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Funds one Administrative Officer III, PFT/Palmer, at Range 21/A from the Agricultural Revolving Loan Fund.

Rick Halford

Prepared by: _____
 Division: Senator Rick Halford, Co-chairman
Senate Finance Committee

Phone: 465-3753
 Date: April 29, 1988

Approved by Commissioner: _____
 Agency: _____

Date: _____

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

SB 487

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AN ACT

Relating to the reorganization of private debt at a
Delta Project.

* Section 1. LEGISLATIVE FINDINGS. The legislature finds that the large grain farms that were developed on state agricultural land in the Delta Projects are subject to a personal debt load that is unmanageable because of a coincidence of unique and unforeseen circumstances:

- (1) the unforeseen difficulties with the limited growing seasons including the extremely short period in which the crops may be planted;
- (2) conflicts with the herds of bison located in the area;
- (3) the inadequate agricultural infrastructure in the area of the Delta Projects and in the state;
- (4) the depressed grain prices nationwide;
- (5) the unexpected problems with economic farm size.

* Sec. 2. (a) The commissioner of natural resources shall, at the request of an individual who holds agricultural rights to land purchased from the state in a Delta Project,

(1) accept the relinquishment of agricultural land purchased from the state in a Delta Project and credit the percentage of the debt owed to the state on land purchased and land clearing loans that equals the percentage of land relinquished under this section, either by acreage or by value, as determined by the commissioner;

(2) enter into an agreement with the individual for the lease for agricultural purposes only of a portion of or all of the land

Chapter 109

1 relinquished for a term of 20 years at the full fair market value of the
2 land; a survey under this paragraph, if required, shall be at the expense
3 of the individual.

4 (b) If an individual who has relinquished land under this section
5 applies before July 1, 1987 for a lease on all or part of the land relin-
6 quished, the lease shall provide the lessee an option to purchase the land
7 leased under (a)(2) of this section at full fair market value at the time
8 of purchase without reduction to reflect the remaining lease term.

9 (c) The commissioner of natural resources in consultation with the
10 Agricultural Revolving Loan Board may renegotiate with the individual loans
11 for chattels or farm improvements located on the agricultural land in a
12 Delta Project if the commissioner determines that renegotiation is neces-
13 sary to minimize financial losses to the state and that it is in the best
14 interest of the state.

15 * Sec. 3. The provisions of this Act are not available to an individual
16 participating in a federal farm program that provides monetary or other
17 incentives for keeping agricultural land in a Delta Project out of produc-
18 tion.

19 * Sec. 4. This Act is repealed July 1, 1988.

Eff. 9/5/86

MEMORANDUM

State of Alaska

DEPARTMENT OF LAW

TO: Judith M. Brady, Commissioner
Department of Natural Resources
Mark Weaver, Director
Division of Agriculture
Board of Directors
Agricultural Revolving Loan Fund

DATE: April 25, 1988

FILE NO: 661-87-0376

TELEPHONE NO: 276-3550

THRU: SUBJECT: ARLF Restructuring Guidelines

Bonnie Robson

FROM: Bonnie Robson
Assistant Attorney General
Commercial Section-Anchorage

The issue addressed by this memorandum is whether the Department of Natural Resources (DNR), Division of Agriculture (DOA), or Agriculture Revolving Loan Fund Board of Directors (ARLF Board) has authority to adopt and implement a program that extends the terms for, reduces the interest rates on, and forgives part of the principal of delinquent ARLF loans. The specific program giving rise to the need for this letter is described in the June 25, 1987 ARLF Board Guidelines for Restructuring (the Guidelines). 1/ For the reasons discussed below, DNR, DOA, and ARLF Board do not have authority to adopt and implement the Guidelines.

I. BACKGROUND INFORMATION

The Agriculture Revolving Loan Fund (the fund) was created by statute "to promote the more rapid development of agriculture as an industry . . . by means of long-term low-interest loans" for farm development, irrigation, farm product processing, land clearing, purchase of chattels, and operating expenses. AS 03.10.010, AS 03.10.030. DNR, in conjunction with the ARLF Board, made these types of farm loans under AS 03.10.010 et seq. from the fund's inception to present. Seventy-five percent of the loans became delinquent. In an effort to maximize return to the fund and minimize the number of farm foreclosures, DNR, DOA, and the ARLF Board conducted public hearings statewide, then adopted the Guidelines. Most notably, the Guidelines allow a delinquent borrower to: (1) aggregate loan balances, then repay 1/20th of the aggregate in each of the next 20 years; (2)

1/ A copy of the Guidelines is attached.

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pay 8 percent interest per year on 1/20th of the aggregate, but no interest on the remaining balance; and (3) have 1 percent of the aggregate forgiven for repaying the rewritten debt in 19 years instead of 20 years (2 percent forgiven for repayment in 18 years, 3 percent for 17 years, etc.).

Former Assistant Attorney General Joan Travostino issued an unpublished memorandum of advice on December 7, 1987 approving adoption and implementation of the Guidelines. Between December 7, 1987 and April 11, 1988, the ARLF Board approved 19 applications submitted under the Guidelines, finalized six of the 19 approved, and denied 22 applications. Another 60 applications remain to be considered.

II. THE STATUTES

The Alaska Agricultural Loan Act (AS 03.10.010 et seq.) authorizes making loans for farm development, irrigation, farm product processing, land clearing, purchase of chattels, and operating expenses. Farm development and irrigation loans "may not exceed a term of 30 years" and "shall bear interest at a rate that may not be less than 8 percent" AS 03.10.030(a)(4). Farm product processing loans "may not exceed a term of 30 years or bear interest that is less than 8 percent a year." AS 03.10.030(f). Land clearing loans "may not ... have a term in excess of 20 years" and "may not ... bear interest that is less than 8 percent." AS 03.10.030(g). "[A] chattel loan may not exceed a term of seven years" (AS 03.10.030(a)(1)) and "shall bear interest at a rate that may not be less than 8 percent" (AS 03.10.030(a)(4)). Operating loans are "to be amortized within one year" (AS 03.10.030(c)); no interest rate is specified by statute for operating loans.

There are only two statutory provisions for deviation from the maximum terms of loans or minimum interest rates for loans. A one-year operating loan "may be extended for up to three years by the Agricultural Revolving Loan Fund Board, in the discretion of the Board." AS 03.10.030(c). And DNR may "establish amortization plans for repayment of loans, which may include delayed payments of principal and interest for not to exceed five years." AS 03.10.020(a)(4).

III. STATUTORY INTERPRETATION AND APPLICATION

Three principles of statutory interpretation are pertinent: (a) "shall" and "may not" are mandatory, (b)

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administrative bodies have only those powers given them by the legislature, and (c) inclusion of specific powers presumptively excludes those not enumerated.

A. "Shall" And "May Not" Are Mandatory

By statute, each farm loan "shall bear interest at a rate that may not be less than 8 percent." And, depending on the type of loan, each farm loan "may not exceed a term of [X] years," where X is 1, 7, 20, or 30. AS 03.10.030 (emphasis added).

According to the Alaska Supreme Court, "the use of the word 'shall' in a statute denotes mandatory intent." Fowler v. City of Anchorage, 583 P.2d 817, 820 (Alaska 1978). 2/

The Alaska Supreme Court has not interpreted the words "may not." However, 2A C. Sands, Sutherland Statutory Construction, § 57.09 (4th ed. 1984) states:

One of the strongest indications of what construction should be given a statutory provision may be found in the use of negative [or] prohibitory ... words. Where statutory restrictions are couched in negative terms they are usually held to be mandatory.

"May not" is negative or prohibitory, and hence mandatory.

Applying these rules of statutory construction to AS 03.10.030, one must conclude that the maximum loan terms of 1, 7, 20, and 30 years are mandatory, as is the minimum interest rate of 8 percent per year. Being mandatory, DNR, DOA, and the ARLF Board cannot extend a loan's term beyond the statutory maximum or reduce its interest rate below the statutory minimum.

B. Administrative Bodies Have Only Those Powers Given Them By The Legislature

DNR, DOA, and the ARLF Board are administrative

2/ Unless the context otherwise indicates, which is not the case here.

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agencies or boards. Administrative bodies are purely creatures of legislation without inherent or common law powers. As a general rule, administrative bodies are entitled to exercise only those powers as are conferred on them by the legislature, expressly or by necessary implication. 2A C. Sands Sutherland Stat. Const. § 65.01 (4th ed. 1984).

The federal Agricultural Credit Act of 1978 provides an example of an express grant of power from a legislature to an administrative body to extend the term of a loan, reduce its interest rate, and forgive principal (among other things). 7 USC § 1981(d) states:

The Secretary [of Agriculture] may ... compromise, adjust, reduce, or charge-off claims, and adjust, modify, subordinate, or release the terms of security instruments, leases, contracts, and agreements entered into or administered by the Farmers Home Administration under any of its programs, as circumstances may require The Secretary may release borrowers or others obligated on a debt incurred under this chapter from personal liability with or without payment of any consideration at the time of the compromise, adjustment, reduction, or charge-off of any claim, except that no compromise, adjustment, reduction, or charge-off of any claim may be made or carried out ... on terms more favorable than those recommended by the appropriate county committee

Unlike the federal Agricultural Credit Act, the Alaska Agricultural Loan Act (AS 03.10.010 et seq.) does not expressly confer powers on any administrative body to extend the term of a loan, reduce its interest rate, or forgive principal, except that: (1) the ARLF Board may extend a one-year operating loan for up to three years (AS 03.10.030(c)), and (2) DNR may establish amortization plans which may include delayed payments of principal and interest for up to five years (AS 03.10.020(a)(4)).

Whether or not the Alaska Agricultural Loan Act vests DNR, DOA, or the ARLF Board with the powers in question by implication is a more difficult issue.

[T]o authorize the supplying of a power by implication . . . it is not sufficient that the act is

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advantageous or convenient to the major power conferred, or even effectual in the exercise of it. The power to be supplied by such process must be practically indispensable and essential in order to execute the power actually conferred.

2A C. Sands, Sutherland Stat. Const., § 55.03 (4th ed. 1984).

The ARLF Board has by implication the power to draft and require fund borrowers to sign promissory notes and security instruments, as this power is "practically indispensable and essential in order to execute" its express power to make farm loans. However, extending the terms of loans beyond the mandatory maximum, reducing interest rates below the mandatory minimum, and forgiving principal ^{3/} would be contrary to the express statutory language. Furthermore, these powers are not "practically indispensable and essential in order to execute" the express power to make farm loans. Consequently, the power to make these changes cannot be implied. This remains true even though the powers in question are advantageous and convenient to the power to lend, and effectual in the exercise of the power to lend.

C. Inclusion Of Specific Powers Excludes Those Not Enumerated

In Burrell v. Burrell, 696 P.2d 157, 165-166 (Alaska 1984), the Alaska Supreme Court interpreted an Alaska statute unrelated to agriculture. Nonetheless, the rule of interpretation established in Burrell is controlling here:

The court's power to modify a final judgment in a divorce suit is limited by the terms of AS 09.55.226 to those arrangements providing for the support and care of minor children, alimony and maintenance payments. It is an accepted rule of statutory construction that to include specific terms presumptively excludes those which are not

3/ Whether or not DNR or the ARLF Board has authority to forgive principal is answered in the negative by the January 31, 1986 memorandum of advice of Assistant Attorney General John McDonagh. A copy of that memorandum is attached.

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enumerated. 2A C. Sands, Sutherland Statutory Construction §§ 47.23-47.24 (4th ed. 1973). In keeping with this precept, we have held that "AS 09.55.220 does not give a court authority to modify a decree as it relates to property rights" Allen v. Allen, 645 P.2d 774, 776 (Alaska 1982); Stone v. Stone, 647 P.2d 582, 584-585 (Alaska 1982).

(Emphasis added, footnote omitted.)

The Alaska Agricultural Loan Act expressly grants administrative bodies certain powers to vary terms of repayment. AS 03.10.030(c), AS 03.10.020(a)(4). Under the most liberal interpretation, these provisions allow the ARLF Board to extend an operating loan from one to three years, and allow DNR to delay the due dates for principal and interest on farm development, irrigation, farm product processing, land clearing, and chattel loans for five years. Under the Burrell, supra, rule of statutory construction, the legislature's inclusion of language allowing administrative bodies to extend the terms of operating loans by an additional two years beyond the otherwise mandatory maximum of one year, and to delay for up to five years the due dates for other farm loans, presumptively excludes related but not enumerated powers, such as powers to extend the terms of 7 year chattel loans and 20 year land clearing loans beyond those maximum periods, respectively, reduce interest rates from 8 percent to an effective rate of less than 1 percent, and forgive principal.

IV. PRIOR OPINION APPROVING ADOPTION AND IMPLEMENTATION OF GUIDELINES

As noted earlier, former Assistant Attorney General Joan Travostino's December 7, 1987 unpublished memorandum of advice approved adoption and implementation of the Guidelines. A copy of that memorandum is attached.

The approval contained in that memorandum was reached by reviewing federal regulations on servicing farm loans, noting that extending terms and reducing interest rates are labelled as "loan servicing functions," and concluding that the Alaska Agricultural Loan Act implicitly grants ARLF the power to perform these "loan servicing functions" where necessary to maximize returns on loans.

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As noted in Part III, above, by statute Congress expressly granted DNR's federal counterpart authority to extend terms, reduce interest rates, and forgive principal. 7 U.S.C. § 1981(d). This federal statute enabled promulgation of those "loan servicing" regulations which allow term extension and interest rate reduction. The statute, and not the "loan servicing function" label, provides authority. To the extent inconsistent with this opinion, the December 7, 1987 memorandum is superceded.

V. INTERPRETATION OF STATE REGULATION

Regulations have been promulgated under the Alaska Agricultural Loan Act. One regulation specifically addresses modification of loan terms. 11 AAC 39.311 states:

OTHER LOAN ACTIONS BY BOARD. (a) ... [A] change in loan terms will not be granted without the approval of a majority of the board

(b) A change in loan terms includes, but is not limited to, a change in interest rate, loan amount, maturity date, amortization schedule, payment date, or collateral

A regulation is valid only if consistent with the statute under which it was promulgated. AS 44.62.030. See Kalmakoff v. State Commercial Fisheries, 693 P.2d 844, 853 (Alaska 1985); 1A C. Sand Sutherland Stat. Const. § 31.02 (4th ed. 1985). Therefore, 11 AAC 39.311 must be read in conjunction with the Alaska Agricultural Loan Act and interpreted so as to be consistent with that act. When so read and interpreted, we believe 11 AAC 39.311 allows the ARLF Board to reduce a theoretical borrower's interest rate from, say, 10 percent to the minimum statutory rate of 8 percent, or extend the maturity date of a five-year chattel loan to the maximum statutory term of seven years. 4/ However, it cannot be read to permit the ARLF Board to change the term of a loan in a manner which would be inconsistent with express statutory limitations on the various loan terms. Also 11 AAC 39.311

4/ These powers are of little practical value since all farm loans have been made at the minimum interest rate, and almost all at the maximum term.

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may not be interpreted to allow a "change in ... loan amount" through principal forgiveness, since statutory authority to forgive principal is lacking. 5/

VI. CONSEQUENCE OF LACK OF AUTHORITY

Whether DNR, DOA, and the ARLF Board possess authority to implement the Guidelines may be the subject of litigation. Three potential formats for litigation are discussed below; others may exist. The discussion below is included only to reveal potential losses and liabilities; it should not be interpreted as an endorsement of allegations that could be made by adverse parties or as an admission of liability.

A. ARLF Sues Borrower on Restructured Debt

ARLF has already restructured six borrowers' debts. Should one of these borrowers stop making payments on the debt as restructured, the Attorney General's Office would file a debt collection action on behalf of ARLF to enforce the restructured note and security instruments. The borrower might raise as a defense the administrative bodies' lack of statutory authority to execute the restructured note and security instruments.

Contracts that violate statutes might be unenforceable. Were the restructured note and security instruments entered into by two private parties, an Alaska court would apply the Restatement (Second) of Contracts § 178 to determine enforceability. Brown v. Baker, 688 P.2d 943 (Alaska 1984). The Restatement provides:

§ 178. When a Term is Unenforceable on Grounds of Public Policy

(1) A promise or other term of an agreement is unenforceable on grounds of public policy if legislation provides that it is unenforceable or the interest in its enforcement is clearly outweighed in the circumstances by a public policy against the enforcement of such terms.

5/ See footnote 3.

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(2) In weighting the interest in the enforcement of a term, account is taken of

(a) the parties' justified expectations,

(b) any forfeiture that would result if enforcement were denied, and

(c) any special public interest in the enforcement of the particular term.

(3) In weighing a public policy against enforcement of a term, account is taken of

(a) the strength of that policy as manifested by legislation or judicial decisions,

(b) the likelihood that a refusal to enforce the term will further that policy,

(c) the seriousness of any misconduct involved and the extent to which it was deliberate, and

(d) the directness of the connection between that misconduct and the term.

However, the parties to restructuring are not both private. The highest courts of other states hold that contracts between a governmental entity and private party which violate a statute are not subject to a balancing test, but are void and unenforceable. Chemical Bank v. Washington Public Power Supply System, 666 P.2d 329, appeal after remand 691 P.2d 524, certiorari denied Haberman v. Chemical Bank, 105 S.Ct. 2140, 471 U.S. 1065, 85 L.Ed.2d 497 and 105 S.Ct. 2154, 471 U.S. 1075, 85 L.Ed.2d 510; Noel v. Cole, 655 P.2d 245 (Washington 1982); First Equity Corp. of Florida v. Utah State Univ., 544 P.2d 887 (Utah 1975); Martin v. City of Corning, 101 Cal. Rptr. 678 (Cal. App. 1972).

The Alaska Supreme Court has not clearly stated whether it will apply Restatement (Second) of Contracts §178 or the rule employed by other states' courts when one of the parties to an illegal contract is a governmental entity. However, a recent opinion suggests the latter, which would render void the restructured notes and security instruments. McBirney &

Judith M. Brady
Mark Weaver
ARLF Board of Directors

April 25, 1988
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Associates v. State of Alaska, P.2d ____, Op. No. 3298 (Alaska, April 15, 1988) ("The state has an established procurement process which includes competitive bidding McBirney's conduct violated the state's procurement process and the resulting contract was void.") See also King v. Alaska State Housing Authority, 512 P.2d 887, 891 (Alaska 1973). ("A public corporation cannot bind itself to any contract which is beyond the scope of its powers.")

Should the restructured notes and security instruments be held void, then ARLF could only sue delinquent borrowers on their original notes and security instruments. However, claims on many of the notes and instruments might soon be barred by the applicable statutes of limitations. There will be no recovery on claims barred.

B. ARLF Sues Borrower On Original Debt

Should ARLF sue a restructured borrower on his original notes and security instruments, the borrower will claim that, in reliance on ARLF's representation that his debt has been restructured, he rearranged his financial affairs so that he is no longer to pay the original notes according to their terms. This defense will: (1) increase the expense of litigation, (2) delay the entry of any judgment against the borrower, (3) possibly reduce the amount of any judgment, and (4) possibly result in court imposition of "equitable" repayment terms.

C. Taxpayer Sues

Restructuring reduces the amount of ARLF's claim against a borrower, although it is intended to increase the amount of ARLF's recovery from the borrower. A taxpayer might sue to prevent reductions in claims.

To sue, a taxpayer must have standing. Important considerations in determining whether a taxpayer has a sufficient personal stake in the outcome of such a suit to vest the taxpayer with standing are: (1) whether specific constitutional provisions have been violated, (2) the potential economic impact on the state treasury, and (3) whether there is anyone in a better position to litigate the issue. Hoblit v. Commissioner of Natural Resources, 678 P.2d 1337, 1340-1341 (Alaska 1984).

Here: (1) specific constitutional prohibitions may not be implicated, but specific statutory prohibitions are, (2) the

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maximum potential economic impact on the Agricultural Revolving Loan Fund is to reduce claims by \$21,156,000, 6/ and (3) a potential ARLF borrower is probably in a better position to litigate the issue than a taxpayer. Because the farm loan fund is a revolving fund, the potential ARLF borrower stands to lose more than the taxpayer if the net effect of implementation of the Guidelines is to reduce the fund. Consequently, while a taxpayer may not have standing to challenge the implementation of the Guidelines, a potential ARLF borrower might. A successful challenge could invalidate the Guidelines and void agreements entered into under the Guidelines.

VII. CONCLUSION

In our view, DNR, DOA, and the ARLF Board are without authority to adopt or implement the June 25, 1987 Restructuring Guidelines. The legislature may grant this authority to DNR, DOA, or the ARLF Board, but has not yet done so.

BR:cmh

Enclosures

6/ Balances outstanding on delinquent ARLF loans total approximately \$30,000,000. Eight percent (8%) interest on \$30,000,000 payable over 20 years is \$31,116,000. Interest calculated under the Guidelines on \$30,000,000 payable over 30 years equals \$9,960,000. \$31,116,000 minus \$9,960,000 is \$21,156,000. \$21,156,000 is the maximum potential reduction of claims. However, since roughly half of the applications for restructuring considered to date have been denied, the actual reduction in claims would be less.

ARLF FILES IN THE ATTORNEY GENERALS OFFICE

Alamasu, Inc. *	\$ 731,148.98	Jurgens, *	\$ 16,062.00
Alaska Fur Farms	\$ 236,038.17	Kachelmeier	\$ 47,277.75
AK Golden Nugget Pot. Chip	\$ 363,593.41	Karr, Richard	\$ 180,180.00
Anchor Renewable Farms	\$ 198,111.60	Keaster, Charles *	\$ 235,080.29
Arden Farms	\$ 250,186.00	Kelley, Laura	\$ 23,293.00
Bannon, Jesse and Wesley	\$2,285,175.57	Kilmurray, Brendon	\$ 300,509.58
Bearson, Myron	\$ 430,805.00	Kratzer, Donald	\$ 77,425.36
Beaver, Roy	\$ 128,386.52	Lasley, Jimmy	\$ 308,726.42
Blyth, James	\$ 40,259.22	Mays, Wm. David *	\$ 22,304.00
Bradley,	\$ 29,695.01	Mead	\$ 5,000.00
Brehmer, Gerald *	\$ 655,262.97	Melin	\$ 19,320.00
Brown, Victor	\$ 101,412.84	Melton, Len	\$ 886,096.75
Buck and Kirsch *	\$ 270,177.01	Miller, Terry	\$ 334,780.02
Cange, Charles	\$ 76,921.00	Mitchell, Earl	\$ 459,686.46
Carlson, Charles	\$ 56,085.29	Mulligan, Patrick	\$ 962,274.11
Carlson, Lyle	\$ 113,547.19	Muth and Sons, Inc.	\$ 182,891.88
Crook	\$ 83,452.34	Olson, Arnold	\$ 3,500.00
Crowson	\$ 454,929.65	Olson, Manvil	\$ 533,819.57
Dairy West * (Lee)	\$1,252,305.00	Orcutt Farms	\$ 460,973.35
Delta K	\$ 133,226.78	Peninsula Grnhs	\$ 935,202.50
Ditchen, Carl	\$ 650,150.00	Peterson, Alan	\$ 651,131.83
Eberhardt, Bernard	\$ 86,453.00	Petty, Larry *	\$ 88,564.52
Engellant	\$ 603,559.23	Porter,	\$ 19,034.29
Evans, Dorothy	\$ 3,732.97	Richards, Ronald	\$ 15,000.00
Far North Aplary	\$ 27,912.00	Roberts, Bruce *	\$ 30,290.00
Fett, Lee and Marie	\$ 275,051.00	Rutt, John	\$ 690,396.65
Fielding, Thomas	\$ 93,167.42	Saylor	\$ 333,722.19
Fretwell,	\$ 48,000.00	Schade, Lloyd	\$ 163,078.34
Gentz, Wayne and Patricia	\$ 395,129.37	Schenk, Neil	\$ 504,891.41
Gerstle River Farms	\$ 667,700.00	Schmidt	\$ 239,086.12
Gilliland (Gold n Honey)	\$ 52,996.25	Schweigert	\$ 41,482.18
Golden Valley	\$ 454,002.86	Smith, Evander	\$ 550,198.00
Green, Dennis *	\$ 823,613.61	Smith, Howard	\$ 45,600.00
H & R Farms *	\$1,028,280.52	Snowcrest Farms	\$ 740,742.97
Hartman, Albert	\$ 130,324.49	Spears/OHM	\$ 227,456.00
Heather Farms	\$ 268,771.00	Stromberg, Gary	\$ 30,852.53
Heaton, Richard	\$ 968,464.13	Taggo	\$ 43,914.66
Hendershot, Ed	\$ 211,871.00	Thom, Robert	\$ 553,466.70
Holcomb, Steve *	\$ 252,246.91	Thomas, Alvin	\$ 6,056.00
Ingalls, Gayland	\$ 40,723.33	Vickaryous, James	\$ 7,309.05
Jacobson, Doug & Shirley	\$ 146,118.00	Wassink, Harry	\$ 668,917.63
Jenn, Eugene	\$1,023,465.00	Wener,	\$ 29,812.00
Johnson, Javid *	\$ 14,413.00	Willard, Bruce	\$ 70,718.52
Johnson, Elvin "Bud" *	\$ 939,125.00	Wright, Sande	\$ 985,075.77
Joyce, Mickey	\$ 29,625.97	Zimmerman, Ed	\$ 659,783.44
	17,125,615.61		13,390,983.84

* Board Action of 4/13/88