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What is CFAB?

Alaska Commercial Fishing and Agriculture Bank (CFAB) began operations in 1980. Its sole mission is to provide financing of all kinds to the commercial fishing industry and the agriculture industry (including timber) in Alaska.

What kinds of loans and repayment programs are available from CFAB?

CFAB can make loans for almost any fishing-related or farming-related purpose. The most common purposes are the purchase, modification, or refinancing of a vessel; purchase of a limited entry permit; gear, engine, or equipment replacement or upgrade; general operating capital; and fish processing, etc. There are no "standard" repayment terms or programs — we work with each applicant to determine a repayment schedule appropriate to that particular loan transaction.

Who may borrow from CFAB?

In order to be eligible for consideration as a CFAB borrower, an applicant must be commercially involved in one of the industries mentioned earlier. An individual applicant must be a bona fide Alaska resident. A partnership must be comprised of Alaska residents. If the applicant is a corporation, the majority ownership and control must rest with Alaskans. There are some exceptions to the latter rule for companies which are involved in shorebased fish processing.

Eligibility, however, is only a first step. To obtain a CFAB loan, an applicant must be found by CFAB to be capable and creditworthy within the context of the specific loan request. The standards used by CFAB are essentially the same as those of any responsible lender. However, CFAB's specialized purposes, and the experience we have gained, may permit us to consider a broader range of applicants than do most other lenders.

Who owns CFAB?

CFAB is a cooperative. This means that each borrower becomes an owner through a modest purchase of CFAB stock when a loan is made. The State of Alaska is also an owner. CFAB was established by a special Alaska statute, and the State made an initial investment of "seed money" — that money is expected to be returned to the State as borrowers' ownership grows.

Does that mean the State operates CFAB?

CFAB's statute provides for it to be operated as a private cooperative rather than as a State agency. Its basic policies and directions are established by a seven-person Board of Directors, which hires professional management and staff to operate the business. Five of the Directors must be borrower-owners of CFAB and are elected by the total borrower-ownership. The other two Directors are appointed by the Governor of Alaska. All Directors' terms are for three years. CFAB holds an ownership meeting each year — borrower-owners have the opportunity to vote on important matters, to receive reports from Directors and management, and to elect Directors. The State's stock is non-voting, although CFAB provides periodic reports to State officials.

Where does CFAB get its money to loan?

CFAB is not limited as to its source of funds. Since its inception, CFAB has borrowed funds for re-lending from the Federal Farm Credit System.

What is CFAB's interest rate and how is it set?

Although CFAB occasionally makes fixed rate loans, the vast majority of its loans are on a variable rate basis. That is, the rate will change — up or down — as CFAB's costs change. There is

no single initial rate — the initial rate is based on the kind of loan involved. Most important is that we have a procedure to objectively analyze the creditworthiness of each individual applicant. This permits us to offer the most favorable interest rates to the most desirable risks. CFAB's interest rates overall are set to provide sufficient income to pay its own interest costs and operating expenses and to provide a small margin. Since CFAB is a cooperative, any margin actually produced is either returned to the borrower-owners or otherwise used to their benefit.

How does one do business with CFAB?

CFAB has one office, located in Anchorage. However, there is also a network of independent Loan Correspondents throughout Alaska. If you are a loan applicant in dealing with CFAB, we are glad to tell you where there's one near you. If you believe you might be eligible, need a loan, or want to learn more, just write to CFAB — we'll be glad to help you and ask to speak with a loan officer.



Alaska Commercial Fishing & Agriculture Bank
P.O. Box 92070
Anchorage, Alaska 99509-2070
(907) 276-2007

For What Kinds Of Loans Can CFAB Accept The Pledge Of My Limited Entry Permit As Collateral?

There are essentially two kinds. One is specific - the other is broad. The first, specific, kind is a loan for the purchase of the limited entry permit itself (ordinarily, such a loan will be for an amount which is less than the actual permit purchase price). An applicant for such a loan must have been an Alaska resident for a continuous period of two years immediately preceding the application date. The applicant must also obtain a certification from the Alaska Commercial Fisheries Entry Commission that he or she is qualified under that commission's regulations to purchase the permit.

What's The Other Kind?

The other kind can best be described as, "For any fishing-related purpose." These would be cases in which the applicant is already the owner of the permit. Also, in such cases, only CFAB's basic one-year residency requirement must be met. A limited entry permit may be pledged as collateral (or part of the collateral) for a loan for the purpose of:

1. Purchase, repair, restoration, or improvement of a commercial fishing vessel or commercial fishing gear;
2. Construction of a commercial fishing vessel;
3. Purchase or improvements of set net sites and related equipment;
4. Most fishing-related working capital or seasonal operating requirements.

Can My Permit Be Used As Collateral For More Than One Loan?

Yes, if each of the loans involved is for one or more of the purposes mentioned above. For

example, if your permit is pledged as part of the collateral for a 10-year vessel purchase loan, and three years later you request an additional term loan for a major gear purchase, your permit may be considered as eligible partial collateral for the second loan as well.

Can I Use My Permit As Collateral For A Loan To Refinance Other Debts?

Yes, if all of the proceeds of the refinanced debts were used for one or more of the fishing-related purposes mentioned earlier.

I Wasn't Aware Of All This - Has CFAB Always Accepted Limited Entry Permits As Collateral For Such A Broad Range Of Loans?

No. The 1987 Alaska State Legislature changed the statute under which CFAB operates in a way which recognizes a limited entry permit as a significant business asset and greatly broadens the ways in which it may be used in the financial structuring of a commercial fisherman's business. The changes became effective in mid-1987.

So It Really Sounds Like Anybody Who Owns A Limited Entry Permit Can Borrow Money From CFAB, Doesn't It?

It may sound like that - but a more realistic way to say it is that any resident Alaska commercial fisherman is eligible to be considered for financing by CFAB. CFAB's business is to make sound and constructive loans. The granting of a loan to a fisherman is always subject to CFAB's evaluation of creditworthiness. While the existence and value of collateral are significant considerations, there are many other equally important credit factors. Because a limited entry permit is a basic and very

important element of every commercial fisherman's business, it should not be exposed to unreasonable risk in any loan transaction.

Is CFAB Telling Me That I'm Risking My Limited Entry Permit If I Use It As Collateral?

Yes. In that respect, it's no different than any other kind of collateral; and one of the purposes of collateral is to provide an ultimate source of repayment of the loan if the expected sources don't materialize. CFAB will not make a loan unless we are satisfied that there is a willingness and an ability to repay it. Nevertheless, commercial fishing involves unusual risks of all kinds, and in rare cases there are serious failures. In those cases, CFAB or any other lender will usually exercise its right to foreclose no matter what the collateral might be.

Now That I've Learned All This - I'm Ready To Talk To CFAB About A Loan. How Do I Do That?

That's easy. You can write to CFAB at the mailing address below; drop in to see us at 2550 Denali St., Suite 1201, in Anchorage; or call (907) 276-2007, just ask for a loan officer.

Alaska Commercial Fishing & Agriculture Bank
P.O. Box 92070
Anchorage, Alaska 99509-2070

CFAB Toll-Free Number
1-800-544-2228

Alaska Commercial Fishing and
Agriculture Bank (CFAB) is the only
lender with legal authority to
accept the pledge of a limited entry
permit as collateral for a loan to an
Alaska commercial fisherman. The
next few pages are to summarize for
Alaska commercial fishermen the
circumstances under which their
limited entry permits may be
effectively used for productive
business (real) purposes.



Limited Entry Permits
CFAB
And You

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FISCAL NOTE

REQUEST:

Revision Date: _____
Title: Commercial Fishing and Agri-
culture Bank
Sponsor: Zarhoff, Sturgulewski, et al
Requestor: Senate Resources

Agency Affected: Commerce & Econ. Dev.
BRU: Banking and Securities
Components: Securities

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
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	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

No fiscal impact.

Prepared by: L.P. Carroll, Senior Securities Examiner Phone: 465-2521
Division: Banking and Securities Date: 01/17/89

Approved by Commissioner: Larry Mercurieff S PM Date: 1/18/1989
Agency: Dept. of Commerce and Economic Development

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)
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2550 Denali Street, Suite 1201
P. O. Box 92070
Anchorage, Alaska 99509-2070
(907) 276-2007

March 24, 1989

Dave Harrison
Office of Representative Zawacki
Post Office Box (MS 3100)
Juneau, Alaska 99811

Dear Mr. Harrison,

To follow up on our recent conversation concerning Section 2 of SB82, I thought you might be interested in the enclosed. It is an excerpt from an American Bankers Association pamphlet which discusses loan participations.

Although the pamphlet addresses the purchase of a loan participation by a bank from another bank, the basic characteristics of such a loan participation are the same as would apply to CFAB's participations as contemplated by SB82. I would call your attention to the final paragraph in particular, which summarizes the basic rights of a loan participant.

For the record, and in response to your understandable concerns, I would stress again: No, neither Section 2 nor any other part of SB82 provides or creates an opportunity for any person or entity, other than an individual resident Alaska fisherman, to become the owner of an Alaska limited entry permit.

Very truly yours,

Edward E. Crane
President

EEC:dmv
Enclosure

Introduction

Definition of Participations

At the time a bank enters into a lending arrangement with a borrower, or some time thereafter, it may wish to sell a portion of the loan to another bank. On the other hand, there may be instances where a bank may wish to purchase a portion of a loan made by another bank. Such a sale or purchase may occur in connection with short-term borrowings, term loans, acceptance financings, letters of credit or other forms of extension of credit.

For purposes of this discussion, the term "Originating Bank" is used to indicate the bank that seeks to sell a participation to another bank and the bank that purchases the participation is referred to as the "Participant."

Distinguishing from Syndications

A distinction should be made between a participation arrangement and a syndication. In the latter case, all the banks involved in the syndicate enter into a direct contractual relationship with each other and the borrower by signing one agreement. Each member of the syndicate usually receives its own promissory note and shares directly in any collateral given as security, although one bank may act as an agent for the rest of the syndicate in holding the collateral and performing administrative functions.

A syndicate member may, if the agreement does not prohibit participations, sell a participation to a Participant that may not be a party to the syndicated agreement and thereby sell all or a part of its portion of the syndication to such Participant.

Relationships Among the Parties

Originating Bank and Borrower

Even when a participation is contemplated, documentation is usually executed only by the Originating Bank and the borrower. Any promissory note or notes evidencing the obligation are payable only to the Originating Bank; any security interest in collateral is granted only to the Originating Bank; and any public recordation of such security interest shows only the Originating Bank as the secured party.

With respect to credit arrangements involving a commitment by the Originating Bank to advance one or more loans to the borrower, special considerations arise if it is contemplated that a portion of each loan will be purchased by a Participant. If the Participant defaults on its obligation to the Originating Bank by failing to purchase a previously agreed on percentage of a loan that the Originating Bank is committed to make to the borrower, the Originating Bank would still be obligated under the contract to lend the full amount of the loan to the borrower.

Nonperformance by a Participant does not relieve an Originating Bank of its contractual obligation to the borrower. *Therefore, when the bank is the Originating Bank, it must be satisfied as to the creditworthiness and reliability of the Participant as well as the borrower.*

Originating Bank and Participant

The essential transaction between the Originating Bank and the Participant is the sale by the Originating Bank to the Participant of an undivided share in a credit extended to the borrower. The Participant obtains an undivided share in any promissory note or notes or other obligations evidencing the debt and in any collateral given as security for such debt. This sale usually is evidenced by a participation certificate.

In other cases, such as the sale of a participation in loans to be made pursuant to a revolving

credit commitment or in any obligation in connection with a letter of credit, the participation certificate is supplemented by a participation agreement entered into between the Originating Bank and the Participant. *Since the terms of participation agreements vary from case to case, counsel should be consulted whenever such an agreement is required.*

Ordinarily, the Originating Bank's responsibility to a Participant is only to account for the Participant's share of all monies received from the borrower in connection with the loan (principal, interest, fees, etc.), including monies received as a result of collection and foreclosure on collateral. The Originating Bank usually does not make any representation or warranty or give any assurances to the Participant with respect to the validity or enforceability of the original obligation or any guarantee or security connected thereto.

In almost all cases, the participation agreement requires the Participant to reimburse the Originating Bank for (or indemnify the Originating Bank against) the Participant's pro rata share of expenses (including legal fees) in connection with collection of the loan or foreclosure of the collateral, to the extent those expenses are not paid by or recovered from the borrower. This provision recognizes that the Participant, which owns a proportionate share of the loan, must bear its proportionate share of the costs of collection.

Some participation agreements also provide for the sharing—sometimes on a proportionate basis and sometimes on a relative fault basis—of liability and expenses that result from the borrower's assertion of lender liability claims against the Originating Bank or the Participant. But such provisions have not become as universal as collection-cost sharing provisions.

A Participant should be satisfied as to the ability of the Originating Bank to service the loan adequately, particularly in the case of asset-based loans and other specialized kinds of lending that require specific expertise and organizational strengths.

In addition, a Participant should be satisfied

with the creditworthiness of an Originating Bank. The insolvency of an Originating Bank leads to many administrative and legal complexities, some of which have not yet been resolved.

An Originating Bank should be aware of its responsibilities to a Participant. A participation certificate and any participation agreement should require the Originating Bank to supply financial and other information to a Participant. The Originating Bank should be fully responsive to all inquiries regarding the financial condition of the borrower, particularly if there is a deteriorating credit situation.

Borrower and Participant

A Participant has no direct contractual relationship with the borrower and should not assume that it will be able to seek to enforce the underlying agreement or the promissory note or notes evidencing the obligation. Also, the Participant cannot proceed to enforce any security interest in any collateral, seek payment from a guarantor of the obligation, or exercise any right of set-off against property of the borrower which is on deposit with the Participant.

465-2718

To Ed Crane, President & CEO CFAB

From Pete Spivey, Rep. Jacko's office

Ed: The copy of Donley's letter is too poor to FAX. Here's what he asked Legislative Legal Services:

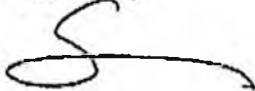
1. What can members and other individuals, corporations, partnerships and joint ventures do under SB 82 that they cannot do under current law?
2. Historically, there have been strong sanctions against any entity other than an individual person from owning or having a controlling interest in a limited entry permit. Could SB 82 dilute an individual's control over a limited entry permit by allowing members or other individuals, corporations, partnerships, and joint ventures to "carry the paper" or otherwise assume some proprietary interest in a permit?
3. Could these groups exert control over a particular permit holder or group of permit holders in a particular fishery if they established a proprietary interest in enough permits in a given area or fishery under the changes proposed in SB 82? How is this different than what could happen under current law?
4. How is the relationship between a permit owner and a bank that has provided financing for a particular permit, as is often the case under current law, different than the kind of relationship that may occur between a permit owner and a member or other individual, a corporation, a partnership or a joint venture that has provided financing for a permit? How would the relationship differ if the permit owner were also a member of the corporation, partnership or joint venture that provided financing?
5. Under Section 8 of SB 82, a bank may sell a permit to an individual commercial fisherman who has been a state resident for two years immediately preceding the date of the sale. Why may instead of shall? What is to prevent a bank from "handpicking" individuals over whom they may be able to exert some control in so far as how that permit holder may work the fishery? Again, can this

section result in a situation where some entity other than an individual may exert control over a fishery?

This letter went to Jack Chenoweth on March 27.

Ed, if you can provide us with information on each of these questions, I'd appreciate it.

Thanks,

A handwritten signature in black ink, appearing to be 'Spivey', with a large, stylized initial 'S' that loops around and extends to the right.

Spivey

*** M E M O R A N D U M ***

TO: Pete Spivey - Representative Jacko's Office

FROM: Ed Crane

DATE: April 3, 1989

SUBJ: CFAB Responses to March 30, 1989, Memo/Questions

1) Under Section 2 of SB82, individuals, partnerships, corporations, and joint ventures may purchase participations in loans made by CFAB. (More accurately, SB82 provides CFAB the authority to sell participations to those persons or entities.)

2), 3) and 4) There is nothing -- absolutely nothing -- in SB 82 which in any way modifies or changes existing laws or regulations regarding limited entry permit ownership. SB82 does not touch on limited entry permit ownership in any way, and does not give any party, including CFAB, any new rights or abilities to influence or control or direct the ways in which permits -- generally or in any specific case -- are used.

CFAB is a lender and, with respect to any borrower (whether or not permit collateral is involved), has only the rights permitted under commercial law and AS44.81. Those rights are formalized in a contractual relationship (the loan documentation) between CFAB and the borrower. CFAB has only the ability to enforce, or require performance under, that contract -- and the borrower has the same rights. There is essentially no difference from the relationship between a car owner and the bank which financed the car's purchase -- the bank may demand that the loan terms be met (i.e., principal and interest payments as scheduled, and insurance coverage on the car) but it cannot somehow direct the way in which the car is driven.

There is no relationship (at least, none which arises from the transaction itself) between a borrower and the party which purchases a participation in the loan. The participant's relationship is with the lender and, again, it is a contractual relationship. It involves primarily intangible and financial rights. It does not involve the ability or authority of the participant to direct the lender's actions, nor does it provide an opportunity for the participant to step into the lender's shoes.

SB82 is the result of an effort by CFAB to find a way to address a specific problem common to Alaska permit holders, particularly in

rural communities. In discussing SB82 with legislators and others, CFAB has described its application to that specific problem and has cited a "classic" father-daughter or father-son situation as an example. In that example, the father winds up being the permit seller, the participation purchaser, and -- potentially -- the person who assumes the obligation and re-acquires the permit if the son or daughter fails. That may be confusing: Even though only one person fills those three roles, they do represent three different roles and they could just as easily be three different persons. The language of SB82 -- particularly Section 2 -- is crafted to provide the flexibility necessary to accommodate a "real world" variety of situations. There is a need for such flexibility even to address some transactions that fall within the scope of the "target" problem. It is not unusual for a fisherman to carry on his fishing operation as a corporation, even though the permit must be owned by him personally, and he may for tax purposes want the participation investment to be owned by that corporation. Or the transaction may be part of a partnership dissolution. Or he may wish the participation investment to be owned by his Keogh plan. Or he may want or need to use it as settlement of an obligation to an ex-wife or another creditor. Or he may be selling his permit on a favorable basis to an oldest son and, as part of his own self-determined effort to treat his children equitably, want his younger son to receive the portion of the proceeds represented by the loan participation.

There are other potential applications which have absolutely nothing to do with permits. CFAB is often asked to re-finance a fisherman's debt to a processor and in many cases is unwilling to do so, for credit-related reasons. There may be certain of those requests which CFAB can satisfy if the processor involved is willing to share in the risk by purchasing a participation.

It cannot be stressed too much that Section 2 addresses only the purchase of loan participations. It does not create co-lenders. It does not create any participants' rights with respect to whatever collateral may be related to any loan.

5) CFAB's statute presently is silent with respect to the disposition of limited entry permits acquired through foreclosure. CFAB requested the substance and language of Section 8 as an expression of clarification and legislative intent and to remove the uncertainties which may arise from having a statute which provides no guidance.

The suggestion that CFAB might "handpick" individuals in order to exercise "control" borders on the ludicrous. How? To what purpose? To whose benefit? CFAB is a cooperative -- its borrowers are its owners, and they elect five of its seven directors; the other two are

Memorandum/Pete Spivey
April 3, 1989
Page 3

appointed by the Governor. CFAB's only business is to make loans in accordance with AS44.81. The 1987 State Legislature enacted an amendment -- again, at CFAB's request -- which requires an annual examination by the State's Bank Examiners with a summary of the examination report transmitted to the Legislature. CFAB's annual report is distributed to legislators. AS44.81 authorizes the Budget and Audit Committee to direct the Legislative Auditor to audit CFAB. There are more bases for fishermen to fear Legislative "control" of CFAB than for Legislators to fear CFAB's "control" of a fishery!

Aside from the matter of relationships, loan documents and the law do not permit lenders to "control" borrowers. In the United States today, including in Alaska, there is an increasing wave of lender liability lawsuits. One of the surest ways for a borrower-plaintiff to win such a suit is to demonstrate that the lender exercised, or attempted to exercise, "control" over the borrower!

CFAB has actually foreclosed one permit lien in nine years (although, coincidentally, the second and third foreclosure processes are currently under way). The permit involved was sold to a longtime Alaska fisherman who was financed by the State rather than by CFAB. That record does not seem to support the image of CFAB as a Machivellian manipulator.

There are a number of reasons for use of the word "may" rather than "shall." The first, as expressed earlier, is that in the eyes of CFAB's Board of Directors and management an expression of legislative intent provides sufficient basis for a workable policy as well as to respond to potential external pressures. The second is that a two-year residency requirement for anything appears to represent a Constitutional "gray area" which some attorneys have cautioned against (and which was acknowledged on the Senate floor during debate on SB82); a pointless and costly test of that matter may be less likely with a permissive "may" than with a mandatory "shall." Third, since the residual proceeds of a permit sale by CFAB belong to the original borrower/permitholder (presumably an Alaska fisherman, since CFAB finances only Alaska fishermen) CFAB has a third-party obligation to obtain a reasonable -- if not the highest available -- price for any permit it sells. Which Alaska fisherman would the Legislature like to disadvantage, to the benefit of another; and is the Legislature prepared to provide financial indemnification to those fishermen who are disadvantaged? Finally, and in spite of the fact that CFAB's policies, practices, and directions are guided by AS44.81 and appear to be consistent with the intents expressed by the Legislature over the years, it is a private corporation. Why should the Legislature control the disposition of a permit it has acquired, or a processing plant it has acquired through foreclosure, or a used typewriter which is surplus to its needs? If the Legislature collectively believes it is "good" for

Memorandum/Pete Spivey
April 3, 1989
Page 4

CFAB to be unable to sell a permit to any but an Alaska fisherman, why not pass a law which says no one can sell a permit to a non-Alaskan? On the surface, that would certainly solve the "permit drain" problem which troubles so many Legislators!

EEC:dmv

APR 12 '89 11:04

P.2
APR 12 1989HOUSE LABOR AND COMMERCE COMMITTEE

ALASKA STATE LEGISLATURE


P.O. BOX Y, JUNEAU 99811

(907) 465-3892



April 12, 1989

To: Senator Fred Zharoff

From: Representative Dave Donley, Chair 
House Labor and Commerce Committee

Re: Proposed amendment to SB 82

Prior to scheduling SB 82 for a hearing before the House Labor and Commerce Committee on Tuesday, April 18, I would like you to review the attached legal opinion from Legislative Counsel, Jack Chenoweth.

To allay the concerns that prompted the request for a legal opinion, I've asked Jack to draft a proposed amendment to SB 82 that would limit individuals, partnerships, joint ventures and corporations, other than CFAB, from participating in more than twenty percent of the loans for particular types of limited entry permits in any given area (i.e. Bristol Bay set net permits). I would like your response to this proposed amendment prior to submitting it to the Committee for their consideration.

Please contact me or Ginger Baim at 4954 if you have any questions or need additional information.

cc: Representative Ben Grussendorf
Representative George Jacko
Representative Lyman Hoffman

dd/gb

APR 12 '89 11:04

P.3

STATE OF ALASKA THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU ALASKA 99811
907 455 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 31, 1989

SUBJECT: Amendment of lending practices of the
Commercial Fishing and Agriculture Bank
(SB 82)

TO: Representative Dave Donley, Chair
House Labor and Commerce Committee

FROM: Jack Chenoweth
Legislative Counsel

This is intended to respond to your March 27 memo. Let me take the questions in numerical order.

I

Your first question asks how the authority of persons who borrow from the Bank is changed by the bill.

The changes proposed in this bill, in the main, affect obligations and responsibilities of the Commercial Fishing and Aquaculture Bank. The legislation does little to limit the authority of persons who are clients of the Bank. Rather, as to those persons, there is some broadening of borrowing opportunity and purportedly some better protection of the interests of state fisherman. Specifically,

(1) a borrower may pledge a second limited entry permit as collateral for a loan, if the pledge gains loan approval and the permit pledged meets the requirements of AS 44.81.230(b) [proposed AS 44.81.230(e), added by bill section 3];

(2) a borrower anticipating foreclosure on a loan for which an entry permit serves as collateral may nominate an otherwise qualified person to assume the obligation; the borrower may thereafter transfer to the person nominated the rights and liabilities, thereby keeping the permit "within the family" [proposed AS 44.81.230(f), added by bill section 3]; that nomination may be made

APR 12 '89 11:05

P.4

Representative Dave Donley
Page 2
March 31, 1989

much later in the foreclosure process than is now authorized, and is exercisable as late as 30 days after the giving of notice by the bank to the borrower that the limited entry commission is refusing to purchase a loan in default that is secured by a permit [proposed AS 44.81.250(b), added by bill section 6];

When these provisions are read and applied in conjunction with bill section 2 ("issue certificates of loan participation"), I am advised that the purpose is to permit the defaulting borrower who holds the limited entry permit to better assure that the permit remains in the community or area without being assigned to a person from another part of the state or to a non-resident. The plan, as I understand it, is this:

CFAB's concept provides for the seller [i.e. the current permit holder] to share in the credit risk of a CFAB-financed purchase, while CFAB in turn shares with the seller the financial protection of the bank's ability to foreclose its permit lien in the event of immediate default. This is accomplished by the seller using a portion of the sale proceeds to purchase a participation in the loan involved, and by the purchaser designating the seller to assume the debt in the event of default and foreclosure. By purchasing the loan participation, the seller also becomes entitled to receive a market interest rate on the deferred portion of the sale proceeds.

II

You next inquire as to possible dilution of a permit holder's control of a permit if other entities take a loan participation role, as SB 82 authorizes.

An entity other than a natural person may not hold a limited entry permit. Limited entry permits are to be issued only to individuals. See AS 16.43.140 and AS 16.43.990(5), limiting the definition of "person."

As noted in part I, at least as to loans involving permits that are tending toward default or are in default, the changes proposed by AS 44.81.210(a), 44.81.230, and 44.81.250(b) may involve second parties in the risk and obligation of an assumed CFAB loan. The certificate of loan

Representative Dave Donley
Page 3
March 31, 1989

participation may involve an entity other than a person, but nothing in the changes proposed by SB 82 would modify the requirement in AS 16.43 that a limited entry permit be held by an individual.

The extent of a loan participation arrangement is not otherwise addressed by AS 44.81 or AS 16.43, so, as drafted, the extent of the influence of the "outside" parties on the permit holder is probably a matter between the parties or, in some instances, between the parties and the Bank.

III

You ask whether one or more groups, making use of the loan participation role authorized by SB 82, could exert disproportional control in a fishery.

I suspect it is possible for one entity--or several--having substantial assets and influence, to associate with individual permit holders through loan arrangements evidenced by certificates of loan participation in order to gain the benefit of a significant economic advantage in a profitable fishery. At the same time, the probability of that occurring seems remote, given the high cost of acquiring limited entry permits that allow entry into the most lucrative fisheries. The likelihood of consolidation of permits around one individual or group through execution of a series of loan participation arrangements is more theoretical than real.

Current law would seem to prohibit wielding of comparable influence in a fishery on the basis of Bank loan participation arrangements simply because the statutes do not now authorize these arrangements.

IV

You raise a question as to the relationship between a permit holder and the Bank that may differ from the relationship between a permit holder and another lender.

The holder of a limited entry permit may use that permit as loan collateral only in conjunction with the Commercial Fishing Loan Act, AS 16.10.310, and loans from the Commercial Fishing and Agriculture Bank. The distinguishing feature is the explicit authority of the state Commercial Fishing Loan Act program managers and the Bank to foreclose on

• APR 12 '89 11:07

P.6

Representative Dave Donley
Page 4
March 31, 1989

the permit in the event of default. See AS 16.10.338 (a limited entry permit may be used as collateral for a Commercial Fishing Loan Act loan); AS 44.81.210(a)(20) (authorizing the Bank to make loans to individual commercial fishermen for limited entry loans). If a person with a permit secures a loan from any other source, the permit holder may not collateralize the loan--may not look to the permit as security for the loan. AS 16.43.150(g). In other words, the Commercial Fishing Loan Act and the Bank hold preferred exclusive positions as makers of loans involving the use of limited entry permits as collateral.

It is for that reason that the loan arrangements evidenced by certificates of loan participation involving third parties, limited entry permits, and Bank loans--an idea proposed in this legislation--have significance. The exact nature of a loan arrangement is not spelled out in the statute. It is left to the permit holder and the other party to the loan arrangement to define their own terms and conditions. The analytical statement from which I drafted appears to assume, though it is not altogether certain that it would be true in every instance, that a loan arrangement entered into under authority proposed to be granted in bill section 2 would involve a family member or person within the same community as the defaulting borrower.

I can't provide you with any other insight into prospective loan arrangements than this. The committee may want to call Senator Zharoff or the principal executive of the Bank to testify concerning the extent of the relationship that might be anticipated under a loan arrangement provision.

V

Finally, you inquire after limitations on the sales of foreclosed permits to persons who are state residents.

AS 44.81.250 addresses loan deficiencies and foreclosed limited entry permit transfers involving defaulted Bank loans. It sets up a scheme of permit buy-backs by the Commercial Fisheries Entry Commission and allows a defaulting borrower to nominate someone to accept the obligations of the loan. Under other amendments made by the bill to this section, the opportunity of the borrower to nominate a qualified person to assume a loan that is extended. Section 8 of the bill adds a new subsection to AS 44.81.250 covering situations in which there is no buy-back and no nomination of a qualified

Representative Dave Donley
Page 5
March 31, 1989

person is made. The addition authorizes the Bank to sell a permit to a commercial fisherman who has been a state resident for two years.

Our drafting followed the language set out in the model suggested. The model used the word "may," though the accompanying memorandum said: "[The change made by this section requires that any foreclosed permit sale by CFAB be to a resident Alaska fisherman . . ." I interpret that to mean that the party seeking the change believed that use of "may" virtually compelled the Bank's selection of a resident.

Indeed, "may" be as close as the legislature could reasonably come to require designation of a resident in the transfer of the permit. Substitution of "shall" would likely hasten a challenge to the requirement by a non-resident who, having sufficient resources, is willing and able to purchase the permit outright, relieving the borrower of the debt obligation. With the language rewritten to direct or require the permit's sale to a resident, the non-resident could challenge denial of sale of the permit to him or her, claiming a privileges and immunities violation. Without extensive research on the point, I suggest that the claim could prevail. The limited entry permit, as you know, was intended to promote protection and rational development of the resource in the state. Within the regulated fishery, residency has not been an issue. Historically, the issuance and sale of entry permits does not draw distinctions between residents and non-residents. Efforts in this section to limit transfers of defaulted entry permits to residents fairly invites a direct challenge by an interested non-resident.

To the balance of the question, I can only note my observation made earlier: under the mechanism proposed, at least in theory, it would be possible, albeit not likely, for the Bank, over an extended period, to steer the award of defaulted limited entry permits to one or another individuals having substantially similar interests, so that the individual(s) might exercise substantial or disproportional influence in the fishery.

JC:gc:kb
WKG8/099



UNITED FISHERMEN OF ALASKA

211 4th Street, Suite 106
Juneau, AK 99801
907-586-2820

UNITED FISHERMEN OF ALASKA

Resolution 89-1

WHEREAS Alaska has a system of limited entry that regulates participation in many of the commercial fisheries of the state, and

WHEREAS in many of the rural areas of the state there has been a permit drain caused by sales of locally owned permits to persons living outside of the area, and

WHEREAS the permit drain is detrimental to the economies of rural Alaska, and

WHEREAS the opportunity for some Alaskans to obtain financing for the purchase of permits is limited by lending requirements that they cannot satisfy, and

WHEREAS the Alaska Commercial Fishing and Agriculture Bank was created to serve the credit needs of resident Alaska fishermen, and

WHEREAS CFAB has developed a concept that would increase the opportunities for Alaskans to obtain permit financing, and

WHEREAS the implementation of the CFAB concept will require changes to the statute that governs the cooperative,

NOW THEREFORE BE IT RESOLVED that United Fishermen of Alaska endorses and supports the creation of a loan program that will increase the opportunities for more Alaskans to purchase limited entry permits, and

BE IT FURTHER RESOLVED that United Fishermen of Alaska supports the purposes and intents of Senate Bill 82 and House Bill 108.

Theo Matthews
President

July 14, 1989
Date

STATE OF ALASKA

COMMERCIAL FISHERIES ENTRY COMMISSION

Twomley
STEVE COWPER, GOVERNOR

P.O. BOX KB
JUNEAU, ALASKA 99811-0302
PHONE: (907) 465-4681

January 11, 1989

The Honorable Fred F. Zharoff
Alaska State Legislature
M/S 3100

Re: CFAB Legislation
SB 82

Dear Senator Zharoff:

Thank you for the opportunity to review your legislation introduced on behalf of the Alaska Commercial Fishing and Agriculture Bank, which I understand has become SB 82.

CFAB's president, Mr. Ed Crane, developed the idea behind the legislation about a year ago, and we have discussed the proposal with him a number of times since then. We are very pleased that CFAB perceived the need and took the initiative to develop this remedy. We also commend you for having introduced this legislation.

SB 82 appears to the Entry Commission to be sound. For those Alaskan fishermen wishing to take advantage of such an opportunity, this legislation should be helpful. In direct response to your question, we would be happy to support this legislation. Please do not hesitate to contact us, if we can provide you with any further information.

Cordially,

COMMERCIAL FISHERIES ENTRY COMMISSION

Bruce Twomley, Chairman
Rich Listowski, Commissioner
Phil Smith, Commissioner

by: _____

cc: Bob Evans
Deputy Chief of Staff
Office of the Governor
M/S 0101



Doyle
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Jacko/Zharoff Bills Ease

(Continued from Page 4)
 fling," he says, "but that's the way it is with any loan nowadays. In summary, what we're going to do is share CFAB's collateral position with the permit seller if he or she will share in a credit risk that doesn't meet CFAB's normal standards. The best way to explain it is to give an example."

"Imagine a commercial fisherman, Peter, who has decided to retire. He's willing to sell his permit for \$150,000 to his daughter, Mary, who's been part of his crew for the past few seasons. Mary learns that neither CFAB nor the State's Division of Investments is willing to lend her the money to buy the permit outright. If Peter and Mary are both willing, here's what can happen using our approach. CFAB will lend \$150,000 to Mary -- Mary gives that \$150,000 to Peter, who transfers the permit to her, subject to CFAB's lien. Peter then returns \$75,000 (half of the \$150,000) to CFAB, who gives Peter a document which says that he now owns a half interest in Mary's loan. Mary also signs a document which says that if she defaults on the loan and loses the permit to foreclosure, Peter will replace her as the borrower and as the owner of the permit."

"When Mary makes her first loan payment to CFAB -- let's say it's \$15,000 principal and \$6,000 of interest -- half of the principal (\$7,500) and half

of the interest (\$3,000) will be paid by CFAB to Peter. That pattern will continue until the loan is paid in full."

Crane says that fishermen and others he has discussed the program with have pointed out a lot of benefits. "Obviously, Mary's been given her start and Peter has the satisfaction of helping her without exposing himself to the risks of an unsecured loan. Peter doesn't have the problem of deciding what to do with \$150,000 all at once, because he'll be getting his second \$75,000 spread out over the term of the loan. Not only that, but Peter will be earning CFAB's interest rate for permit loans, currently 11-1/2 percent, on his investment. There will be a commercial lender, CFAB, between Peter and Mary, which should help avoid the problems that often arise when one family member owes money to another. At the same time, Peter is free to help Mary out along the way if he feels that's appropriate."

At CFAB, they're excited about the potential program. Says Crane, "We believe it will work for a lot of situations -- especially in rural Alaska. At the same time, we don't want to create the expectation that it can be applied in every case. Credit is a judgment business, so we'll probably still disappoint some folks. But if Peter and Mary, and others like them, are motivated to make it work and can strike a reasonable deal with each other, we're anxious to give it a try. Ideally, the State Legislature will pass one of these bills in time for us to put the idea to work later this spring, when lots of permit transfer activity takes place."

Jacko and Zharoff, and their staffs, are working within the legislative process to meet that time frame. Both bills have been subjected to committee hearings, with more scheduled. There are many legislators interested in finding ways to help keep limited entry permits in rural Alaska. Representative Jacko's House Bill 108 is co-sponsored by Representatives Grussendorf, Navarre, and Cato, while Senators Sturgulewski, Elliason, Duncan, Binkley, Szymanski, Kelly, Adams, Coghill, Kerttula, and Pearce have joined Zharoff as co-sponsors of Senate Bill 82.

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VA Releas

(Continued from Page 6)
 higher incidence of PTSD
 psychological disorders.

The VA will be analyzing other study results to assess on the agency and to determine effectiveness of VA programs the needs of Vietnam. Currently, the VA operates a 194 Vietnam Veteran Outreach which provide counseling to veterans and their families on a variety of readjustment problems, including Veterans also receive PTSD treatment at VA's 172 medical centers and 160 hygiene clinics. Eighty-nine VA centers have developed programs specifically for PTSD. The RTI study indicates that 15 percent of Vietnam veterans with PTSD (approximately 100,000) have not received treatment from the VA.

Fish Expe

(Continued from Page 5)
 as marine mammals, pollution
 and marine debris. Formerly
 editor and chief of the public
 relations section of the
 Department of Fish and Game,
 that she was a legislative aide and
 of her own public relations company.

In announcing the appointment of a new
 governor stressed Benton
 Iudicello's knowledge of politics
 than their knowledge of fisheries
 issues. "As this administration
 turns up the heat on the
 government to curtail the high
 interception of Alaska fish, we
 need experts who are also politically
 savvy," Cowper said.

Test Well

(Continued from Page 5)
 of the 900 blocks offered in the
 Arco and other oil companies
 the cost of drilling and the information
 from the well. Shell E&P and
 USA have indicated they will
 exploring for crude oil in Bristol
 soon as they can obtain the necessary
 governmental approval.

Meanwhile, the state is preparing
 appeal to the U.S. Supreme Court
 Governor Steve Cowper has asked
 U.S. House Interior Appropriations
 Committee not to budget any funds
 the Bristol Bay lease area.

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Jacko/Zharoff Bills Ease Lending for Permit Transfers

There will be a new alternative available to many commercial fishermen searching for a satisfactory way to help a son, daughter, or other young person get started in a fishing business, if legislation introduced by District Senator Fred Zharoff and District 26 Representative George Jacko is enacted.

Senate Bill 82 and House Bill 108 are identical, and they will make changes to the statute which governs the operations of Alaska Commercial Fishing and

Agriculture Bank (CFAB). CFAB is one of the primary financing sources for resident Alaska commercial fishermen. It is the only lender aside from the State's own Commercial Fishing Loan Program which can finance the purchase of a Limited Entry Permit and use the permit itself as collateral.

"Contrary to popular belief," says CFAB President Ed Crane, "Loan officers don't enjoy saying no. We have felt especially frustrated about those times

when a young man, for example, would come and apply for a CFAB loan in order to buy his father's permit; but after we had taken a look at the son's experience and financial circumstances, we'd wind up turning him down. It's tough for a young person to get started in any business, especially when it requires the kind of investment that commercial fishing does. It's even harder when the young person is in a rural community with limited other opportunities to work in order to earn and save money for that investment. It seemed to us at CFAB that a distressing number of those permits would ultimately wind up being sold outside the village or even to fishermen from Outside."

Crane continues, "About a year ago, Senator Zharoff challenged us to find a way to address as many of those situations as possible. Representative Adelheid Herrmann also offered encouragement, and as soon as Mr. Jacko was elected, he became very interested. As a matter of fact, I believe HB 108 is one of the first bills that Representative Jacko

introduced."

According to Crane, the idea that CFAB came up with is fairly simple but seems complicated to describe. "It's true that there will be lots of paper shuf-

(See Jacko/Zharoff Page 14)

Fish Valuable in District N

by Senator Fred Zharoff

All of us know the fishing industry is very valuable in District N. But calculating an exact figure for that value can be a difficult exercise.

In order to obtain more exact information, I recently asked the Department of Revenue to determine the value of the fisheries resources harvested in District N. The figures they came up with are somewhat rough because fisheries management regions -- especially in regard to the International Pacific Halibut Commission -- do not exactly match election district boundaries.

Still, the department gave my request their best try and came up with some impressive figures.

In 1985, the ex-vessel value of the fisheries resources in District N was \$213,301,360; in 1986, \$369,409,474. In 1987, it was \$500,008,220. And in 1988, it was \$707,086,940.

One can see that the value more than tripled in three years. Everyone has noticed the dramatic increase in fishing industry activity throughout District N, including the Aleutian Chain, the Alaska Peninsula, Bristol Bay, Kodiak Island

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EXAMINER'S COMMENTS AND CONCLUSIONS	NUMBER
-------------------------------------	--------

SCOPE OF EXAMINATION

In compliance with Chapter 81 of the Alaska Statutes, an examination of the Alaska Commercial Fishing and Agricultural Bank was done by the Department of Commerce and Economic Development, Division of Banking, that contains financial information prepared in accordance with generally accepted accounting principles.

LOAN PORTFOLIO

Examination ratios and trends indicate continued improvement in the quality of the loan portfolio and the reduction of adversely classified assets. The ratio of adversely classified loans to total loans decreased from 32.25% at the previous examination on November 30, 1987, to 14.09% at this examination. Similarly, the ratio of overdue loans to gross loans decreased from 37.36% at the previous examination to 22.10% at present. All of the examination ratios demonstrate a dramatic improvement from the bank's condition at the first examination by the Division of Banking on April 29, 1985.

Non-earning loans totaled \$12,761,089 at the previous examination compared to \$3,768,757 at present. The amount of loans classified loss decreased from \$1,891,596 to \$252,611. These reductions were accomplished primarily through loan work-outs and collection of problem loans. The loan loss reserve of \$2,229,916 represents 6.04% of total loans and leases and appears adequate.

Year-to-date earnings have been substantial due to the aforementioned collection of problem loans which contributed approximately \$3,048,000 of interest income on a one-time basis. The bank had been using its net operating loss carryforward to offset its federal income tax liability, but the increased earnings for the current fiscal year may deplete the tax credit.

BANK POLICIES AND PRACTICES

The present management team has significantly reduced the volume of problem and non-earning loans, and appears to have brought the bank back to prudent lending practices and profitable operations. This has been done during a depression that continues to challenge the Alaska economy. It is appropriate at this time to review the Alaska statutes with an eye to the future to determine what the role the bank will play in helping to develop the infrastructure in Alaska. Some forethought is needed to provide the flexibility to examine new business opportunities and markets to enable the bank to better fulfill its statutory mandate.

State Banking Authority (Signature)

Frank J. Puschak by: Terry L. Lutz

Examiner (Signature)

State Bank Authority (Signature)

1. Does the bank have written loan policies which are periodically revised and approved by the Board of Directors? Provide an overall assessment of said policies specifically noting any deficiencies and remedial measures anticipated.

In response to recommendations from external auditors, the bank adopted a new policy for non-accrual loans. The loan policy was considered outdated at the previous examination and has yet to be revised. Management agreed that it was time to update the loan policy and would strive to do so as soon as possible.

2. Does the bank have a written investment policy incorporating liquidity objectives and funding strategies that is periodically reviewed and approved by the Board of Directors? Provide an overall assessment of said policy commenting on any deficiencies in the policy or any significant deviations therefrom which did not have the prior consent of the Board or Investment Committee.

The bank does not have a formal investment policy at this time. Because there are no deposit liabilities, the bank's present source of funds is the National Bank for Cooperatives (formerly Spokane Bank for Cooperatives). As long as subject bank performs satisfactory it can borrow from the National Bank for Cooperatives.

3. Comment on the extent to which recommendations made by supervisory authorities and internal/external auditors are reviewed and implemented by management.

To the extent that external auditors recommendations appear applicable to the operations of subject bank, management is receptive to and implements such recommendations.

4. Comment with respect to management's knowledge, adherence, and willingness to comply with governing laws, regulations, and the Corporation's Statements of Policy.

Bank management has a good knowledge of applicable statutes and regulations, and demonstrates a willingness to comply with same.

5. Indicate whether or not the bank is owned or controlled by any individual or other interest. If so, state particulars as to the extent of control and amount of stock held by such interests.

The major shareholder is the State of Alaska by virtue of its initial capitalization of the bank. However, these shares are non-voting and the State of Alaska exercises no control over bank policies and procedures other than by enactment of statutes or regulation.

6. Describe the bank's relationship with any bank holding company and/or affiliate specifically commenting upon any unfavorable trends which could adversely affect the bank.

The bank formed a subsidiary, OFAB Services Inc., which is presently dormant. The purpose to enable the bank to pursue business opportunities related to its type of lending. One example would be to offer its specialized vessel mortgage and foreclosure experience to other financial institutions.

7. Comment on other matters relating to administration, supervision, and control by directors and management.

No comment.



SENATOR FRED F. ZHAROFF
ALASKA STATE LEGISLATURE

P.O. BOX 405, KODIAK, ALASKA 99615 (907) 486-5259

DURING SESSION:

P.O. BOX V, JUNEAU, ALASKA 99811 • (907) 465-3473 • 465-3474

DISTRICT N

ALASKA PENINSULA • ALEUTIAN CHAIN • BRISTOL BAY • KODIAK ISLAND • LAKE CLARK/LAKE ILIAMNA • PRIBILOF ISLANDS • SHUMAGIN ISLANDS

SECTIONAL ANALYSIS FOR DRAFT BILL

"An Act relating to loans and lending practices of the Alaska Commercial Fishing and Agriculture Bank; providing an exemption for the bank's membership stock and certain other securities issued by the bank from registration under the Alaska Securities Act; and providing for an effective date."

SECTION 1 PURPOSE.

Explains the rationale behind the bill.

SECTION 2

New paragraph (12) added to 44.81.210(a).

Gives CFAB the power to issue loan participation certificates.

SECTION 3

New subsections (e) and (f) added to 44.81.230.

- (e) Allows a borrower to pledge more than one limited entry permit as security for a loan. This will be of benefit to fishermen who have multiple permits and are trying to expand their operations. They will be able to use their limited entry permits as financial assets to leverage the funds they need to purchase vessels, gear, etc. They can diversify and spread fixed costs over more fisheries. This will be of particular benefit to fishermen who have little liquidity, but substantial equity in existing permits.
- (f) Allows a borrower to nominate another person to assume the debt on a permit loan. This way the individual who holds a loan participation certificate can take over the loan in the case of foreclosure.

SECTION 4

Amendment to subsection (b) in 44.81.235.

Corrects an oversight in the existing statute by allowing a loan made to purchase a limited entry permit to be included when a single permit is pledged to secure multiple loans.

SECTION 5

Amendment to subsection (c) in 44.81.235.

Corrects an oversight in the existing statute by allowing CFAB to refinance a loan which is made to purchase a limited entry permit.

Under the current statute, CFAB may accept a permit as collateral when refinancing loans for fishing vessels, fishing gear, set net sites, and working capital, but not loans which are for the purchase of a permit.

SECTION 6

Amendment to subsection (b) in 44.81.250.

Makes this section of the existing CFAB statute consistent with the amendment in paragraph (f) of Section 3, above, by including a reference to the nomination of a person to assume debt.

SECTION 7

Amendment to subsection (a) in 44.81.250.

Adds reference to loans for the purchase of limited entry permits to the statute regarding CFAB's legal rights during foreclosure.

SECTION 8

New subsection (e) added to 44.81.250.

Describes the procedure CFAB shall follow when it has repossessed a limited entry permit.

SECTION 9

New paragraph (12) added to 45.55.140(a).

Exempts CFAB from the state's securities registration requirements. This restores the exemption CFAB had in statute when it was originally created. The exemption is currently granted to banks, savings institutions, savings and loan associations, trust companies, foreign governments, employee benefit plans, insurance companies, credit unions, nonprofit organizations, and others. The exemption will allow CFAB to offer loan participation certificates and remove the question of whether this transaction must comply with the extensive requirements for securities registration. CFAB will still be subject to annual audits by the Division of Banking, Securities and Corporations, an independent outside auditor, and, upon legislative instruction, by the Legislative Audit Division, as provided for in 44.81.270.

SECTION 10

Immediate effective date.

HOUSE COMMITTEE REPORT

(7)

Date Referred: March 3, 1989

FURTHER REFERRALS: FINANCE

Date of Committee Action: 4-20-89

The LABOR & COMMERCE Committee considered:

SB 82

SENATE BILL NO. 82 [CFAB LOANS & LENDING PRACTICES]
"An Act relating to loans and lending practices of the Alaska Commercial Fishing and Agriculture Bank; providing an exemption for the bank's membership stock and certain other securities issued by the bank from registration under the Alaska Securities Act; and providing for an effective date."

RECOMMENDATIONS:
[] be replaced with C/S House L&C [] the same title
[] have 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): (Dept) APPROVES PREVIOUS: (Date/Dept)
[] fiscal impact _____ [] fiscal note(s) _____
[] zero fiscal note _____ [] zero fiscal note(s) _____
[] zero with analysis _____ [] zero fn/analysis _____

SIGNING DO PASS:

[Handwritten signatures]

SIGNING:
(Check approp. column)

	Do Not Pass	No Rec	Amend
<i>[Signature]</i>		X	
<i>[Signature]</i>		✓	

[Handwritten signature]

Chairman's signature

6-0312Ab
Chenoweth
4/19/89

A M E N D M E N T

OFFERED IN THE HOUSE

TO: SB 82

BY THE LABOR AND

COMMERCE COMMITTEE

Page 1, line 29, after "ventures":

Insert ", but the bank may not issue a certificate of loan participation if the certificate would allow participation by the member, individual, corporation, partnership, or joint venture in loans that individually or cumulatively involve more than 20 percent of the commercial fishery entry permits issued for one type of gear in a specific fishery resource administrative area"

PROPOSED
AMENDMENT

OFFERED IN THE HOUSE

TO: SB 82

BY THE LABOR AND

COMMERCE COMMITTEE

Page 1, line 29, after "ventures":

Insert ", but the bank may not issue a certificate of loan participation if the certificate would allow participation by the member, individual, corporation, or joint venture in loans that individually or cumulatively involve more than 20 percent of the commercial fishery entry permits issued for one type of gear in a specific fishery resource administrative area"

HOUSE LABOR AND COMMERCE COMMITTEE


ALASKA STATE LEGISLATURE

P.O. BOX Y, JUNEAU 99811

(907) 465-3892

April 12, 1989

To: Senator Fred Zharoff

From: Representative Dave Donley, Chair 
House Labor and Commerce Committee

Re: Proposed amendment to SB 82

Prior to scheduling SB 82 for a hearing before the House Labor and Commerce Committee on Tuesday, April 18, I would like you to review the attached legal opinion from Legislative Counsel, Jack Chenoweth.

To allay the concerns that prompted the request for a legal opinion, I've asked Jack to draft a proposed amendment to SB 82 that would limit individuals, partnerships, joint ventures and corporations, other than CFAB, from participating in more than twenty percent of the loans for particular types of limited entry permits in any given area (i.e. Bristol Bay set net permits). I would like your response to this proposed amendment prior to submitting it to the Committee for their consideration.

Please contact me or Ginger Baim at 4954 if you have any questions or need additional information.

cc: Representative Ben Grussendorf
Representative George Jacko
Representative Lyman Hoffman

dd/gb

STATE OF ALASKA
THE LEGISLATURE

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LEGISLATIVE AFFAIRS AGENCY


MEMORANDUM

March 31, 1989

SUBJECT: Amendment of lending practices of the
Commercial Fishing and Agriculture Bank
(SB 82)

TO: Representative Dave Donley, Chair
House Labor and Commerce Committee

FROM: Jack Chenoweth
Legislative Counsel



This is intended to respond to your March 27 memo. Let me take the questions in numerical order.

I

Your first question asks how the authority of persons who borrow from the Bank is changed by the bill.

The changes proposed in this bill, in the main, affect obligations and responsibilities of the Commercial Fishing and Aquaculture Bank. The legislation does little to limit the authority of persons who are clients of the Bank. Rather, as to those persons, there is some broadening of borrowing opportunity and purportedly some better protection of the interests of state fisherman. Specifically,

(1) a borrower may pledge a second limited entry permit as collateral for a loan, if the pledge gains loan approval and the permit pledged meets the requirements of AS 44.81.230(b) [proposed AS 44.81.230(e), added by bill section 3];

(2) a borrower anticipating foreclosure on a loan for which an entry permit serves as collateral may nominate an otherwise qualified person to assume the obligation; the borrower may thereafter transfer to the person nominated the rights and liabilities, thereby keeping the permit "within the family" [proposed AS 44.81.230(f), added by bill section 3]; that nomination may be made

Representative Dave Donley
Page 2
March 31, 1989

much later in the foreclosure process than is now authorized, and is exercisable as late as 30 days after the giving of notice by the bank to the borrower that the limited entry commission is refusing to purchase a loan in default that is secured by a permit [proposed AS 44.81.250(b), added by bill section 6];

When these provisions are read and applied in conjunction with bill section 2 ("issue certificates of loan participation"), I am advised that the purpose is to permit the defaulting borrower who holds the limited entry permit to better assure that the permit remains in the community or area without being assigned to a person from another part of the state or to a non-resident. The plan, as I understand it, is this:

CFAB's concept provides for the seller [i.e. the current permit holder] to share in the credit risk of a CFAB-financed purchase, while CFAB in turn shares with the seller the financial protection of the bank's ability to foreclose its permit lien in the event of immediate default. This is accomplished by the seller using a portion of the sale proceeds to purchase a participation in the loan involved, and by the purchaser designating the seller to assume the debt in the event of default and foreclosure. By purchasing the loan participation, the seller also becomes entitled to receive a market interest rate on the deferred portion of the sale proceeds.

II

You next inquire as to possible dilution of a permit holder's control of a permit if other entities take a loan participation role, as SB 82 authorizes.

An entity other than a natural person may not hold a limited entry permit. Limited entry permits are to be issued only to individuals. See AS 16.43.140 and AS 16.43.990(5), limiting the definition of "person."

As noted in part I, at least as to loans involving permits that are tending toward default or are in default, the changes proposed by AS 44.81.210(a), 44.81.230, and 44.81.250(b) may involve second parties in the risk and obligation of an assumed CFAB loan. The certificate of loan

participation may involve an entity other than a person, but nothing in the changes proposed by SB 82 would modify the requirement in AS 16.43 that a limited entry permit be held by an individual.

The extent of a loan participation arrangement is not otherwise addressed by AS 44.81 or AS 16.43, so, as drafted, the extent of the influence of the "outside" parties on the permit holder is probably a matter between the parties or, in some instances, between the parties and the Bank.

III

You ask whether one or more groups, making use of the loan participation role authorized by SB 82, could exert disproportional control in a fishery.

I suspect it is possible for one entity--or several--having substantial assets and influence, to associate with individual permit holders through loan arrangements evidenced by certificates of loan participation in order to gain the benefit of a significant economic advantage in a profitable fishery. At the same time, the probability of that occurring seems remote, given the high cost of acquiring limited entry permits that allow entry into the most lucrative fisheries. The likelihood of consolidation of permits around one individual or group through execution of a series of loan participation arrangements is more theoretical than real.

Current law would seem to prohibit wielding of comparable influence in a fishery on the basis of Bank loan participation arrangements simply because the statutes do not now authorize these arrangements.

IV

You raise a question as to the relationship between a permit holder and the Bank that may differ from the relationship between a permit holder and another lender.

The holder of a limited entry permit may use that permit as loan collateral only in conjunction with the Commercial Fishing Loan Act, AS 16.10.310, and loans from the Commercial Fishing and Agriculture Bank. The distinguishing feature is the explicit authority of the state Commercial Fishing Loan Act program managers and the Bank to foreclose on

Representative Dave Donley
Page 4
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the permit in the event of default. See AS 16.10.338 (a limited entry permit may be used as collateral for a Commercial Fishing Loan Act loan); AS 44.81.210(a)(20) (authorizing the Bank to make loans to individual commercial fishermen for limited entry loans). If a person with a permit secures a loan from any other source, the permit holder may not collateralize the loan--may not look to the permit as security for the loan. AS 16.43.150(g). In other words, the Commercial Fishing Loan Act and the Bank hold preferred exclusive positions as makers of loans involving the use of limited entry permits as collateral.

It is for that reason that the loan arrangements evidenced by certificates of loan participation involving third parties, limited entry permits, and Bank loans--an idea proposed in this legislation--have significance. The exact nature of a loan arrangement is not spelled out in the statute. It is left to the permit holder and the other party to the loan arrangement to define their own terms and conditions. The analytical statement from which I drafted appears to assume, though it is not altogether certain that it would be true in every instance, that a loan arrangement entered into under authority proposed to be granted in bill section 2 would involve a family member or person within the same community as the defaulting borrower.

I can't provide you with any other insight into prospective loan arrangements than this. The committee may want to call Senator Zharoff or the principal executive of the Bank to testify concerning the extent of the relationship that might be anticipated under a loan arrangement provision.

V

Finally, you inquire after limitations on the sales of foreclosed permits to persons who are state residents.

AS 44.81.250 addresses loan deficiencies and foreclosed limited entry permit transfers involving defaulted Bank loans. It sets up a scheme of permit buy-backs by the Commercial Fisheries Entry Commission and allows a defaulting borrower to nominate someone to accept the obligations of the loan. Under other amendments made by the bill to this section, the opportunity of the borrower to nominate a qualified person to assume a loan that is extended. Section 8 of the bill adds a new subsection to AS 44.81.250 covering situations in which there is no buy-back and no nomination of a qualified

Representative Dave Donley
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person is made. The addition authorizes the Bank to sell a permit to a commercial fisherman who has been a state resident for two years.

Our drafting followed the language set out in the model suggested. The model used the word "may," though the accompanying memorandum said: "[The change made by t]his section requires that any foreclosed permit sale by CFAB be to a resident Alaska fisherman . . ." I interpret that to mean that the party seeking the change believed that use of "may" virtually compelled the Bank's selection of a resident.

Indeed, "may" be as close as the legislature could reasonably come to require designation of a resident in the transfer of the permit. Substitution of "shall" would likely hasten a challenge to the requirement by a non-resident who, having sufficient resources, is willing and able to purchase the permit outright, relieving the borrower of the debt obligation. With the language rewritten to direct or require the permit's sale to a resident, the non-resident could challenge denial of sale of the permit to him or her, claiming a privileges and immunities violation. Without extensive research on the point, I suggest that the claim could prevail. The limited entry permit, as you know, was intended to promote protection and rational development of the resource in the state. Within the regulated fishery, residency has not been an issue. Historically, the issuance and sale of entry permits does not draw distinctions between residents and non-residents. Efforts in this section to limit transfers of defaulted entry permits to residents fairly invites a direct challenge by an interested non-resident.

To the balance of the question, I can only note my observation made earlier: under the mechanism proposed, at least in theory, it would be possible, albeit not likely, for the Bank, over an extended period, to steer the award of defaulted limited entry permits to one or another individuals having substantially similar interests, so that the individual(s) might exercise substantial or disproportional influence in the fishery.

JC:gc:kb
WKG8/099

HOUSE LABOR AND COMMERCE COMMITTEE

ALASKA STATE LEGISLATURE


P.O. BOX Y, JUNEAU 99811

(907) 465-3892

March 27, 1989

M E M O R A N D U M

To: Jack Chenoweth, Attorney
Legislative Legal Services

From: Representative Dave Donley, Chair 
House Labor and Commerce Committee

Re: Legal opinion on effects of SB 82

SB 82, relating to CFAB lending practices, is currently before the House Labor and Commerce Committee. Several questions have been raised about the possible effects of the changes to law proposed under SB 82. Prior to scheduling a hearing on the measure, I would like your response to the following:

1. What can members and other individuals, corporations, partnerships, and joint ventures do under SB 82 that they cannot do under current law?
2. Historically, there have been strong sanctions against any entity other than an individual person from owning or having a controlling interest in a limited entry permit. Could SB 82 dilute an individual's control over a limited entry permit by allowing members and other individuals, corporations, partnerships, and joint ventures to "carry the paper" or otherwise assume some proprietary interest in a permit?
3. Could these groups exert control over a particular permit holder or group of permit holders in a particular fishery if they established a proprietary interest in enough permits in a given area or fishery under the changes proposed in SB 82? How is this different than what could happen under current law?
4. How is the relationship between a permit owner and a bank that has provided financing for a particular permit, as is often the case under current law, different than the kind of relationship that may occur between a permit owner and a member or other individual, a corporation, a partnership or a joint venture that has provided financing for a permit? How would the relationship differ if the permit owner were also a member of the corporation, partnership or joint venture that provided financing?
5. Under Section 8 of SB 82, a bank may sell a permit to an individual commercial fisherman who has been a state resident for two years immediately preceding the date of the sale. Why may instead of shall? What is to prevent a bank from "handpicking" individuals over whom they may be able to exert some control in so far as how that permit holder may work the fishery? Again, can this section result in a situation where some entity other than an individual may exert control over a fishery?

I would appreciate your response to these questions at your earliest convenience so that we may proceed with hearing SB 82. Please call Ginger Baim at 4954 if you have any questions or need additional information.

SB82 file

BRISTOL BAY DRIFTNETTERS' ASSOCIATION

3605 Arctic Blvd., Suite 742 Anchorage, Alaska 99503

(907)562-2161, Ext. 742

279 - 5208

2 Donley
Anchorage, Alaska
99503

April 15, 1989

Representative Dave Donley
Alaska State Legislature
Juneau, AK 99811

RE: Amendment to HB 108 (CFAB)

Dear Representative Donley:

Recently I wrote in support of 108, and urged speedy passage to facilitate this season's business. Still a good idea, I think.

But I'm writing about one aspect of this bill, which you may be discussing. That is, the final bill should not become a loop hole to allow a few people to own more of our inshore limited entry fisheries, while others do the work for them. It is important to the limited entry concept that entry be permitted to as many participants as practical. It is crucial to the system that it not become owned by some small group who is then "selling" these rights to individual serfs, in perpetuity. In short, again an ownership class and a worker class.

In supporting this bill, I assumed that it would not allow such a situation to develop. It would seem that the way to keep the status quo, would be to consider both parties as permit holders for purposes of CFEC eligibility to participate in other limited fisheries. This should not restrict any existing rights, and would avoid the situation of one of these parties having more rights than other permit holders. If there are no technical problems something like this should work OK. Regarding the open and highseas fisheries, we should encourage Alaskans as we don't have a proportionate share of the high seas. Now, NPFMC is strongly tending toward limited entry in those fisheries, which would make it even more difficult for Alaskan to matriculate into them.

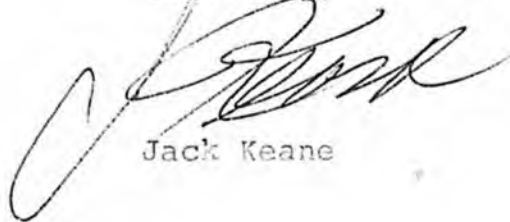
TAX considerations: I can't quite make out whether a permit is eligible for installment sale under the 1986 changes. Perhaps so under "business personal or real property under \$150,000". If so HB 108 could be of some tax help by making an installment sale possible. This could help someone selling out for retirement or for other reasons.

As it now stands, someone holding a permit through the high inflation years faces an unattractive situation. The seller would pay the highest rate on the entire amount of "capital gains". Quotations because there is a difference between a capital gain and inflation, and our country seems confused about that. In addition, the seller would have to recapture all the depreciation on the boat. Usually the full sale price of a boat more than five years old. Fair enough, but still adds to the overall tax problem of the seller. In some circumstances the seller could end up a net cash loser in the year of sale.

For a taxpayer facing some low income years due to retirement or injury the possibility of an installment sale could help, and would be consistent with other small business sellers.

I'd like to know how this is coming along. If I can be of any help, please let me know.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Jack Keane', written in dark ink.

Jack Keane

*Jack Keane
2152 Dawson St.
Anchorage, Alaska
99508*

BRISTOL BAY SALMON ENHANCEMENT ASSOCIATION

Board of Directors

Chairman ~~Stosh~~ Anderson, Regional Planning Team

Jim Bingman—Regional Planning Team

AIFMA—Norm Stadem

Egegik Setnet. Assoc.—Claudia Anderson

BBDA—Jack Keane

Paula Cullenberg—U of A Marine Adv. Prog.

Andy Golia—Fisherman

ADFG FRED div.—Jerry Madden

Frank Logusak—Fisherman

Olaf Mathisen—U of A Fisheries & Ocean Sci.

Don Rogers—FRI

Brad Barr—Concerned Area M Fishermen

WASP—Mark Holum

Last spring a volunteer group of Bristol Bay fishermen formed the Bristol Bay Salmon Enhancement Association (BBSEA). After watching aquaculture associations throughout Alaska improve their fisheries, BBSEA undertook a few projects in Bristol Bay using a small amount of state funding. Concerned primarily with habitat enhancement, BBSEA is developing beaver dam bypasses, beluga and marine mammal studies, fish ladders and lake food enhancement to improve fry survival. Your direction will determine which projects are implemented.

BBSEA needs your support to continue these initial efforts. In order to develop an organization which is responsive to all user groups, we need volunteers to fill board vacancies. We welcome representatives of user groups and those who have time to offer. We need your advice and would appreciate your comments on the attached reply card.

Comments & Suggestions _____

What is your opinion about financial support for enhancement? Are you willing to reinvest 1% of your Bristol Bay salmon fishery into habitat enhancement? YES ___ NO ___

If your reply is no could you tell us why?

Could you spend some of your time to serve on the board of directors?

Name

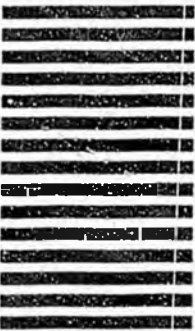
Organization

Phone

(Return Address)



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UNITED STATES

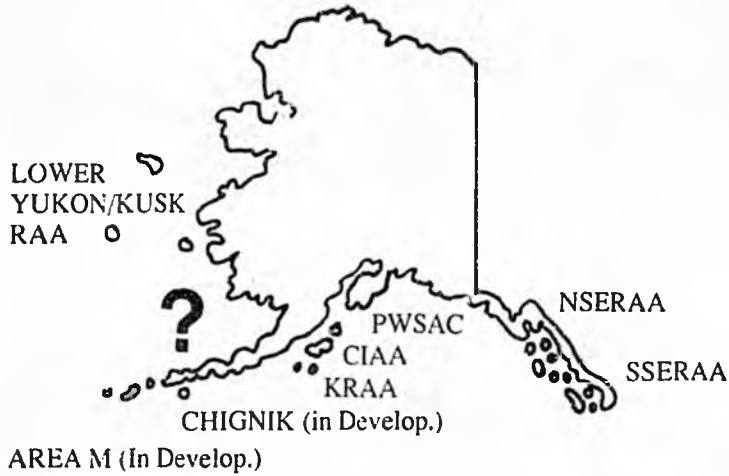


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Enhancement Association**
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Dillingham, Alaska 99567

ALASKA'S REGIONAL ASSOCIATIONS



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ENHANCEMENT ASSOCIATION**
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Dillingham, AK 99567

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JACK*

DID YOU CATCH ENOUGH FISH LAST SEASON?

STATE OF ALASKA
THE LEGISLATURE

POUCH - STATE CAPITOL
JUNEAU ALASKA 99801
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 3, 1989

SUBJECT: Sectional analysis
(Work Orders 6-0395 and 6-0953)

TO: Representative Mike Davis
Chair, Legislative Council

FROM: Theresa L. Bannister *TB*
Legislative Counsel

This provides a sectional analysis of the above described bill.

As a preliminary matter, note that a sectional analysis or summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.

Section 1 (AS 10.06.010). Eliminates an inconsistency with AS 10.06.485 by making the loan approval requirement applicable to employee loans as well as loans to officers and directors. Clarifies that a corporation has the power to make guarantees to eliminate a question that they were included in corporate powers. Gives corporations the powers of a limited or general partner. Corrects the term for joint ventures.

Section 2 (AS 10.06.020). The current content is designed to protect third parties from an ability of the corporation, or any shareholder asserting a derivative claim, to evade liability for an act or undertaking of a corporate agent by claiming that it was done without real authority. The amendment allows the corporation to assert limitations on the powers of corporate agents set forth in the articles, but not to assert limitations found in its bylaws or board resolutions as a defense to the third party's claim. This change would protect shareholders to the extent that the articles of the corporation contained such limitations on either the nature of agency power or the manner of its exercise.

Representative Mike Davis
Page 2
March 3, 1989

Section 3 (AS 10.06.025(a)). Deletes language that created an internal conflict within AS 10.06.

Section 4 (AS 10.06.105(c)). Clarifies that the subsection is not intended to prevent a limited partnership from using the word "limited" in its name.

Section 5 (AS 10.06.130). Eliminates the need for a corporation to take any other steps to protect the exclusivity of its name and allows the corporation to enjoin the use of the same or a deceptively similar name.

Section 6 (AS 10.06.343). States that the corporation may issue stock purchase rights or options for shares of any class or classes. Substitutes "shall" for "must" as a technical change.

Section 7 (AS 10.06.348). Coordinates AS 10.06.348 with the proposed new AS 10.06.349.

Section 8 (AS 10.06.349). Allows a corporation to issue shares without certificates and establishes a procedure for notifying the shareholder of certain information that is usually disclosed on certificates under other sections of AS 10.06.

Section 9 (AS 10.06.353). Coordinates section with new ability to issue certificateless shares.

Section 10 (AS 10.06.355). Coordinates section with new ability to issue certificateless shares.

Section 11 (AS 10.06.356). Allows a corporation to establish procedures by which the beneficial owner of shares that are registered in the name of a nominee is recognized by the corporation as the shareholder. The purpose of the section is to facilitate communication between the corporation and the beneficial owner.

Section 12 (AS 10.06.358(c)). Eliminates the unqualified requirement that the amount of distributions payable in property be based on generally accepted accounting principles.

Section 13 (AS 10.06.358(d)). Eliminates the unqualified requirement that the eligibility to make certain

distributions is limited to corporations that classify their assets under generally accepted accounting principles.

Section 14 (AS 10.06.358(e)-(f)). Allows a board to determine that a distribution is not prohibited either by generally accepted accounting principles or by accounting practices and principles that are fair and reasonable in the circumstances. States that statements and determinations prepared or arrived at under generally accepted accounting principles are fair and reasonable, but that the fairness and reasonableness of statements and determinations made under other practices and principles must be proved by the corporation.

Section 15 (AS 10.06.360). Changes the insolvency test. Allows existing directors to make the distribution and then determine whether the distribution did, in fact, render the corporation unable to meet its current debts. If it does, the corporation could theoretically recover the illicit dividend from the shareholders.

Section 16 (AS 10.06.385(b)). Coordinates subsection with new ability to issue certificateless shares.

Section 17 (AS 10.06.385(d)). Coordinates subsection with new ability to issue certificateless shares.

Section 18 (AS 10.06.405). States that the failure of a corporation to hold an annual meeting at the required time does not cause the corporation to forfeit its status, does not cause a dissolution of the corporation, and does not affect the validity of corporate action. Restores to the corporations code the section from the former corporations code that indicated that the failure did not affect the validity of corporate action.

Section 19 (AS 10.06.410). Substitutes a ten-day minimum notice of shareholders' meeting for the current twenty-day requirement because some corporations find it difficult to know 20 days ahead that a meeting will be necessary. Makes a minor change relating to the mailing of the meeting notice to a shareholder's new address.

Section 20 (AS 10.06.418(b)). Makes two minor changes relating to revocation of a proxy.

Section 21 (AS 10.06.418(e)). Defines the term "pledgee" and makes a citation change to coordinate with the changes to AS 10.06.425.

Section 22 (AS 10.06.418(f)). Coordinates the section with the changes in AS 10.06.425.

Section 23 (AS 10.06.418(g)). Gives to a transferee (of a share having an otherwise irrevocable proxy) title clear of the proxy unless the transferee knows about the proxy provision or the proxy, or the irrevocability or notice of the proxy appears on the certificate.

Section 24 (AS 10.06.420(c)). Allows a shareholder's authorized attorney-in-fact to vote for the shareholder in person or by written proxy.

Section 25 (AS 10.06.420(e)). Clarifies the intent of the subsection. States that shares may not be voted if they are owned, directly or indirectly, by a second corporation, domestic or foreign, and if the first corporation owns, directly or indirectly, a majority of the shares entitled to vote for the directors of the second corporation. This section is based on a public policy objection to permitting a corporate subsidiary that is presumably under the direct or indirect control of the parent to vote shares of the parent at a meeting of the parent corporation's shareholders.

Section 26 (AS 10.06.420(i)). Coordinates subsection with new ability to issue certificateless shares.

Section 27 (AS 10.06.421). Based on the Revised Model Business Corporation Act, its purpose is to provide guidelines for election judges and directors when deciding whether to accept certain documents.

Section 28 (AS 10.06.425(a)). Indicates that the subsection doesn't invalidate an irrevocable proxy that complies with AS 10.06.418(e).

Section 29 (AS 10.06.425(b)). Rewrites the subsection to expressly allow shareholders to enter into a voting agreement or any other agreement if the agreement is consistent with this chapter.

Section 30 (AS 10.06.430(a)). Makes technical wording changes to make the use of the term "books and records of account" consistent throughout the section.

Section 31 (AS 10.06.430(b)). Conforms the section to the demand and scope provisions of Sec. 16.02(b)-(c) of the Revised Model Business Corporation Act. Requires that a shareholder's demand to inspect the books and records of a corporation be made with reasonable particularity. Places some burden on the shareholder making the request in order to avoid harassment requests. Substitutes "directly connected" for "relevant". Makes a technical wording change to make the use of the term "books and records of account" consistent throughout the section.

Section 32 (AS 10.06.430(c)). Makes technical wording changes, including one to make the use of the term "books and records of account" consistent throughout the section.

Section 33 (AS 10.06.433(a)). Exempts a corporation with less than 100 shareholders from the requirement of sending out an annual report, unless its articles or bylaws impose the requirement.

Section 34 (AS 10.06.435(a)). Coordinates subsection with new ability to issue certificateless shares.

Section 35 (AS 10.06.450(c)). Is taken from Sec. 8.30(c) of the Revised Model Business Corporation Act and indicates when a director cannot be considered to be acting in good faith.

Section 36 (AS 10.06.450(f)). Follows the suggestion of the ALI Statement on Corporate Governance and articulates the business judgment defense for directors. No jurisdiction has, to this point, ever attempted a statutory formulation of the business judgment rule. The reader is referred to the official comments of the ALI statement for a fuller understanding of the relationship between the duties of care and loyalty and the business judgment rule.

Section 37 (AS 10.06.453(a)). States that the board consists of one or more members. Establishes how the number of directors is fixed. Restricts changing the number of directors to amendment of the articles, if the articles fix the number of directors. Sets the number of directors at three if the number is not otherwise set.

Section 38 (AS 10.06.453(b)). Coordinates subsection with new language of AS 10.06.453(a).

Section 39 (AS 10.06.465(d)). Allows a director to resign at any time.

Section 40 (AS 10.06.470(a)). Coordinates subsection with new language of AS 10.06.453(a).

Section 41 (AS 10.06.470(b)). Allows a corporation to establish in its bylaws the machinery for holding a special board meeting or a meeting of a committee designated by the board. Shortens the general provision relating to the minimum required written notice of the meeting from 20 to 10 days and notice by other listed means from 72 to 24 hours. The general requirement that notice of a special meeting must disclose the proposed agenda is made subject to bylaw provisions.

Section 42 (AS 10.06.483(d)). Corrects a citation. Deletes the reference to "share certificates" because they are covered by another section and there was a conflict.

Section 43 (AS 10.06.483(e)). Allows officers a limited right to rely on legal counsel and public accountants.

Section 44 (AS 10.06.483(f)-(g)). Follows the suggestion of the ALI Statement on Corporate Governance and articulates the business judgment defense for officers. No jurisdiction has, to this point, ever attempted a statutory formulation of the business judgment rule. The reader is referred to the official comments of the ALI statement for a fuller understanding of the relationship between the duties of care and loyalty and the business judgment rule.

Section 45 (AS 10.06.576(f)). Coordinates subsection with new ability to issue certificateless shares.

Section 46 (AS 10.06.576(g)). Coordinates subsection with new ability to issue certificateless shares.

Section 47 (AS 10.06.578(c)). Coordinates subsection with new ability to issue certificateless shares.

Section 48 (AS 10.06.580(f)). Coordinates subsection with new ability to issue certificateless shares.

Representative Mike Davis
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March 3, 1989

Section 49 (AS 10.06.605(b)). In addition to technical changes, indicates that a corporation may dissolve if one of the three listed situations occurs.

Section 50 (AS 10.06.528(d)). Coordinates subsection with changes to AS 10.06.425(d).

Section 51 (AS 10.06.530(e)). Coordinates subsection with changes to AS 10.06.425(e).

Section 52 (AS 10.06.633(a)). Allows the commissioner to dissolve a corporation if the corporation is delinquent six months in paying its biennial corporation tax. Deletes paragraph (8) since AS 10.06.155 (registration of agent by nonresident with controlling interest) is repealed by sec. 57 of the bill.

Section 53 (AS 10.06.828). Makes an application for a certificate of authority or any other application subject to a filing fee.

Section 54 (AS 10.06.855). Requires that fees and charges provided for in AS 10.06 be paid in advance.

Section 55 (AS 10.06.960). Updates the citation for the Alaska Native Claims Settlement Act.

Section 56 (AS 10.06.960(e)-(f)). Grants the boards of native corporations the authority to amend their articles without the necessity of a vote of the shares if the purpose is to bring the articles into conformity with federal law. Defines "act" for the section.

Section 57 (AS 10.06.990(12)). Deletes the term "controlling interest" since it is not used in AS 10.06.

Section 58 (AS 10.06.990(47)). Defines "entire board" for the chapter.

Section 59 (AS 10.06.155). Repeals AS 10.06.155, "Registration of agent by non-resident with controlling interest".

Section 60 gives the bill an effective date.

TLB:lmb
L7/024

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH - STATE CAPITOL
JUNEAU, ALASKA 998
907 485 3800

March 3, 1989

The Honorable Mike Davis
Chair, Alaska Legislative Council
Pouch V, State Capitol
Juneau, Alaska 99811

Re: Bill on the Alaska Corporations Code (AS 10.06)
(6-0953A and 6-0395A)

Dear Representative Davis:

The attached bills (one for the House and one for the Senate) are submitted to the Alaska Legislative Council pursuant to AS 24.20.075 with the request that they be introduced in the Sixteenth Legislature. A sectional analysis accompanies the bills.

The bills are the product of work done by the Alaska Code Revision Commission and the Task Force for the Alaska Corporation Code and represent a consensus of changes and additions to AS 10.06 which passed the Legislature during the second session of the Fifteenth Legislature.

By way of background, AS 10.06 (CSHB 322(Jud)(efd am S)), passed the House by a vote of 38-0 and the Senate by a vote of 14-4. During the final week of consideration of this bill, both individuals and groups indicated to various legislative members that they had not had sufficient time to consider the wholesale revision of the Alaska's for-profit corporation code (bills virtually identical to the bill that finally passed the Legislature were introduced and considered by the Legislature beginning in 1982 through 1988). In an effort to allow additional comments on AS 10.06, Senator Kelly offered an amendment in the Senate to postpone the effective date of the bill until July, 1989. The Legislature approved the amendment and the bill was forwarded to Governor Cowper where it was signed into law.

The purpose of the delayed effective date was to allow for the creation of a task force (the ACC Task Force) representing those interests which wanted additional time to consider

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AS 10.06 to propose changes and amendments to the bill as passed for consideration by the Legislature prior to the July 1989 effective date. The Task Force was comprised of the following interests:

1. Erik LeRoy representing the Alaska Bar Association's Business Law Committee and the interests of Native Village Corporations;
2. Willis Kirkpatrick, Director of the Division of Banking, Corporations and Securities (Mr. Kirkpatrick chaired the Task Force);
3. David Wolf representing the Alaska Federation of Natives and the interests of the Native Regional Corporations;
4. J.P. Tangen representing the interests of the State Chamber of Commerce;
5. John W. Abbott representing the Alaska Code Revision Commission.

The Task Force was also to have included Elizabeth Johnstone because she had earlier led a group of five attorneys designed by the Alaska Federation of Natives to work with the Code Revision Commission in tailoring the new code so that it reflected the interests of Alaska Native Corporations. Her whereabouts were unknown and, as such, she did not participate. A representative of the Anchorage Chamber of Commerce was also contacted to participate in the Task Force but did not do so.

The Task Force first met in November of 1988 and essentially finished its work (which was approved by the Alaska Code Revision Commission) on February 28, 1989. The draft bill accompanying this letter of transmittal is basically the work product of the Task Force. Although the Task Force has not seen the final form of the bill, it is our understanding that the Task Force agrees with the changes proposed by the bill.

Although the bill appears lengthy, in fact the number of changes is minimal. In many instances, sections of AS 10.06 which are being modified are duplicated in their entirety, even though only two or three words are added or deleted. New sections have been added to clarify the duties of offi-

Representative Mike Davis
Page 3
March 3, 1989

cers and directors so that the duties appear in respective sections dealing with directors or officers (the provisions generally mirror each other in language). In other sections of the bill, substantive changes have been made to AS 10.06, which substantive changes are reflected in the sectional analysis accompanying this letter of transmittal. A member of the Alaska Code Revision Commission will be available to testify as to the legal ramifications of each such change at any committee hearings.

The work of the Task Force has enhanced the clarity of AS 10.60 by the addition of new language spelling out what corporate conduct is acceptable. It also reflects the needs of a cross-section of the Alaskan community that will be operating under the corporations code. We feel that the changes made are good ones, are defensible and should be made to make AS 10.06 an even better statutory product. I would encourage the Legislative Council to give this bill serious consideration and to encourage its expeditious passage in both houses of the Legislature.

Because time is short for consideration of this bill, and because there may be questions concerning the changes and amendments, I can make myself available for telephone or teleconference consultation concerning the draft bill. Again, the Commission would appreciate your consideration of this bill which, if passed by the Legislature, will take effect at the same time that AS 10.06 is scheduled to become law in Alaska.

Respectfully submitted,



John Abbott
Chair
Alaska Code Revision Commission

JA:gc
WKG7/087

Enclosure



Representative Dave Donley, Chair House Labor & Commerce Committee

DATE: 4-18-89

PLACE: C#17

SUBJECT OF MEETING:

HB 96
HB 284
SCR 21
SB 82

HB 108
HB 13
SCR 41

HB 166

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?	WHAT SUBJECT WHICH BILL?
✓ ED CRANE	CFFB	5260 LUPIN PL. ANC	99507	562-7556	276-2007	(Y) N	SB 82
✓ Bob Bartholomew	DOTMPF	P.O. Box 2 Juneau		463-3237	465-3911	(Y) N	HB 284
✓ Tom Lawson	DCED	PO Box D JUNO	99811		465-2017	Y (N)	SCR 21 Available for Q
✓ Paul Roller	D.O.F	Pouch D - "	99811		465-7515	(Y) N	SCR 41
✓ MARTHA FISCHBACH	SELF	Box 34496, JUNO	99803	364-2675	465-8828	(Y) N	HB 96 - Vet
✓ ROSAUN HORSCHER	Assoc Fenece A.S.A	10360 Nigh Rd	99515	522-1155	522-5289	(Y) N	HB 284
✓ Karl OHS	Sen. Zharoff	P.O. Box V, Juneau	99811		465-3473	(Y) N	SB 82
✓ Resa Terrell	A.G.C. of AL	134 No. Franklin	99801	584-1741		(Y) N	HB 284
✓ Randall Burns	Dept. of Commerce	P.O. Box D-216 Juneau, AK 99811			465-2535	(Y) N	HB 96
✓ Dean Paddock	Self	Box 20312 Juneau 99802		788-4231	463-4970	(Y) N	SB 82
✓ Scott Burgess	AMC	217 2nd St Suite 200 Juneau 99801			6-1325	(Y) N	HB 284



Representative Dave Donley, Chair House Labor & Commerce Committee

DATE: 4-20-89

PLACE: CA17

SUBJECT OF MEETING:

SB 82 SB 101
 SJR 30 HB 284 HB 166
 HB 278

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?	WHAT SUBJECT WHICH BILL?
PAULA TERRELL	SENATOR KERTOLA					<input checked="" type="radio"/> Y <input type="radio"/> N	
ROSIE PETERSON	G/COVE	211 FOURTH ST. #101	99801		6-1736	<input checked="" type="radio"/> Y <input checked="" type="radio"/> N	SJR 30
Doree Gray	Sen. Kelly			3822		<input type="radio"/> Y <input type="radio"/> N	SB 101
Guy Warren	JUD DOUGLAS OFFICIALS	4362 TAKUBLUD JUNEAU	99801		9-3852	<input checked="" type="radio"/> Y <input type="radio"/> N	SB 107
166 KATE GRAHAM	UNITED FISHERMEN OF ALASKA	211 4TH ST. SUITE 106 JUNO	99801		6-2820	IF NEEDED <input type="radio"/> Y <input type="radio"/> N	SB 82 HB 166
166 Dennis Mestas	Alaska Academy of Trial Lawyers	880 'N' St. Suite 202	99501	277-4	277-4551	<input checked="" type="radio"/> Y <input type="radio"/> N	HB 166
66 Pam Kerttula	SENATOR Atty Gen	Juneau				<input type="radio"/> Y <input checked="" type="radio"/> N	HB 166
						<input type="radio"/> Y <input type="radio"/> N	
						<input type="radio"/> Y <input type="radio"/> N	
						<input type="radio"/> Y <input type="radio"/> N	
						<input type="radio"/> Y <input type="radio"/> N	