

SB

264

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264</subject><comm>SFIN26</comm></target>



ALASKA STATE LEGISLATURE

SENATOR JOHN COGHILL

State Capitol, Room 504, Juneau, AK 99801-1182 (907) 465-3719
3340 Badger Road Suite #290, North Pole, AK 99705 (907) 488-5725

SB 264 Alaska Commercial Fishing and Agriculture Bank SPONSOR STATEMENT

SB 264 makes two changes to statutes for the Commercial Fishing & Agriculture Bank (CFAB).

SB 264 would eliminate the designation for a "resident farmer" to be required as a member of the board. The Commercial Fishing and Agriculture Bank (CFAB) was created by the legislature in a time when there was emphasis on agriculture in the State. CFAB did make considerable agriculture loans in the 1980's but when the Agricultural Revolving Loan Fund became available to the agriculture loan market the number of persons eligible as "a resident farmer" has dwindled.

The bill would also require CFAB financial records to be examined by the Department of Commerce Division of Banking at 36 month intervals.



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SB 264 Alaska Commercial Fishing and Agriculture Bank SECTIONAL Version A

- Section 1.** Adds a definition to AS 06.01.010(b) Examination and investigation fees and assessments. The section adds CFAB to the definition of "financial institutions".
- Sec. 2.** Eliminates the requirement that one member of the CFAB board of directors must be a resident farmer.
- Sec. 3.** Adds an audit by Department of Commerce, Community, and Economic Development, Division of Banking and Securities, as an exception to the confidentiality provision of CFAB's financial records.
- Sec. 4.** Establishes a new section in CFAB statutes providing for a bank examination at intervals of not more than 36 months.
- Sec. 5.** House cleaning provision repeals definition of "resident farmer".
- Sec. 6.** Provides for an immediate effective date for resident farmer provisions.
- Sec. 7.** Establishes an effective date of July 1, 2011 for examinations as requested by the Division of Banking and Securities.

SENATE FINANCE COMMITTEE REPORT

DATE: 3/17/10

FURTHER:

DATE TURNED
IN TO OFFICE: _____

Finance Committee considered SENATE BILL NO. 264

SB 264 COMMERCIAL FISHING & AGRICULTURE BANK

"An Act relating to the board, investigations, and examinations of the Alaska Commercial Fishing and Agriculture Bank; and providing for an effective date."

and recommends:

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

SENATE BILL:
 Same Title
 New Title

HOUSE BILL:
 Same Title
 Technical Title Change
 New Title w/ SCR # _____

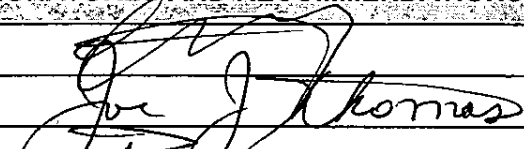
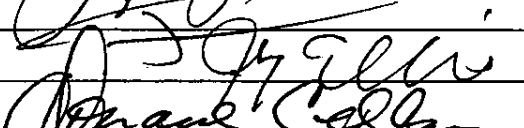
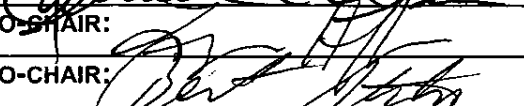


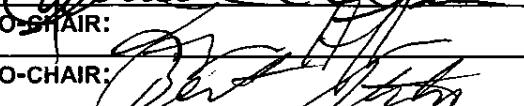

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#
CED		✓			

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	PRINTED LAST-NAME	Do PASS	Do NOT PASS	No REC	AMEND
	Huggins	✓			
	Thomas	✓			
	Egan	✓			
	Ellis			✓	
	Oesod			✓	
CO-CHAIR: 		✓			
CO-CHAIR: 		✓			

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: SB 264
 (S) Publish Date: 3/17/10

Identifier (file name): SB264-CED-BSS-3-15-10 Dept. Affected: DCCED
 Title Commercial Fishing and Agriculture Bank RDU Banking and Securities
 Component Banking and Securities
 Sponsor Senator Coghill
 Requester Senate Labor and Commerce Component Number 2808

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information						
		FY 2011	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
OPERATING EXPENDITURES								
Personal Services								
Travel	10.6		10.6	10.6	10.6	10.6	10.6	10.6
Contractual								
Supplies								
Equipment								
Land & Structures								
Grants & Claims								
Miscellaneous								
TOTAL OPERATING	10.6	0.0	10.6	10.6	10.6	10.6	10.6	10.6

CAPITAL EXPENDITURES								
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CHANGE IN REVENUES ()								
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts								
1003 GF Match								
1004 GF								
1005 GF/Program Receipts								
1037 GF/Mental Health								
Other Receipts Svs (1156)	10.6		10.6	10.6	10.6	10.6	10.6	10.6
TOTAL	10.6	0.0	10.6	10.6	10.6	10.6	10.6	10.6

Estimate of any current year (FY2010) cost: _____

POSITIONS

Full-time								
Part-time								
Temporary								

ANALYSIS: (Attach a separate page if necessary)

This bill changes the requirements of board membership of the Commercial Fishing and Agriculture Bank (CFAB) and requires the Department of Commerce, Community and Economic Development to perform examinations of CFAB at a minimum of every three years, however examinations could take place more frequently at the discretion of the department.

Assuming a standard 2 week examination, costs incurred are travel costs for Juneau based examiners to travel to Anchorage. Estimated airfare, hotel, car rental, and per diem for 3 examiners for a two week period: \$10,600. CFAB would be required to reimburse for the exam but spending authorization would still be required up front.

Prepared by: Lorie Hovanec, Director
 Division: Banking and Securities
 Approved by: Emil Notti, Commissioner
Commerce, Community and Economic Development

Phone 269-8140
 Date/Time 3/15/10 12:00 AM
 Date 3/15/2010

State of Alaska - Bank Examinations

3/14/2003

Year	Amount	Date Paid
2002 Exam	6,307.61	03/03/03
2001 Exam	10,507.77	01/08/02
2000 Exam	9,281.99	10/20/00
1999 Exam	10,333.05	10/21/99
1998 Exam	13,149.33	10/27/98
1997 Exam	12,421.67	09/22/97
1996 Exam	10,495.32	12/11/96
1995 Exam	16,337.93	10/13/95
1994 Exam	14,618.27	09/30/94
1993 Exam	14,231.52	01/11/94
1992 Exam	7,500.00	12/11/92
1991 Exam	7,500.00	02/19/92
1990 Exam	7,500.00	02/27/91
1989 Exam	7,500.00	02/14/90
1988 Exam	7,500.00	03/21/89

4255 S McKechnie Loop
Palmer, AK 99695-9708
March 5, 2010

Dear Senator Coghill,

I was one of the original Directors of CFAB, appointed in 1979 by Governor Jay Hammond. I served as CFAB's "farmer Director" through the late 1980's, and for most of that period I was Chairman of the Board. I have first-hand knowledge of the problem SB264 is intended to address: Although I resigned from Board service in 1988 due to family considerations, in the early 1990's I agreed to run, and serve, again because there were no other eligible "farmer members" willing to serve.

Neither I nor my company have an ongoing need to borrow from CFAB; however, I remain an active member in order to take advantage of other services offered by the cooperative. I keep myself very much aware of CFAB's circumstances, both through published reports and through personal associations. When I contemplate the record CFAB has established, especially in light of early missteps, and the valuable services it continues to offer to the commercial fishing and agriculture communities and to its other constituencies, I count my involvement as one of the significant contributions of my nearly 60 years in Alaska.

I was very much involved in the process leading to CFAB's creation, and am aware of the philosophy behind the inclusion of a "farmer Director" requirement in the founding legislation. It was a logical, and effective, approach. I am also aware, however, of the ways in which the commercial agriculture community has developed over the ensuing 30 years, and of the difficulties CFAB has encountered in attempting to reach out to the relatively small universe of eligible operators whose needs are not met by subsidized public programs. But my experience and observations over those years have made me equally aware of CFAB's need, and persistent efforts, to extend lending services to any markets that will lead to diversification of its loan portfolio.

My conclusion, despite my attraction to and defense of the original requirement, is that CFAB and its statutory missions are best served by a Board of Directors consisting of mature and business-oriented persons who respect cooperative principles and practices, who attach value to sound credit standards and procedures, who understand basic financing and economic dynamics, and who appreciate the opportunities and limitations inherent to CFAB's circumstances. The "pedigrees" of individual Directors really do not matter. Because CFAB is a statewide financing cooperative whose members are widely dispersed and diversified, and are largely unknown to each other, the annual election of Directors is a challenging and imperfect process at best; maintenance of the "farmer Director" requirement is a further and unnecessary impediment. While SB264 indeed eliminates that requirement, the fact remains that any eligible CFAB member from the agricultural community may run for election to the Board if (s)he so desires. The "A" in "CFAB" will continue to stand for Agriculture, and CFAB will continue efforts to serve Agriculture. I support, and urge, the passage of SB264.



Paul A. Huppert



Lela E. Klingert
President

March 19, 2003

The Honorable Frank Murkowski
Governor, State of Alaska
Post Office Box 110001
Juneau, Alaska 99811-0011

Dear Governor Murkowski,

We have reviewed House Bill 159 and Senate Bill 113, each introduced by the respective Rules Committee at your request.

We note that Section 2 of each bill provides for the repeal of AS 44.81.270(d), which authorizes and directs annual examination of the Alaska Commercial Fishing and Agriculture Bank. This is problematic to us, and we are wondering if a modified approach might be crafted; one which would support the bills' purposes and intents while continuing to meet the needs of CFAB and other interested parties.

To that end, we would offer the following points of perspective. They may seem somewhat lengthy, but our purposes are (1) to provide sufficient information to permit full consideration of an alternate approach; and (2) to emphasize that the examination function has been extremely useful to CFAB and its resident member-owners.

AS 44.81.270(d) was the result of 1987 legislation. CFAB had begun operations in early 1980. By the end of 1984, and into 1985, it had become clear that cumulative losses and other effects of inappropriate credit judgments and practices threatened CFAB's failure. During the late '80's, and into the early 90's, CFAB was "in recovery." (At that time, the State of Alaska owned \$32.0 million of CFAB's preferred stock.) Among the ancillary effects of the publicity and perceptions concerning CFAB's circumstances were the generally unfounded yet understandable allegations of a wide range of improprieties within CFAB and the expressed frustrations that "nobody knows what the real story is." These emanated from both the legislative and executive branches, as well as from member-owners, competing lenders, and various media, etc.

Thus, one of the practical, and successful, purposes of the 1987 legislation was establishment of a process by which a professional, credible, and independent

Alaska Commercial Fishing and Agriculture Bank

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The Honorable Frank Murkowski

March 19, 2003

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periodic evaluation of CFAB's loan/asset quality, management, practices, and statutory compliance may be submitted to authorized and interested parties. Over the years many examination reports - or elements thereof - have been noted by, or discussed with, a range of administrators, legislators, lenders, and others. Those examination reports have proven to be extremely useful.

Quite often the value of a safeguard, or a safety element such as a fire extinguisher, may become "invisible" because it has never been called upon. That may be the case here. CFAB has the statutory authority, unique among private lenders, to acquire and administer a consensual lien on a Commercial Fisheries Limited Entry Permit. CFAB has always exercised this authority within a context of fiduciary responsibility, and has attempted to adhere to the spirit, as well as the letter, of the comprehensive statutory limitations. There has never been a sustained, or even substantial, suggestion of CFAB failure in this regard.

Notwithstanding the foregoing, it should not be overlooked that the annual examination has been a most effective means of oversight of this area, and AS 44.81 in general, for the benefit and protection of the thousands of Alaska residents potentially affected. Similarly, these examinations have provided an element of protection for those Alaska residents who are the collective owners of over \$19.0 million of CFAB equity. This is not unlike the efforts undertaken by the State to protect the depositors and/or owners of other institutions.

We note the suggestion that the annual examination is redundant to the statutorily-mandated financial audit. However, those processes encompass significantly different professional disciplines and emphases, and are complimentary to each other. Simply put, an examination is focused on the quality/value of assets, whereas an audit is concerned primarily with appropriate accounting for the assets and liability of the subject. If CFAB makes a \$100,000 loan to Bill Jones, who confirms to the auditors that he indeed owes CFAB \$100,000, the auditors are satisfied that \$100,000 has been accounted for. However, the examiners' process is concerned with whether or not it made professional sense for CFAB to make the loan, and with whether or not Bill Jones has the intent and capacity to repay.

We do not consider the annual audit and annual examination, each of which we value, to be at all redundant. For over 15 years CFAB's management has viewed the annual examination to be a necessary and valuable check on its own analyses and judgments. Its officers, while not lacking in confidence, have welcomed the scrutiny of objective and professional eyes. In short, the examination has proved a valuable tool in assuring the effective management of CFAB, to the benefit of Alaska residents. Similarly, CFAB's Board of Directors has utilized the examination and the resultant report and examiners' presentation as an element of its ongoing evaluation of

The Honorable Frank Murkowski
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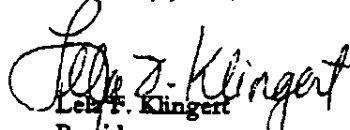
management, in keeping with the Board's fiduciary duty to member-owners. Finally, CFAB's lender - without which CFAB could not function - has clearly viewed the annual examination as an important element of its evaluation of CFAB's creditworthiness.

Your letters transmitting HB 159 and SB 113 suggest that certain fiscal objectives will be served through passage of this legislation. Obviously, we have no insight into the agency finances involved, and would not presume to offer comments in that regard. Neither would we suggest that a reduction in agency net expense is inappropriate. However, we are somewhat confused as to the relevance of AS 44.81.270(d) to that issue. Through 1992 CFAB, like each other state-chartered financial institution, was charged a maximum of \$7,500 (or actual costs, if less) for each examination. Beginning in 1993, premised on a change in the relevant statute, CFAB has been charged - and has paid - what has been expressed as the "actual costs" of each examination. CFAB has paid a total of \$117,684 for the ensuing examinations - an average of \$11,768, with a high of \$16,338 and a low of \$6,308. If those charges have indeed reflected the actual costs of examination, it is difficult to understand how a cessation of those examinations will have a significant fiscal impact.

As a closing observation, we would like to assure that a modification of the required examination interval to 18 months, as your bills provide for other non-banking entities, would be a workable approach from CFAB's standpoint.

Governor Murkowski, we are somewhat troubled at the appearance of "opposing" your legislation; we would have preferred an earlier discussion. CFAB is a private cooperative institution with unique purposes, authorities, foundation, and history, and is charged with serving a public interest. We believe that routine professional examinations are an important element for the protection of the State, the public, the cooperative, and its member-owners. And, of course, CFAB is willing to continue to pay its own way on the same bases as in the past.

Very truly yours,


Leif F. Klingert
President

Alaska Statutes 2002

Sec. ~~44.81.270~~. Audits and examinations of bank.

(a) The legislative auditor may cause the bank to be audited in the manner and under the conditions established by AS 24.20.271 for audits performed by the legislative audit division. The legislative audit division has free access to all books and papers of the bank that relate to the business of the bank and books and papers kept by a director, officer, or employee relating to or upon which a record of the business of the bank is kept. The legislative audit division may summon witnesses and administer oaths or affirmations in the examination of directors, officers, or employees of the bank or another person in relation to the affairs, transactions, and conditions of the bank, and may require and compel the production of records, books, papers, contracts, or other documents by court order if not voluntarily produced. At the direction of the Legislative Budget and Audit Committee under AS 24.20.271, the legislative auditor may conduct an audit of the bank.

(b) The legislative auditor and the auditor's employees may not disclose information acquired by them in the course of an audit of the bank concerning the particulars of the business or affairs of a borrower of the bank or another person, unless the information is required to be disclosed by law or under a court order.

(c) The bank shall be audited annually by independent outside auditors. The legislative auditor may confer with the outside auditors and review the work papers of the audit. The board shall engage the outside auditors, who shall be responsible to the board. The bank shall submit copies of each report of the outside auditors to the legislative auditor within 30 days of the report by the bank.

~~(d)~~ The state bank examiners shall perform an annual qualitative examination and evaluation of the bank. The commissioner of community and economic development shall assess the bank a fee established under AS 06.01.010 (b) for the actual expenses incurred by the Department of Community and Economic Development in connection with the examination. The examiners shall report to the board on the examination. The examiners shall prepare a summary report evaluating the bank's loan portfolio quality on a statistical basis and addressing the appropriateness and effectiveness of the bank's policies, practices, and management within the context of the bank's statutory purposes. The examiners shall distribute copies of the summary report to the bank, the legislature, and the governor, and the other records related to the examination of the bank are subject to AS 06.01.025.