

HB

116

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

DATE: 4/17/00

REPORTED OUT OF
SFC 4/18/00

FURTHER:

DATE TURNED
IN TO OFFICE: 18 April 00

Finance Committee considered CS FOR HOUSE BILL NO. 116(FIN)

"An Act relating to the Board of Agriculture and Conservation, to the director of agriculture, to the agricultural revolving loan fund and to loans from the fund, to the disposal of interests in state agricultural land; and providing for an effective date."

and recommends:

be replaced with _____ CS _____ (_____)

adopt previous _____ CS _____ (_____)

attached amendment(s)

adopt Letter of Intent by _____ Committee

further referral to the _____ Committee

Senate Bill:

same title

new title

House Bill:

same title

technical title

new: SCR# _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>[Signature]</i>	✓	<i>[Signature]</i>	✓		
<i>[Signature]</i>	✓	<i>[Signature]</i>	X		
<i>[Signature]</i>	✓				
<i>[Signature]</i>	✓				
<i>[Signature]</i>	✓				
Co-Chair: <i>[Signature]</i>	✓	Co-Chair:			
Co-Chair:		Co-Chair:			

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal
DNR	4/17/00		10.0

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

SENATE FINANCE COMMITTEE REPORT

DATE: 4/17/00

REPORTED OUT OF
SFC 41800

FURTHER:

DATE TURNED
IN TO OFFICE: 18 April 00

Finance Committee considered

CS FOR HOUSE BILL NO. 116(FIN)

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and recommends:

- be replaced with _____ CS _____ (_____)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to the _____ Committee

- Senate Bill:**
- same title
 - new title
- House Bill:**
- same title
 - technical title
 - new: SCR# _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>[Signature]</i>	✓	<i>[Signature]</i>	✓		
<i>[Signature]</i>	✓	<i>[Signature]</i>	X		
<i>[Signature]</i>	✓				
<i>[Signature]</i>	✓				
<i>[Signature]</i>	✓				
Co-Chair: <i>[Signature]</i>	✓	Co-Chair:			
Co-Chair: <i>[Signature]</i>		Co-Chair:			

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal
DNR	4/17/00		10.0

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

FISCAL NOTE

STATE OF ALASKA
2000 LEGISLATIVE SESSION

REPORTED OUT OF
 SFC 418100

BILL No. 2
 Bill Version: SCS CSHB 116 (RES)
 ((S) Publish Date: 4-17-00

Revision Date/Time: 28-Mar-00 Dept Affected: Natural Resources
 Title: Board of Agriculture and Conservation BRU: Agricultural Development and ARLF Admin.
 Component: Agricultural Development, and ARLF Program Admin.
 Sponsor: Rep. James Component No: 455 and 2235
 Requestor: (S) RES

Expenditures/Revenues (Thousands of Dollars)
 Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY2001	FY2002	FY2003	FY2004	FY2005	FY2006
PERSONAL SERVICES						
TRAVEL	10.0	10.0	10.0	10.0	10.0	10.0
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	10.0	10.0	10.0	10.0	10.0	10.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES (fund code)	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1021 ARLF	10.0	10.0	10.0	10.0	10.0	10.0
TOTAL	10.0	10.0	10.0	10.0	10.0	10.0

Estimate of any current year (FY2000) cost: \$ none

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary)

FY01 and future costs are difficult to quantify since proposed legislation creates a new level of government.

Per diem allowance language section 39.20.180 (2) is unclear as to rate of reimbursement. Currently the Agricultural Revolving Loan Fund Board meeting expenses are approximately \$9.0 per year for travel related meeting expenses for 8 meeting a year, the minimum set by statute. These costs can be higher depending on where a board member lives, the number of meetings held, or if all seven seats are filled during the year. There are no costs to the Division of Agriculture for the creamery corporation meetings. The new board of agriculture, it would be reasonable to assume, would need to meet at least twice as many times or more (16) since the proposed board has an expanded mission. We estimate a potential \$10.0 increase in meeting expenses. This \$10.0 is reflected in the fiscal

Prepared by: Robert Wells *[Signature]* Phone: 907-745-7200
 Division: Division of Agriculture Date: 17-Apr-00
 Approved by Commissioner: John Shively *[Signature]* Date: 17-Apr-00
 Agency: Natural Resources

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Continuation of fiscal note for: SCSHB116(RES)

Based on loans issued in FY99, each percent decline in the interest rate of Agricultural Revolving Loan Fund loans will result in a corresponding decline in interest revenue that averages approximately \$20.0 annually over a five-year period.

Also the exiting portfolio could eventually participate in any offered reduction through requested loan modifications, which would further reduce interest income.

STATE OF ALASKA
HOUSE OF REPRESENTATIVES

Representative Jeannette James



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North Pole, AK 99701
TEL 488-1546, FAX 488-4271

State Capitol
Juneau, AK 99801
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SPONSOR STATEMENT

House Bill 116 Board of Agriculture and Conservation

4/16/00

House Bill 116 represents a cooperative effort and years of intensive work by the agriculture industry, the Legislature, and the Administration.

HB 116 creates a new board - The Board of Agriculture and Conservation - comprised of seven people involved in grass-roots commercial production agriculture.

The new board submits names to the Commissioner of DNR for selection of its director, and that same person will serve as the Director of the Division of Agriculture. The bill requires that the board be consulted prior to any disposal of agricultural land. In addition, HB 116 extends the life of the Agriculture Revolving Loan Fund (ARLF) by insuring that the new board has control over ARLF funds. It makes the ARLF interest rate competitive with other loans which are currently drawing farmers away and shortening the life and income of the ARLF. HB 116 allows flexibility for the new board to restructure loans in the event of a disaster, and it strengthens the emergency loan program.

House Bill 116 provides much-needed stability and allows long-term planning and growth for the agriculture industry in Alaska.

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Sectional Analysis
CS HB 116 (FIN)

4/16/00

Section 1 adds an entire new chapter to Title 3 Agriculture and Animals

"CHAPTER 9. BOARD OF AGRICULTURE AND CONSERVATION."

Members serve staggered three-year terms and may be removed from office by the Governor only if the governor first provides a written statement of the reasons for removal.

A person may be appointed to the Board even though that person or an immediate family member has an existing lease, permit, or loan for which the board is responsible, but that person may not participate in any Board action that directly affects that lease, permit, or loan, or obtain a new lease, permit, or loan for which the Board is responsible.

The director of agriculture shall be chosen by the Commissioner of DNR from a list of two or more names submitted by the Board. The director of agriculture shall also serve as the director of the new Board and shall be responsible for the daily operations of the agricultural revolving loan fund, as directed by the Board.

The Board may make recommendations to the Commissioner of DNR regarding identification and disposal of agricultural land.

Section 2 amends existing statute, authorizing the new board (instead of DNR) to make loans.

Section 3 amends existing statute, making the fixed interest rate on farm development, chattel, or irrigation loans comparable to that charged by other agricultural lending institutions in the state.

Section 4 amends existing statute, authorizing the new board, instead of the ARLF Board, to extend the term of a loan for up to three years.

Section 5 amends existing statute, authorizing the new board, in place of DNR and Division of Agriculture, to assess delinquency penalties on loans.

Section 6 amends existing statute, making the fixed interest rate on farm product processing loans comparable to that charged by other agricultural lending institutions in the state.

Section 7 amends existing statute, making the fixed interest rate on loans for clearing land comparable to that charged by other agricultural lending institutions in the state.

Section 8 amends existing statute, authorizing the new board, instead of the Commissioner of DNR, to adopt regulations to establish other terms and interest rates for loans.

Section 9 amends existing statute, authorizing the new board to restructure loans by reducing interest and extending terms to a borrower who has experienced an agricultural disaster as defined by regulations adopted by the board.

Section 10 amends existing statute, authorizing the new board, rather than the ARLF Board, to approve an application for loan restructuring.

Section 11 amends existing statute, designating the new board, instead of the Commissioner of DNR, to be the recipient of out-standing balance payments.

Section 12 amends existing statute, authorizing the legislature to appropriate money from the ARLF for costs of administering the operations of the new board.

Section 13 amends existing statute, giving the new board, instead of the commissioner of DNR, authority to administer the ARLF. A loan may not be made without the approval of a majority of the board, except that emergency loans up to \$50,000 may be approved by majority vote of a committee composed of the board chair, another board member, and the director.

Section 14 amends existing ARLF Board statutes to apply to the new Board of Agriculture and Conservation instead. The new board consists of seven members appointed by the Governor and confirmed by the Legislature. The members have the following qualifications:

One with business or financial experience,
One from a statewide agriculture promotion organization,
One from Alaska Soil and Water Conservation Districts,
Four from different enterprises in commercial production agriculture.

Section 15 amends existing statute, exempting the new board from public meeting requirements.

Section 16 amends existing statute, allowing the new board, rather than DNR, to establish credits for loans maintained in good financial standing.

Section 17 amends existing statute, allowing the new board, rather than the Director of Agriculture, to dispose of property acquired through foreclosure or default.

Section 18 amends existing statute and adds a new subsection, specifying that the new board shall be given the opportunity to comment before disposal of any state land designated as agricultural.

Section 19 amends existing statute, specifying that the new board shall be consulted prior to conveyance of agricultural use rights.

Section 20 amends existing statute, specifying that the new board shall be consulted prior to any action to waive, postpone, or modify development requirements of a contract for sale of agricultural land.

Section 21 amends existing statute, specifying that the new board shall be consulted prior to any action to adopt regulations specifying qualifications for lottery participants involving agricultural land disposal.

Section 22 amends existing statute, specifying that the new board shall be consulted prior to any action to provide for the sale of agricultural land subject to state subdivision requirements and municipal ordinances.

It also adds a clause stating that money from a sale of agricultural land shall be accounted for separately and may be appropriated to the ARLF by the Legislature.

Section 23 amends existing statute, specifying that the new board shall be consulted prior to any action to provide for maximum interest rates, to declare a moratorium of up to five years on payments, to certify agreements with purchasers to perform development and expenditures during a moratorium, and to assure compliance with development plans during a moratorium.

Section 24 amends existing statute, specifying that the new board shall be consulted prior to any action granting an Alaska resident first option on auctioned agricultural land.

Section 25 amends existing statute to allow payments collected under this section to be appropriated to the ARLF.

Section 26 amends existing statute, specifying that the new board shall be consulted before the Director of the Division of Mining, Land, and Water disposes of any land designated as agricultural.

Section 27 amends existing statute, allowing payments received under this section to be accounted for separately and appropriated to the ARLF.

Section 28 amends existing statute specifying that the new board shall be consulted prior to any action to dispose of homestead entry land designated as agricultural.

Section 29 adds the new board to the list of boards defined in statute.

Section 30 *REPEALS* existing statutes which:

Define a duty of the ARLF Board,
Define limitations on ARLF Board members,
Place the ARLF Board in statute.

Section 31 outlines the transition process from existing boards to the new board.

Section 32 sets the effective date of this bill as July 1, 2000.

delineate the full extent of the constitution's express grant to the legislative branch of checks on the governor's power to appoint subordinate executive officers. *Bradner v. Hammond*, 553 P.2d 1 (Alaska 1976).

This section and § 26 of this article mark the full reach of the delegated, or shared, appointive function to Alaska's legislative branch of government. *Bradner v. Hammond*, 553 P.2d 1 (Alaska 1976).

The quorum for a joint session of the legislature convened under Article III, §§ 25 and 26 of the Alaska Constitution is a majority of the members of the legislature, or 31 legislators from either house of the legislature. *Abood v. Gorsuch*, 703 P.2d 1158 (Alaska 1985).

Section 1, ch. 82, SLA 1975, is unconstitutional. — Section 1, ch. 82, SLA 1975, which amends AS 39.05.020 and purports to authorize legislative "meddling" in the exercise of an executive power, i.e., the appointment of executive officials, is unconstitutional because it is violative of separation of powers requirements. *Bradner v. Hammond*, 553 P.2d 1 (Alaska 1976).

Applied in *Larson v. State*, 564 P.2d 365 (Alaska 1977); *Buckalew v. Holloway*, 604 P.2d 240 (Alaska 1979); *Kerttula v. Abood*, 686 P.2d 1197 (Alaska 1984).

Section 26. Boards and Commissions. When a board or commission is at the head of a principal department or a regulatory or quasi-judicial agency, its members shall be appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session, and may be removed as provided by law. They shall be citizens of the United States. The board or commission may appoint a principal executive officer when authorized by law, but the appointment shall be subject to the approval of the governor.

NOTES TO DECISIONS

Clear nature of provisions. — The provisions of this section and § 25 of this article are clear and unambiguous. *Bradner v. Hammond*, 553 P.2d 1 (Alaska 1976).

Vesting of powers of appointment and confirmation. — This section vests the power of appointment in the governor and the power to confirm in the legislature in joint session. *Bradner v. Hammond*, 553 P.2d 1 (Alaska 1976).

Removal is as provided by law. — Removal of board or commission members appointed under this section is as provided by law and, therefore, not necessarily at the governor's pleasure. *Bradner v. Hammond*, 553 P.2d 1 (Alaska 1976).

Confirmation is part of executive power of appointment. — Confirmation is not a distinct legislative power, but rather a part of the executive power of appointment which has in turn been delegated in some specific instances by constitution to the legislative branch of government. *Bradner v. Hammond*, 553 P.2d 1 (Alaska 1976).

Limitation on legislative checks on governor's power to appoint. — The lack of ambiguity in this section and § 25 of this article mandate that this court interpret these express provisions as embodying not only the maximum parameters of the delegation of the executive appointive authority through the legislative confirmation function but, further, that they delineate the full extent of the constitution's express grant to the legislative branch of checks on the gov-

ernor's power to appoint subordinate executive officers. *Bradner v. Hammond*, 553 P.2d 1 (Alaska 1976).

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Appointment of members of Alaska State Mortgage Association. — This section does not govern the appointment of members of the Alaska State Mortgage Association. *Walker v. Alaska State Mtg. Ass'n*, 416 P.2d 245 (Alaska 1966).

Applied in *State v. A.L.I.V.E. Voluntary*, 606 P.2d 769 (Alaska 1980); *Kerttula v. Abood*, 686 P.2d 1197 (Alaska 1984).

Cited in *Ault v. Alaska State Mtg. Ass'n*, 387 P.2d 698 (Alaska 1963).

Collateral references. — 63A Am.Jur.2d, Public Officers and Employees, §§ 121 to 126.

67 C.J.S., Officers and Public Employees, § 44; 81A C.J.S., States, § 84.

Section 27. Recess Appointments. The governor may make appointments to fill vacancies occurring during a recess of the legislature, in offices requiring confirmation by the legislature. The duration of such appointments shall be prescribed by law.

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Citation/Title
File No. J-66-326-80

*7001 1980 WL 27561

Office of the Attorney General
State of Alaska

File No. J-66-326-80
January 4, 1980

Confirmation of members of boards and commissions

Honorable Jay S. Hammond
Governor

ATTN: Vicki A. Clayman
Special
Assistant to the Governor

Pursuant to your request, we are updating our memoranda of February 3 and 6, 1977, on this subject.

Under the Alaska Constitution, the only appointments which are and which can be subject to legislative confirmation are those prescribed by the constitution. Bradner v. Hammond, 553 P.2d 1 (Alaska 1976). Those consist of the heads of principal departments and the members of boards or commissions which are at the head of a principal department or a regulatory or quasi-judicial agency. Alaska Const., art. III, § 26.

Accordingly, as a matter of constitutional law in Alaska, appointments to boards or commissions are subject to legislative confirmation not on the basis of whether confirmation is required by a statute but on the basis of what the board or commission is and does. If the board or commission is at the head of a principal department, e.g., the Board of Education, its members are appointed subject to legislative confirmation. If the board regulates, e.g., the Public Utilities Commission, its members are subject to confirmation. If it adjudicates, e.g., the Workmen's Compensation Board, confirmation is required. On the other hand, if the board is not at the head of a principal department and its function is neither to regulate nor adjudicate, no confirmation is required, and a statute requiring confirmation is unconstitutional. Bradner v. Hammond, 553 P.2d 1 (Alaska 1976). Because of potentially adverse precedential effects, every effort must be made to ensure that no appointments are submitted for legislative confirmation except those required by the state constitution.

Agricultural Action Council, Alaska, AS 44.33.450. No confirmation is required.

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File No. J-66-326-80

Agricultural Revolving Loan Fund Board, AS 03.10.050. No confirmation is required. While the statute requires confirmation, the board is neither regulatory nor quasi-judicial, and therefore, the statutory requirement is unconstitutional.

Architects, Engineers, & Land Surveyors, State Board of Registration for, AS 06.48.021. Confirmation is required. The statute does not require confirmation; however, this board regulates the profession of architects, engineers, and land surveyors and, under the constitution, appointment of its members must be confirmed.

Catastrophic Illness Committee, AS 47.06.020. No confirmation is required. The committee performs some quasi-judicial functions, but its main function is administrative.

Coastal Policy Council, Alaska, AS 44.19.891. No confirmation is required. The council's functions are principally administrative in nature.

Commercial Fishing & Agriculture Bank Board of Directors, AS 44.54.020. No confirmation is required.

Cultural Facilities, Advisory Council on, AS 44.33.100. No confirmation is required.

Educational Commission of the States, AS 14.40.730. No confirmation. This law was repealed by chapter 24, section 7, SLA 1979, and the commission no longer exists.

Emergency Medical Services, Advisory Council on, AS 18.08.020. No confirmation is required.

Employment Security Advisory Council, AS 23.20.025. No confirmation is required.

Forestry, Board of, AS 41.17.040. No confirmation is required.

Health Coordinating Council, Statewide, AS 18.17.011. No confirmation is required.

Medical Facilities Authority Board, Alaska, AS 18.26.030. No confirmation is required.

Oil & Gas Conservation Commission, AS 31.05.005. Requires confirmation. The statute refers to the commission as an 'independent quasi-judicial' agency. It is not, but it is an independent regulatory agency.

Power Authority, Alaska, AS 44.56.030. No confirmation is required. While the statute provides for confirmation, the APA is not at the head of a principal department and it is neither a regulatory nor quasi-judicial

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File No. J-66-326-80

agency. Accordingly, the statute's requirement for confirmation is unconstitutional.

Public Broadcasting Commission, Alaska, AS 14.58.010. No confirmation required. The statute's provisions for confirmation are unconstitutional.

Renewable Resources Corporation Board of Trustees, Alaska, AS 37.12.030. No confirmation is required. The statute's provisions for confirmation are unconstitutional.

Science & Technology, Alaska Council on, AS 44.19.181. No confirmation is required. The statute's provisions for confirmation are unconstitutional.

Status of Women, Governor's Commission on, AS 44.19.958. No confirmation is required.

Water & Wastewater Works Advisory Board, AS by 46.30.020. No confirmation is required.

Wood-Tickchik State Park Management Council, AS 41.20.480(b). No confirmation is required.

*7002 We suggest that an alphabetical card file or other means be used to maintain a permanent record on the confirmation requirements of each of the boards and commissions in order to avoid future confusion or uncertainty.

Avrum M. Gross

Attorney General

Rodger W. Pegues

Assistant Attorney



Teleconference Update Summary

TCN: 10804

- Participants
- Announcements
- Notes
- Billing Information
- Final Statistics
- Summary
- Main Menu
- Search

Summary Data

TC Date: April 18, 2000	Moderator:
Time: 6:00 PM TO 8:00 PM	Toll Free Number: 800 368 8772
Status: In-Progress	Dial-up Number:
Sponsor: SFIN: FINANCE	Personal Number: 907 258 8772
Chairs: Parnell	Testimony Allowed: Yes
Torgerson	Time Limit: 5 minutes
Purpose: PUB	Backup Material: No
Contact: Darwin 4652138	Meeting ID: 73462
Public Remarks:	
Internal Comments: Other sites may add	

Agenda

Bill Number	Bill Subject
HB 58	OIL & GAS AUDITS
HB 116	BOARD OF AGRICULTURE AND CONSERVATION
HB 339	CFAB LOANS FOR TOURISM & NAT RESOURCES
HB 317	STATE EMPLOYEE HIRE AND PROMOTION

LIO Sites

Chair	Name	Room
<i>on line</i>	ANCHORAGE	
<i>on line</i>	FAIRBANKS	<i>1 person observing only</i>
<i>x</i>	JUNEAU	CAP532
<i>on line</i>	MATSU	<i>- 1 person HB116 - observing observing</i>

VTS Sites

Chair	Code	Name	Location	LIO
<i>on line</i>	GAK	GAKONA	JUNCTION VILLAGE -	GLN HB339

Off-net Sites

Chair	Code	Name	Location	Phone
online	OF1	Elizabeth Hickerson	<i>on line</i>	907 269-5208 <i>HB116</i>
	OF2	Susan Springer		907 234-7410
online	OF3	Cheryl Frasca	<i>- listening Anc available for questions</i>	<i>HB116 HCR 22</i>

Participants

Name	Type	Bill
<i>fil</i>		