

HB

HO

# DIVISION OF LEGAL SERVICES

## LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

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### MEMORANDUM

February 22, 1991

**SUBJECT:** Sectional summary of HB 110

**TO:** Representative Mike Navarre  
Attn: Tom Ackerly

**FROM:** Theresa L. Bannister *TB*  
Legislative Counsel

You have requested a sectional summary of the above described bill. As a preliminary matter, note that a sectional 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 rewrites AS 44.81.260, the section that currently establishes confidentiality requirements for the records of the Commercial Fishing and Agriculture Bank (CFAB).

AS 44.81.260(a) makes confidential those records that are identified with a specific borrower, bank member, or loan applicant, that can be identified as being from the records of one of those persons. Prohibits the bank or the bank's directors, officers, employees or agents from disclosing the records, except in certain listed situations.

AS 44.81.260(b) authorizes CFAB to keep other records (those not subject to (a)) confidential, except in certain indicated situations.

AS 44.81.260(c) states that a borrower, bank member, or loan applicant may authorize CFAB to disclose those records provided to the bank by the person. The release must be in writing.

AS 44.81.260(d) defines "member" and "records" for the section.

Section 2 gives the Act an immediate effective date.

If I may be of further assistance, please advise.

TLB:pl  
91-104.plm

ALASKA STATE LEGISLATURE  
REPRESENTATIVE MIKE NAVARRE

Co-Chair  
House Finance Committee  
P.O. Box V  
Juneau, Alaska 99811  
(907) 465-3779

March 11, 1991

**MEMORANDUM**

**TO:** Representative Dave Donley, Chairman Judiciary Committee

**FROM:** Representative Mike Navarre

**SUBJECT:** House Bill 110, An Act relating to the confidentiality of the records of the Commercial Fishing and Agriculture Bank; and providing for an effective date.

.....

I would like to request a hearing on House Bill 110 at your earliest convenience.



ALASKA STATE LEGISLATURE  
REPRESENTATIVE MIKE NAVARRE

Co-Chair  
House Finance Committee  
P.O. Box V  
Juneau, Alaska 99811  
(907) 465-3779

March 12, 1991

Memorandum

TO: Representative Dave Donley, Chair Judiciary Committee

FROM: Representative *Mike Navarre*

SUBJECT: House Bill 110, An Act relating the confidentiality of the records of the Commercial Fishing and Agriculture Bank; and providing for an effective date.

.....  
PURPOSE of HB 110

The existing CFAB statutes contain inconsistencies and undefined terms which are difficult to interpret and invite litigation by borrowers or others who might assert damages from actions in violation of the statute. This bill also provides avenues for the release of legitimate information which are found in the statutes or regulations governing other commercial lenders.

Benefits of this Legislation

1. **Eliminate Cost-** Currently CFAB has no choice but to literally force a formal confrontation before a Court. In the end CFAB is ordered to produce the information at great legal expense. This procedure is costly to all parties involved.
2. **Current Law-** This legislation will bring CFAB in concurrence with other lending institutions. Under current law CFAB cannot release "legitimate" information when provided with a subpoena while other lending institutions can.
3. **Retain Privacy-** This legislation still provides the elements of privacy to CFAB and its members, borrowers, and applicants while at the same time provides information that is sought within the statutory and/or regulatory frameworks established with respect to the customers of financial institutions generally.

HOUSE COMMITTEE REPORT

(7)

Date Referred: February 27, 1991

FURTHER REFERRALS:

Date of Committee Action: 3-26-91

The JUDICIARY Committee considered:

HB 110

HOUSE BILL NO. 110

CONFIDENTIALITY OF CFAB RECORDS

"An Act relating to the confidentiality of the records of the Commercial Fishing and Agriculture Bank; and providing for an effective date."

RECOMMENDATIONS:

be replaced with HB 110  the same title

a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept) \_\_\_\_\_

APPROVES PREVIOUS: (Dept/Date) \_\_\_\_\_

fiscal impact \_\_\_\_\_

fiscal note(s) \_\_\_\_\_

zero fiscal note \_\_\_\_\_

zero fiscal note(s) CFAB 2-27-91

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>David Donley</i>					
<i>W. Shumaker</i>	-				
<i>Mark O'Rourke</i>	x				
<i>Kevin Pad Parkell</i>	✓				
<i>H. Elgin</i>	✓				
<i>Perry J. Masten</i>	✓				
<i>Mike Miller</i>	✓				

*David Donley*  
CHAIRMAN'S SIGNATURE

HOUSE COMMITTEE REPORT

(7)

Date Referred: February 5, 1991

FURTHER REFERRALS:

Judiciary

Date of Committee Action: 2-26-91

The LABOR AND COMMERCE Committee considered:

HB 110

HOUSE BILL NO. 110

CONFIDENTIALITY OF CFAB RECORDS

"An Act relating to the confidentiality of the records of the Commercial Fishing and Agriculture Bank; and providing for an effective date."

RECOMMENDATIONS:

be replaced with \_\_\_\_\_ [ ] the same title

[ ] have attached amendments(s) [ ] a new title

do pass

[ ] do not pass

[ ] no recommendations

[ ] individual recommendations

[ ] additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) \_\_\_\_\_

APPROVES PREVIOUS: (Dept/Date) \_\_\_\_\_

[ ] fiscal impact \_\_\_\_\_

[ ] fiscal note(s) \_\_\_\_\_

zero fiscal note CFAB

[ ] zero fiscal note(s) \_\_\_\_\_

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

	Check appropriate column:	Do Not Pass	No Rec	Amend
<i>Dee Douley</i>				
<i>Bucky Buchanan</i>				
<i>Don M. ...</i>				
<i>...</i>				
<i>...</i>				

*[Signature]*  
Chairman's Signature

FEB 25 '91 12:28 HOUSE JUNEAU

FISCAL NOTE

P.6/6

STATE OF ALASKA  
1991 LEGISLATIVE SESSION

BILL NO. HB 110

Revision Date: \_\_\_\_\_ Department Affected: \_\_\_\_\_

Title: CONFIDENTIALITY OF CPAB BRU: \_\_\_\_\_

RECORDS Component: \_\_\_\_\_

Sponsor: REP. NAVAREE

Requestor: HOUSE LABOR & COMMUNITY COMPONENT SERIAL NO. [ ] [ ] [ ] [ ]

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
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	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year impact: NONE

ANALYSIS: (Attach a separate page if necessary.) HB 110 AFFECTS THE ALASKA COMMERCIAL FISHING + AGRICULTURE BANK ONLY. NO FISCAL IMPACT TO ANY STATE AGENCY IS EXPECTED.

Prepared By: BILL HALL, BUSINESS DEV. OFFICER Phone: 226-2007

Division: CPAB Date: 2-25-91

Approved by Commissioner: B. Hall

Agency: ALASKA COMMERCIAL FISHING + AG. BANK Date: 2-25-91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

ALASKA STATE LEGISLATURE  
REPRESENTATIVE MIKE NAVARRE

Co-Chair  
House Finance Committee  
P.O. Box V  
Juneau, Alaska 99811  
(907) 465-3779

February 21, 1991

Memorandum

TO: Representative David Finklestein, Chair L&C Committee

FROM: Representative Mike Navarre 

SUBJECT: House Bill 110, An Act relating the confidentiality of the records of the Commercial Fishing and Agriculture Bank; and providing for an effective date.

.....  
PURPOSE of HB 110

The existing CFAB statutes contain inconsistencies and undefined terms which are difficult to interpret and invite litigation by borrowers or others who might assert damages from actions in violation of the statute. This bill also provides avenues for the release of legitimate information which are found in the statutes or regulations governing other commercial lenders.

Benefits of this Legislation

1. **Eliminate Cost-** Currently CFAB has no choice but to literally force a formal confrontation before a Court. In the end CFAB is ordered to produce the information at great legal expense. This procedure is costly to all parties involved.
2. **Current Law-** This legislation will bring CFAB in concurrence with other lending institutions. Under current law CFAB cannot release "legitimate" information when provided with a subpoena while other lending institutions can.
3. **Retain Privacy-** This legislation still provides the elements of privacy to CFAB and its members, borrowers, and applicants while at the same time provides information that is sought within the statutory and/or regulatory frameworks established with respect to the customers of financial institutions generally.

## **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, we use a procedure to objectively analyze the credit-worthiness of each individual applicant, which 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 which is actually produced is either returned to the borrower-owners or otherwise used to their benefit.

— EXCERPTED FROM A CFAB BROCHURE. —

HB 110

BACKGROUND/DRAFT FOR SECTIONAL ANALYSIS - ~~PROPOSED BILL "A"~~

The existing section (AS 44.81.260) of CFAB's statute which addresses the confidentiality of its records contains a number of ambiguities, undefined terms, and inconsistencies which are difficult to interpret and which instill an overshadowing fear of litigation by borrowers or others who might assert damages from actions in violation of the statute. Perhaps more important, it does not provide the avenues for "legitimate" releases of information which are found in the statutes or regulations governing other commercial lenders such as commercial banks, credit unions, savings and loan associations, etc.

The latter circumstances have proven to be confounding and challenging to attorneys, regulators, law enforcement agents, and judges, etc. As time has passed in CFAB's "life" and as the number of individuals and companies with whom CFAB does business has grown, there are more occasions or opportunities for litigants, regulators, and enforcement officers to approach CFAB with expectation that a summons, subpoena, or other "normal" procedure will be effective in obtaining records or information.

CFAB's statute, as it exists, leaves the bank with no option except to say "No" and to literally force a formal confrontation before a Court. Such a posture is costly -- to CFAB and to all concerned -- and creates an unfortunate burden on the legal system. In every situation

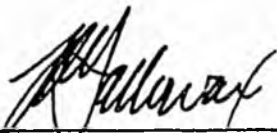
Background/Draft for Sectional Analysis  
Proposed Bill "A"

which has been finalized to date, CFAB has predictably "lost"; i.e., the Court has ordered production of the information at issue. On the other hand, CFAB has "won" the protection of a Court Order against the potential claims of the parties who are the subjects of the information.

This legislation addresses the above circumstances. It retains the elements of privacy for CFAB and its members, borrowers, and applicants while at the same time it provides for the disclosure and release of information when that information is sought within the statutory and/or regulatory frameworks established with respect to the customers of financial institutions generally. Within that context, it does not create inappropriate exposures for CFAB members, borrowers, and applicants; neither does it provide protections which are unavailable to the customers of other institutions.

HB 110: An Act relating to the confidentiality of the records of the Commercial Fishing and Agriculture Bank; and providing for an effective date."

The department has no opposition to this bill, as it does not affect any of the department's programs.

 *Asst Comm*  
\_\_\_\_\_  
Glenn A. Olds, Commissioner

Date: 3-21-91

FISCAL NOTE

STATE OF ALASKA  
1991 LEGISLATIVE SESSION

BILL NO. HB 110

Revision Date: \_\_\_\_\_ Department Affected: Commerce & Economic Dev.  
 Title: Confidentiality of the BRU: Banking, Securities & Corporations  
Commercial Fishing & Agriculture Bank Component: Banking  
 Sponsor: Rep. Navarre  
 Requestor: \_\_\_\_\_ COMPONENT SERIAL NO. 

1	2	3	3
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
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						

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Willis F. Kirkpatrick, Director Phone: 465-2521  
 Division: Banking, Securities & Corporations Date: \_\_\_\_\_  
 Approved by Commissioner: Glenn A. Olds *[Signature]*  
 Agency: Department of Commerce & Economic Development Date: 3-20-91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).