

ALASKA LEGISLATURE

1365

HOUSE and SENATE FINANCE COMMITTEE FILES, 1995-1996

HB

282

HFIN

FILE

HOUSE COMMITTEE REPORT

(11)

Date Referred: May 3, 1995

FURTHER REFERRALS:

Date of Committee Action: _____

The FINANCE Committee considered:

HB 282

HOUSE BILL NO. 282

FINANCING REPAIR/REHAB OF U AK BLDGS

"An Act relating to the authorization for and the issuance of revenue bonds by the University of Alaska to pay for the costs of repair and rehabilitation of buildings and other structures, excluding student housing and dormitories, of the University of Alaska; expanding the uses of the Alaska debt retirement fund to allow financing of the repair and rehabilitation of University of Alaska facilities; and providing for an effective date."

recommends it be replaced with the following committee substitute _____ the same title a new title

additional referral to _____ Committee

attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): _____ (Dept)

APPROVES PREVIOUS: _____ (Dept/Date)

fiscal note(s) _____

fiscal note(s) _____

zero fiscal note(s) _____

zero fiscal note(s) _____

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
Died				
in				
Committee				

CHAIR'S SIGNATURE _____

FISCAL NOTE

NO. 4

STATE OF ALASKA
1995 LEGISLATIVE SESSION

Bill Version: HB 282
(H) Publish Date: 3/24/95

Revision Date:
Title: UNIVERSITY OF ALASKA BOND AUTHORIZATION

Department Affected: University of Alaska
BRU: A.L.L.
Component: ALL

Sponsor:
Requestor:

COMPONENT SERIAL NO.

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY96	FY97	FY98	FY99	FY00	FY01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

REVENUE FD SOURCE						
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FUNDING: (Thousands of Dollars)

1002 FEDERAL FUNDS						
1003 GF MATCH						
1004 GENERAL FUND						
1006 GF/MHTIA						
OTHER						
TOTAL FUNDING	0.0	0.0	0.0	0.0	0.0	0.0


POSITIONS:						
FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: Wendy Matheny, Budget Analyst
Division: Statewide Budget Office

Phone: 463-3086
Date: 3/14/95

Approved by:  Marylou Burton, Director
Agency: Statewide Budget Office

Date: 3/14/95

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

FISCAL NOTE

N^o 3

Bill Version: HB 282

(H) Publish Date: 3/24/95

**STATE OF ALASKA
1995 LEGISLATIVE SESSION**

Revision Date: _____ Dept. Affected: Revenue
 Title: University Maintenance BRU: Revenue Ops
 Component: Treasury
 Sponsor: GOV
 Requester: _____ COMPONENT SERIAL NO. 121

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY95) cost: \$ _____

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

There would be no identifiable revenue or cost impacts resulting from the passage of this legislation over the period covered by this fiscal note.

Prepared by: Bob Baratko Phone: 465-2312
 Division: _____ Date: 3/14/95
 Approved by: _____
 Commissioner: Deborah Voigt Date: 3/14/95
 Agency: Revenue

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FISCAL NOTE

No. 2
 Bill Version: HB 282
 (H) Publish Date: 3/24/95

STATE OF ALASKA
 1995 LEGISLATIVE SESSION

Revision Date: _____
 Title: "An Act relating to authorizing University of Alaska to issue bonds for purpose of funding maintenance projects..."
 Sponsor: Rules
 Requestor: _____

Department Affected: Administration
 BRU: General Services
 Component: Purchasing
 COMPONENT SERIAL NO. 60

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0	0	0	0	0	0
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CHANGE IN REVENUES ()	0	0	0	0	0	0
------------------------	---	---	---	---	---	---

FUND SOURCE: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 95) cost: \$ -0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

There is no fiscal impact to the Division of General Services.

Prepared by: Dugan Petty, Director
 Division: General Services

Phone: 465-2250
 Date: _____

Approved by Commissioner: Mark Boyer
 Agency: Department of Administration

Date: 3/14/95

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FISCAL NOTE

No. 1
 Bill Version: HB 282
 (H) Publish Date: 3/24/95

STATE OF ALASKA
 1995 LEGISLATIVE SESSION

Revision Date: _____
 Title: "An Act relating to authorizing University of Alaska to issue bonds for purpose of funding maintenance projects..."
 Sponsor: Rules
 Requestor: _____

Department Affected: Administration
 BRU: Finance
 Component: Finance
 COMPONENT SERIAL NO. 59

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0	0	0	0	0	0
CHANGE IN REVENUES ()	0	0	0	0	0	0

FUND SOURCE: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 95) cost: \$ -0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

There is no fiscal impact to the Division of Finance.

Prepared by: Don Wanie, Director
 Division: Finance

Phone: 465-2240
 Date: _____

Approved by Commissioner: Mark Bover
 Agency: Department of Administration

Date: 3/14/95

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COMMITTEE COPY

HB 282

TONY KNOWLES
GOVERNOR



P.O. Box 110001
Juneau, Alaska 99811-0001
(907) 465-3500
Fax (907) 465-3532

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

March 24, 1995

The Honorable Gail Phillips
Speaker of the House
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

Dear Speaker Phillips:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill authorizing the University of Alaska (university) to issue \$45,000,000 in revenue bonds for building maintenance projects at various campuses of the university.

Meeting the long-deferred repair and rehabilitation needs of the university is a priority of my Administration. It is my intent to work closely with the legislature during the remainder of this session and next session to identify other funding sources to meet those needs. If, however, we are not able to provide \$20,000,000 in capital appropriations or other forms of bond authorizations for these purposes through a bill enacted into law by July 1, 1996, this bill will authorize the university to issue revenue bonds to begin addressing the problem. The bill's amendment of AS 37.15.011 is intended to allow for repayment of the debt service to be made from annual legislative appropriations from the Alaska debt retirement fund if necessary.

I urge your early and favorable consideration of this bill.

Sincerely,

Tony Knowles
Governor

HB

284

HFIN

FILE

FINANCE COMMITTEE REPORT

(11)

Date Referred: May 2, 1995

FURTHER REFERRALS:

Date of Committee Action: 3/13/96

The FINANCE Committee considered:

HB 284

HOUSE BILL NO. 284

AK COMMERCIAL FISHING & AGRICULTURE BANK

"An Act relating to the Alaska Commercial Fishing and Agriculture Bank."

recommends it be replaced

with the following committee substitute

CS HB 284 (FIN)

the same title
 a new title

additional referral to _____ Committee

attached amendment(s)

ADOPTS: IFC Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

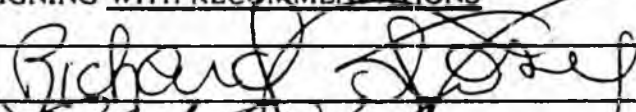
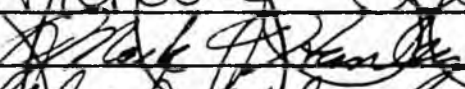

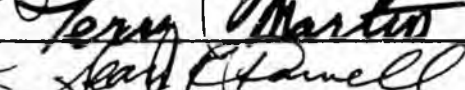
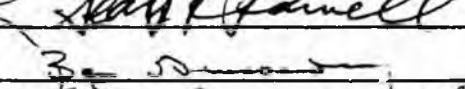
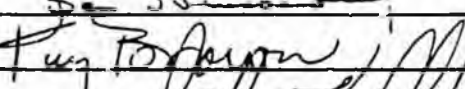
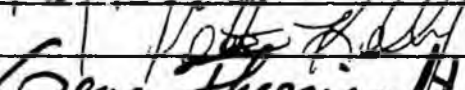
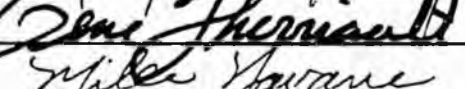
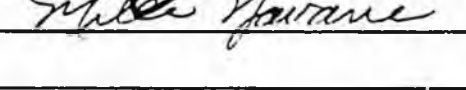

APPROVES PREVIOUS: (Dept/Date)

fiscal note(s) Revenue

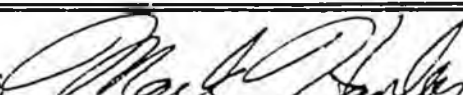
fiscal note(s) _____

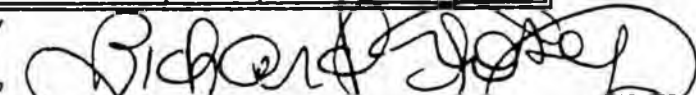
zero fiscal note(s) Com Fishery bid entry

zero fiscal note(s) _____

SIGNING WITH RECOMMENDATIONS		DP	DNP	NR	AM
	FOSTER	X			
	Hanley	X			
	Mulder	X			
	Martin	X			
	Parrish	X			
	Grossindorf	X			
	BROWN			X	
	Kelly	X			
	Theriault	X			
	YAVARE	X			

CO-CHAIR'S SIGNATURE



 Hanley


 Foster

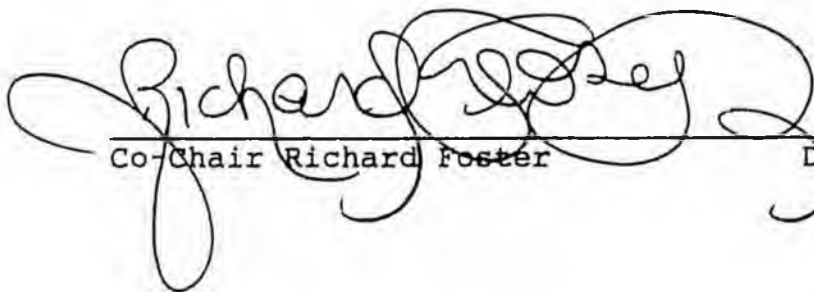
CS HB 284 (FIN)

LETTER OF INTENT

The legislature requests that the board of directors of the Alaska Commercial Fishing and Agriculture Bank investigate the feasibility of providing services authorized under AS 44.81.210 to Alaskans other than those authorized for services under AS 44.81.210, and report the results of that investigation to the legislature by the 15th day of the first session of the twentieth Alaska Legislature.


Co-Chair Mark Hanley

3/15/96
Date


Co-Chair Richard Foster

15 MAR 96
Date

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. HB284

Revision Date: 3/8/96 Dept. Affected: Fish and Game
 Title: An Act relating to the Commercial Fishing and Agriculture Bank BRU: Commercial Fisheries (Limited) Entry Commission
 Sponsor: House Special Committee on Fisheries Component: Limited Entry Program Administration
 Requester: House Finance Committee COMPONENT SERIAL NO. 3471

Expenditures/Revenues	(Thousands of Dollars)					
OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	3.0	0.0	3.0	3.0	3.0	3.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE	(Thousands of Dollars)					
002 Federal Receipts						
003 GF Match						
004 GF						
005 GF/Program Receipts	3.0	0.0	3.0	3.0	3.0	3.0
006 GF/MHTIA						
Other						
TOTAL	3.0	0.0	3.0	3.0	3.0	3.0

Estimate of any current year (FY96) cost: \$ 0.0

POSITIONS						
FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)
 House Bill 284 is a housekeeping bill which streamlines, clarifies and improves many of the operations of CFAB and is not expected to have a fiscal impact on this agency.

Prepared By: Roger Kolden Phone: 789-6160
 Agency: Commercial Fisheries (Limited) Entry Commission Date: 3/8/96

Approved by Commissioner: Frank Horton Date: 3/8/96
 Agency: Commercial Fisheries (Limited) Entry Commission

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For further distribution information call the Governor's Legislative Office

Revision Date: March 8, 1996 Dept. Affected: Revenue
 Title: An Act relating to the Alaska Commercial Fishing and Agriculture Bank (CFAB) BRU: Revenue Operations
 Sponsor: House Special Committee on Fisheries Component: Treasury Division
 Requestor: Finance COMPONENT SERIAL NO. 121

Expenditures/Revenues: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES (CFAB)		-1,000.0				

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY96) cost \$ _____

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

CFAB is currently repurchasing non-voting, preferred shares of stock originally sold to the State in 1980 for \$32 million. The repurchase, which is required to be complete by the year 2000, is currently scheduled to be completed by FY 1998. The effect of this bill, which establishes a \$1 million minimum level of capital at the bank, will be to reduce the total final payment to the State by \$1 million.

Prepared by: Betty Martin, Comptroller *Betty Martin* Phone: 465-2350
 Division: Treasury Date: 3/8/96
 Approved by Commissioner: Wilson L. Condon, Commissioner *Wilson L. Condon* Date: 3/8/96
 Agency: Department of Revenue

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adopted N/O

AMENDMENT #1

OFFERED IN THE HOUSE

BY REPRESENTATIVE AUSTERMAN

TO: HB 284

1 Page 3, line 31, following "purpose":

2 Insert "In the exercise of its powers under AS 44.81.215(7), the bank is acting as
3 an agent under the express authority and reservations of the state as the issuer of
4 limited entry permits under AS 16.43."

5 Page 4, lines 8 - 9:

6 Delete "If the cumulative value of the shares [SHARES]"

7 Insert "Shares"

8 Page 4, lines 9 - 10:

9 Delete "exceeds \$1,000,000, the shares representing the excess"

10 Page 4, line 11:

11 Delete "representing the excess"

12 Page 4, line 14:

13 Delete "representing the excess"

no action on
amendment

Attachment #3

3/11/96

9-LS0584G.2

Bannister

3/11/96

AMENDMENT II

OFFERED IN THE HOUSE

BY REPRESENTATIVE BROWN

TO: HB 284

- 1 Page 1, line 1:
- 2 Delete "and Agriculture"
- 3 Insert ", Agriculture, and Small Business"

- 4 Page 3, line 29:
- 5 Delete "and Agriculture"
- 6 Insert " , [AND] Agriculture, and Small Business"

- 7 Page 7, line 24:
- 8 Delete "and agriculture"
- 9 Insert ", commercial agriculture, and small businesses"

- 10 Page 7, line 26:
- 11 Delete "or"
- 12 Insert " ,"

- 13 Page 7, line 27, following "farmers":
- 14 Insert " , or small business persons"

- 15 Page 7, line 28:
- 16 Delete "or agriculture"
- 17 Insert " , commercial agriculture, or small businesses"

- 18 Page 8, line 19:
- 19 Delete "or farmers"

no action yet
on

Amendment #2

Amendment #1
was adopted

withdrawn

- 1 Insert ", farmers, or small business persons,"
- 2 Page 8, line 23:
- 3 Delete "or"
- 4 Insert ",,"
- 5 Page 8, line 24, following "agriculture":
- 6 Insert ", or small businesses"
- 7 Page 9, line 2, following "agriculture":
- 8 Delete "or fishing"
- 9 Insert ", commercial fishing, or small business,"
- 10 Page 9, line 6:
- 11 Delete "or fishing"
- 12 Insert "commercial fishing, or small business."
- 13 Page 9, line 20:
- 14 Following "timber processor.":
- 15 Delete "or"
- 16 Following "agricultural processor":
- 17 Delete "or"
- 18 Insert ",,"
- 19 Following "harvester":
- 20 Insert ", or a small business person"
- 21 Page 9, line 22:
- 22 Delete "or harvester"
- 23 Insert ", harvester, or small business person"
- 24 Page 9, line 23:
- 25 Delete "or harvester"

1 Insert ", harvester, or small business person"

2 Page 10, following line 14:

3 Insert a new bill section to read:

4 **** Sec. 19.** AS 44.81.225(a) is amended to read:

5 (a) To facilitate the development of commercial fisheries or small businesses
6 in geographic areas in which factors such as geographic considerations, uncertainties
7 of communication, or limited demands do not encourage normal lending activities, the
8 bank may make small loans to qualified borrowers who are not members of the bank."

9 Renumber the following bill sections accordingly.

10 Page 17, line 16:

11 Delete "AS 44.81.350(3)"

12 Insert "AS 44.81.350"

13 Page 17, lines 17 - 21:

14 Delete all material and insert:

15 "Sec. 44.81.350. DEFINITIONS. In this chapter,

16 (1) "bank" means the Alaska Commercial Fishing, [AND] Agriculture,
17 and Small Business Bank;

18 (2) "commission" means the Alaska Commercial Fisheries Entry
19 Commission under AS 16.43.020;

20 (3) "member of the bank" includes

21 (A) a holder of a share of membership stock of the bank; or

22 (B) a patron of the bank with retained patronage earnings, or
23 other form of capital ownership in the bank, of \$2,500 or more to the
24 patron's credit;

25 (4) "supplier" means a person whose main source of income is from
26 providing goods or services that are directly related to commercial fishing or
27 agriculture to individuals, corporations, partnerships, or joint ventures engaged in
28 commercial fishing or agriculture."

1 Page 18, line 2, following "state":

2 Delete "."

3 Insert ";

4 (9) "resident small business person" means a person who is a resident
5 of the state and who is engaged in a small business in the state;

6 (10) "small business" means a business that has 100 or fewer
7 employees and an annual average gross income of \$500,000 or less.

8 * Sec. 28. AS 44.88.080(18) is amended to read:

9 (18) to facilitate the expansion of a secondary market for the resale of
10 federally or commercially insured loans made to finance the costs of projects in
11 Alaska held by federal and state chartered financial institutions or by the Alaska
12 Commercial Fishing, [AND] Agriculture, and Small Business Bank;

13 * Sec. 29. AS 45.55.900(a)(12) is amended to read:

14 (12) shares of membership stock in the Alaska Commercial Fishing,
15 [AND] Agriculture, and Small Business Bank, and other securities issued by that
16 bank to members or in connection with loans to members.

17 * Sec. 30. AS 45.92.050(a) is amended to read:

18 (a) The department may guarantee a loan under this chapter if

19 (1) the term of the loan does not exceed one year;

20 (2) the loan is secured by inventory or accounts receivable of the fish
21 processor, or by other collateral acceptable to the department;

22 (3) the loan is originated with and serviced by the Alaska Commercial
23 Fishing, [AND] Agriculture, and Small Business Bank, or by a state or federally
24 chartered financial institution located in the state; and

25 (4) the majority interest in the fish processor is beneficially owned by
26 residents of the state and the majority of owners of the fish processor are residents of
27 the state."

28 Renumber the following bill sections accordingly.

29 Page 18, line 9, following "Bank":

30 Delete "on or"

adopted 10/03

AMENDMENT

OFFERED IN THE HOUSE
TO: HB 284

BY REPRESENTATIVE BROWN

LETTER OF INTENT

The legislature requests that the board of directors of the Alaska Commercial Fishing and Agriculture Bank investigate the feasibility of providing services authorized under AS 44.81.210 to Alaskans other than those authorized for services under AS 44.81.210, and report the results of that investigation to the legislature by the 15th day of the first session of the twentieth Alaska Legislature.

Delete PC II
amended passed

HOUSE BILL NO. 284

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE SPECIAL COMMITTEE ON FISHERIES

Introduced: 3/27/95

Referred: House Special Committee on Fisheries, Labor and Commerce, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the Alaska Commercial Fishing and Agriculture Bank."

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

3 * Section 1. AS 16.43.150(g) is amended to read:

4 (g) Except as provided in AS 16.10.333 - 16.10.338, AS 44.81.215
5 [AS 44.81.210], 44.81.225, and 44.81.231 - 44.81.250 [44.81.230 - 44.81.250], an
6 entry permit may not be

7 (1) pledged, mortgaged, leased, or encumbered in any way;

8 (2) transferred with any retained right of repossession or foreclosure,
9 or on any condition requiring a subsequent transfer; or

10 (3) attached, distrained, or sold on execution of judgment or under any
11 other process or order of any court, except as provided in AS 16.43.170(g) and (h).

12 * Sec. 2. AS 16.43.150(h) is amended to read:

13 (h) Unless an entry permit holder has expressed a contrary intent in a will that
14 is probated, the commission shall, upon the death of the permit holder, transfer the
15 permanent permit by right of survivorship directly to the surviving spouse or, if no

1 spouse survives, to a natural person designated by the permit holder on a form
2 provided by the commission. If no spouse survives and if the person designated on
3 the form, if any, does not survive, the permit passes as part of the permit holder's
4 estate. A designation under this subsection must be acknowledged before a person
5 authorized to administer an oath under AS 09.63.010 or must be witnessed by two
6 persons who are qualified under AS 13.11.170 to witness the will of the permit holder.
7 Except as provided in AS 16.10.333 - 16.10.337, AS 44.81.215 [AS 44.81.210], and
8 44.81.231 - 44.81.250 [44.81.230 - 44.81.250], the permit is exempt from the claims
9 of creditors of the estate.

10 * Sec. 3. AS 16.43.170(a) is amended to read:

11 (a) Except as provided in AS 16.10.333 - 16.10.338 and in AS 44.81.231 -
12 44.81.250 [AS 44.81.230 - 44.81.250], entry permits and interim-use permits are
13 transferable only through the commission as provided in this section and AS 16.43.180
14 and under regulations adopted by the commission. An involuntary transfer of an entry
15 permit in a manner inconsistent with the statutes of this state and the regulations of the
16 commission is void.

17 * Sec. 4. AS 16.43.170(b) is amended to read:

18 (b) Except as provided in (c) and (e) of this section, the holder of an entry
19 permit may transfer the permit to another person or to the commission upon 60 days
20 notice of intent to transfer under regulations adopted by the commission. No sooner
21 than 60 days nor later than 12 months from the date of notice to the commission, the
22 holder of an entry permit may transfer the permit. If the proposed transferee, other
23 than the commission, can demonstrate the present ability to participate actively in the
24 fishery and the transfer does not violate any provision of this chapter or regulations
25 adopted under it, and if a certificate for the permit under AS 16.10.333(b)(1) - (2),
26 16.10.338, or AS 44.81.231(a) [AS 44.81.230(b)(1) - (2)] is not in effect, the
27 commission shall approve the transfer and reissue the entry permit to the transferee
28 provided that neither party is prohibited by law from participating in the transfer.

29 * Sec. 5. AS 16.43.170(g) is amended to read:

30 (g) A person may request the commission to transfer an entry permit due to
31 an execution on the holder's interest in that permit. The request shall be made in the

1 form and manner provided in this chapter and regulations adopted under this chapter.
2 The commission may deny a request for transfer of an entry permit due to an
3 execution of a holder's interest in that permit if

4 (1) the execution does not comply with legal requirements or otherwise
5 is not valid;

6 (2) the transfer violates this chapter or regulations adopted under this
7 chapter;

8 (3) the proposed transferee or other party to the transfer is prohibited
9 by law from participating in the transaction;

10 (4) a certificate for the permit under AS 16.10.333(b)(1) - (2),
11 16.10.338, or AS 44.81.231(a) [AS 44.81.230(b)(1) - (2)] is in effect at the time of
12 the proposed transfer;

13 (5) the proposed transferee of the entry permit, other than the
14 commission, cannot demonstrate the present ability to actively participate in the
15 fishery; or

16 (6) the holder of the entry permit as shown by the records of the
17 commission demonstrates, under regulations adopted by the commission, that the entry
18 permit is a necessary means of support for the holder and those dependent upon the
19 holder.

20 * Sec. 6. AS 16.43.960(i) is amended to read:

21 (i) An entry permit revoked by the commission under this section that is
22 pledged as security for a loan under AS 16.10.333 or AS 44.81.231 [AS 44.81.230]
23 shall be reassigned or sold as provided in AS 16.10.337 or AS 44.81.250.

24 * Sec. 7. AS 16.43.970(f) is amended to read:

25 (f) An entry permit forfeited under this section that is taken as security for a
26 loan under AS 16.10.333 or AS 44.81.231 [AS 44.81.230] shall be reassigned as
27 provided in AS 16.10.337 or AS 44.81.250.

28 * Sec. 8. AS 44.81.010(a) is amended to read:

29 (a) There is established the Alaska Commercial Fishing and Agriculture Bank.
30 The exercise by the bank of the powers conferred by this chapter is considered to be
31 for a public purpose. The bank is exempt from the provisions of AS 06.05 (Alaska

1 Banking Code) and AS 10.15 (Alaska Cooperative Corporation Act) in its structure
2 and operations and in the exercise of powers granted by this chapter.

3 * Sec. 9. AS 44.81.010(b) is amended to read:

4 (b) For the purpose of acquiring and accumulating capital [THE FUNDING]
5 of the bank [BANK'S OPERATIONS], the board [OF DIRECTORS] may issue
6 nonvoting, preferred shares of stock in the bank and determine the value of each share.
7 The state, through the Department of Revenue [APPROPRIATE AGENCIES], may
8 purchase the nonvoting, preferred shares issued by the bank. If the cumulative value
9 of the shares [SHARES] purchased by the state exceeds \$1,000,000, the shares
10 representing the excess shall be repurchased by the bank within 20 years after their
11 purchase. If the bank fails to repurchase the shares representing the excess within
12 20 years after their purchase by the state, the commissioner of commerce and
13 economic development may appoint a receiver to direct, manage, and operate
14 [DISSOLVE] the bank until the shares representing the excess have been
15 repurchased. Upon voluntary or involuntary liquidation of the bank, and upon
16 repayment of all legal debts and obligations of the bank, all shares of nonvoting,
17 preferred stock owned by the state have priority for redemption over all other
18 forms and amounts of ownership of the bank.

19 * Sec. 10. AS 44.81.020 is repealed and reenacted to read:

20 Sec. 44.81.020. BOARD OF DIRECTORS. (a) The bank shall be governed
21 by a board of directors consisting of seven to nine natural persons. The number is
22 determined by the bank's bylaws. Two board members shall be appointed by the
23 governor of the state. The other board members shall be elected by the members of
24 the bank as provided in the bank's bylaws, except that at least one of the elected board
25 members must be a resident farmer.

26 (b) The members of the board shall serve for terms of three years and may
27 serve successive terms. Terms must be staggered. A member of the board who
28 releases confidential information in violation of AS 44.81.260, commits serious ethical
29 misconduct that relates to the member's fitness to serve as a member of the board, or
30 maintains a chronically and irredeemably substandard borrowing relationship with the
31 bank may be removed from the board by affirmative vote of a majority of the

1 members of the board.

2 (c) A majority of the members of the board constitutes a quorum for the
3 transaction of business and the exercise of the powers and duties of the board.

4 (d) A member of the board may not vote on a transaction of the bank under
5 this chapter if the member is a party to the transaction.

6 (e) The members of the board shall annually elect from among themselves a
7 chair and vice-chair and other board officers as may be provided in the bank's bylaws.

8 (f) Members of the board shall receive compensation not to exceed \$250 for
9 each day of a board meeting if they attend the meeting. Directors may also receive
10 compensation for personal time and efforts expended to further the bank's interests or
11 business other than on meeting days as may be determined by the chair under the
12 bank's bylaws.

13 * Sec. 11. AS 44.81 is amended by adding a new section to read:

14 Sec. 44.81.031. OFFICERS AND EMPLOYEES. (a) The board shall employ
15 a president. The president may not be a member of the board and serves at the
16 pleasure of the board. The president is the chief executive officer of the bank.

17 (b) The board shall appoint those officers of the bank that are provided for in
18 the bank's bylaws and as the board determines to be necessary for the effective
19 operations of the bank. An executive, operating, administrative, or other salaried
20 officer of the bank may not be a member of the board.

21 (c) The president may hire employees of the bank as may be determined
22 necessary for the efficient performance of the functions of the bank. The board shall
23 approve the compensation of the employees. Employees of the bank are not
24 employees of the state and are not considered to be employees of a public organization
25 for the purposes of AS 39.35.

26 * Sec. 12. AS 44.81 is amended by adding a new section to read:

27 Sec. 44.81.041. STRUCTURE AND MEMBERSHIP OF THE BANK. (a)
28 The bank shall be structured and operated as a cooperative corporation.

29 (b) The board shall issue shares of membership stock in the bank in the
30 amounts and with the value determined by the board and stated in the articles of
31 incorporation. The membership stock may be issued under this chapter and under the

1 bylaws of the bank to persons determined to be eligible to transact business with the
2 bank.

3 (c) The board may establish one or more mechanisms by which persons or
4 entities, or classes of persons or entities, who transact business with the bank are
5 required to provide or establish capital ownership in the bank. The mechanisms may
6 include the issuance of capital stock or other equity instruments or the allocation or
7 retention of net proceeds from the operations of the bank. The mechanisms shall be
8 established and imposed in a manner that the board determines equitably reflects the
9 nature and amount of business transacted with the bank.

10 * Sec. 13. AS 44.81 is amended by adding a new section to read:

11 Sec. 44.81.051. BYLAWS. The board may adopt bylaws for the bank for the
12 regulation and management of the affairs of the bank, and may alter, amend, or repeal
13 them. The bylaws shall be consistent with this chapter and other laws that apply to the
14 bank.

15 * Sec. 14. AS 44.81 is amended by adding a new section to read:

16 Sec. 44.81.061. INDEMNIFICATION OF DIRECTORS, OFFICERS, AND
17 EMPLOYEES. The bank may indemnify directors, officers, and employees, or may
18 purchase and maintain insurance on behalf of directors, officers, and employees. The
19 indemnification and the insurance purchase and maintenance shall comply with
20 AS 10.06.490.

21 * Sec. 15. AS 44.81 is amended by adding a new section to read:

22 Sec. 44.81.101. PLEDGE OF THE STATE. (a) The state pledges to and
23 agrees with any lender to the bank that the state will not limit or alter the rights and
24 powers given to the bank by this chapter to fulfill the terms of a contract made by the
25 bank with the lender to the bank, or in any way impair the rights and remedies of the
26 lender to the bank. The bank is authorized to include this pledge and agreement of the
27 state in a contract with any lender to the bank.

28 (b) The pledge of the state is limited to the express provisions of (a) of this
29 section and is not a guarantee, surety, promise, undertaking, or assurance of repayment
30 or performance of any obligation of the bank.

31 * Sec. 16. AS 44.81.200 is amended to read:

1 Sec. 44.81.200. REPORTS AND PUBLICATIONS. The board [OF
2 DIRECTORS] shall publish an annual report to the bank's members. The report shall
3 be made available to the governor, the legislature, and the public. The report
4 [AND] must include financial statements audited by independent outside auditors, a
5 discussion [STATEMENT] of the bank's circumstances and operations
6 [INVESTMENTS, A DESCRIPTION OF THE BANK'S LOAN ACTIVITY] during
7 the period covered by the report [, AN ANALYSIS OF ECONOMIC AND OTHER
8 EFFECTS OF LOAN DECISIONS ON THE STATE'S COMMERCIAL FISHING
9 AND AGRICULTURE INDUSTRIES], and any other information that the board
10 believes would be of interest to the governor, the legislature, and the public, or that
11 the legislature requests the board to include. The board may [ALSO] publish other
12 reports considered appropriate [IT CONSIDERS DESIRABLE] to [CARRY OUT]
13 its purposes.

14 * Sec. 17. AS 44.81.210 is repealed and reenacted to read:

15 Sec. 44.81.210. GENERAL POWERS OF THE BANK. The bank may

- 16 (1) adopt, alter, and use a corporate seal;
- 17 (2) sue and be sued in the name of the bank;
- 18 (3) appoint officers, employees, trustees for certificate holders, and
19 agents, and establish their powers and duties;
- 20 (4) provide technical services to members of the bank; in this
21 paragraph, "technical services" includes services that will enhance the ability of a
22 member to obtain financial assistance from the bank;
- 23 (5) participate with state departments and agencies in formulating
24 policy and in planning for the development of commercial fishing and agriculture in
25 the state;
- 26 (6) engage in programs to support the efforts of resident fishers or
27 farmers in order to enhance the further development, efficiency, stability, or
28 profitability of commercial fishing or agriculture in the state;
- 29 (7) make contracts and execute instruments necessary to or convenient
30 for the exercise of its corporate powers;
- 31 (8) issue bonds to carry out its corporate purposes and powers;

1 (9) borrow money and issue secured and unsecured evidence of
2 indebtedness for a corporate purpose or to fund, refund, pay, or discharge outstanding
3 obligations, and enter into agreements and contracts relating to these obligations;

4 (10) secure the payment of its obligations by pledge, mortgage, or other
5 lien on its contracts, revenue, income, or property;

6 (11) incur secondary liability by guaranty or endorsement of the
7 obligations of a person, except for natural persons, when, in the judgment of the board,
8 the action furthers the bank's corporate purposes;

9 (12) acquire real or personal property by purchase, lease, bequest,
10 devise, gift, the satisfaction of debts, or the foreclosure of mortgages, and hold,
11 maintain, use, operate, and convey real or personal property;

12 (13) sell, lease as lessor or lessee, exchange, donate, convey, or
13 encumber in any manner by mortgage or by creation of another security interest, real
14 or personal property owned by it, or in which it has an interest, when, in the judgment
15 of the board, the action furthers its corporate purposes;

16 (14) establish wholly-owned or majority-owned subsidiary corporations
17 or limited liability companies to acquire, hold, operate, maintain, or liquidate property
18 received by the bank in a foreclosure action or other loan collection process or to
19 provide services to resident fishers or farmers, or other persons, if the services are
20 consistent with the corporate purposes and powers expressed in this chapter;

21 (15) acquire equity or other ownership interest in a domestic
22 corporation or limited liability company if the purpose of the acquisition is to enhance
23 the further development, efficiency, stability, or profitability of commercial fishing or
24 agriculture in the state;

25 (16) enter into agreements with public or private lenders or other
26 entities, or with state agencies or agencies of the federal government, to carry out the
27 purposes of this chapter;

28 (17) do what is necessary or desirable to carry out the corporate
29 purposes and powers expressed or implied in this chapter.

30 * Sec. 18. AS 44.81 is amended by adding a new section to read:

31 Sec. 44.81.215. LENDING POWERS OF THE BANK. The bank may

1 (1) make loans to individuals, including married couples, who are
2 residents of the state and who are engaged in commercial agriculture or fishing,
3 including harvesters, processors, suppliers, and marketers, if at least one of the primary
4 obligors on the loan is a member of the bank;

5 (2) make loans to corporations, partnerships, or limited liability
6 companies engaged in commercial agriculture or fishing if the majority interest of the
7 corporation, partnership, or limited liability company is beneficially owned by residents
8 of the state and a majority of the owners are residents of the state, and if at least one
9 of the primary obligors on a loan is a member of the bank; however, the bank may not
10 make a loan under this paragraph to a corporation, partnership, or limited liability
11 company for the purchase of a new or existing fishing boat or for the repair or
12 renovation of an existing fishing boat if the primary purpose of the fishing boat is to
13 commercially harvest fishery resources, unless the corporation, partnership, or limited
14 liability company is wholly owned and controlled by residents of the state, and unless
15 at least one of the primary obligors on the loan is a member of the bank;

16 (3) make loans for limited entry permits to individuals who fish
17 commercially if the individual is a state resident; loans made under this paragraph are
18 subject to AS 44.81.231;

19 (4) make a loan for capital investment or operating capital to a
20 shore-based fish processor, a timber processor, or an agricultural processor or harvester
21 who does not meet the resident ownership requirements of (1) or (2) of this section if
22 a facility of the processor or harvester is located in the state and the majority interest
23 in the processor or harvester is beneficially owned by residents of the United States;

24 (5) make a loan to a person, regardless of residency, if the board
25 determines that the loan is necessary to preserve the value of property held by the bank
26 as security for a loan that was made under AS 44.81.210 or this section and that is in
27 default;

28 (6) make loans, as provided in (1), (2), or (4) of this section, that are
29 secured by liens subordinate to valid first liens and security agreements granted to
30 another creditor;

31 (7) accept the pledge of a limited entry permit as security for a loan

1 made under this chapter subject to the conditions set out in AS 44.81.236 on pledges
2 of limited entry permits;

3 (8) make loans in participation with other lenders as provided in (1),
4 (2), or (4) of this section, whether or not an obligor is a member of the bank;

5 (9) purchase or acquire participations in loans from other lenders if the
6 participations conform to the provisions of (1), (2), or (4) of this section, whether or
7 not an obligor is a member of the bank;

8 (10) issue certificates of loan participation to members and to other
9 individuals, corporations, partnerships, and limited liability companies, but the bank
10 may not issue a certificate of loan participation if the certificate would allow
11 participation by the member, individual, corporation, partnership, or limited liability
12 company in loans that individually or cumulatively involve more than 20 percent of
13 the commercial fishery entry permits issued for one type of gear in a specific fishery
14 resource administrative area.

15 * Sec. 19. AS 44.81 is amended by adding a new section to read:

16 Sec. 44.81.231. PLEDGE OF PERMITS. (a) A limited entry permit issued
17 under AS 16.43 may be pledged by the holder as security for a loan authorized under
18 AS 44.81.236 if the certificate for the pledged permit lists the bank as the legal owner
19 of the permit and the pledger as the equitable owner of the permit.

20 (b) Annual permit cards issued under the pledged permit must be in the name
21 of the equitable owner who shall be responsible for compliance with the laws that
22 govern the permit as if the equitable owner were the holder of the permit.

23 (c) Co-borrowers or guarantors on a loan secured by one or more pledged
24 permits do not have a right in the pledged permit of the equitable owner, whether by
25 subrogation or other manner.

26 (d) Upon payment of the loan, the bank shall certify to the Commercial
27 Fisheries Entry Commission that the loan has been repaid, and the commission shall
28 amend the permit certificate to list the equitable owner as the holder, and the legal
29 interest of the bank shall terminate.

30 (e) In anticipation of a possible foreclosure under AS 44.81.241 - 44.81.250,
31 the equitable owner of a permit that is pledged as security for the loan may nominate

1 a person to whom the permit may be transferred if the pledge is foreclosed under
2 AS 44.81.245.

3 * Sec. 20. AS 44.81 is amended by adding a new section to read:

4 Sec. 44.81.236. LIMITATIONS ON THE PLEDGE OF PERMITS. A loan
5 may not be secured by the pledge of a limited entry permit unless the proceeds of the
6 loan are used for

7 (1) the purchase of a permit;

8 (2) the purchase or lease of quota shares, individual fishing quotas, or
9 another license, permit, or other grant of commercial fisheries harvesting entitlements
10 that is issued and regulated under state or federal law;

11 (3) the purchase, construction, maintenance, repair, or improvement of
12 commercial fishing boats, sites, gear, or equipment;

13 (4) working capital, including insurance premiums, supplies, food, fuel,
14 bait, boat storage, and boat launching;

15 (5) the payment of obligations incurred in the support of a borrower
16 and the persons who are dependent upon that borrower if the majority of the
17 borrower's earned income is derived through commercial fishing under the borrower's
18 permit;

19 (6) the enhancement of the productivity or diversification of the
20 commercial fishing activities of a borrower, including education and technical training;

21 (7) the payment of taxes or other obligations whose status places the
22 permit of a borrower in jeopardy of attachment, distraint, or sale on execution of
23 judgment or under a process or order of a court;

24 (8) the purchase of the bank's stock or other equity instruments and
25 loan costs; or

26 (9) refinancing of debts incurred for a purpose listed in (1) - (8) of this
27 section.

28 * Sec. 21. AS 44.81 is amended by adding new sections to read:

29 Sec. 44.81.241. INITIAL NOTICE OF DEFAULT. If there is a default on a
30 loan secured by a permit pledged under AS 44.81.231, the bank shall notify the
31 borrowers and guarantors on the loan of the default and of the right to cure the default

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1 by sending a notice by certified mail to their last known address or addresses on file
2 with the bank. The notice must include

3 (1) the date of the notice;

4 (2) a description of the security given for the loan, including the
5 number assigned by the commission and the name of the equitable owner of each
6 permit pledged to secure the loan;

7 (3) the date and nature of the default;

8 (4) the amount of arrearages as of the date of the notice;

9 (5) the total indebtedness, including interest, penalties, and costs of
10 collection, remaining owing on the loan as of the date of the notice;

11 (6) the amount of daily interest to accrue from the date of the notice;

12 (7) a statement that the costs of collection of the loan incurred by the
13 bank after the date of the notice will be added to the total amount of the indebtedness
14 owing on the loan;

15 (8) a statement that the default may be cured within 60 days from the
16 date of the notice or within an extended time period that is specified in an extension
17 notice provided by the bank within the 60-day period under AS 44.81.249;

18 (9) the place where payment of arrearages or other cure may be made;

19 and

20 (10) a statement in at least 10 point bold type stating:

21 "IMPORTANT: UNLESS YOU CURE THE LOAN DEFAULT
22 WITHIN THE TIME SPECIFIED BY THIS NOTICE, THE TOTAL
23 INDEBTEDNESS OWING ON THE LOAN SHALL BE
24 IMMEDIATELY DUE AND PAYABLE TO THE BANK WITHOUT
25 FURTHER NOTICE TO YOU. ALSO, THE BANK SHALL THEN
26 BE ENTITLED TO TAKE ANY LEGAL ACTION AGAINST YOU
27 TO COLLECT THE LOAN, INCLUDING THE INSTITUTION OF
28 LAWSUITS AND THE FORECLOSURE OF THE PLEDGE OF ANY
29 PERMIT PLEDGED TO SECURE THIS LOAN."

30 Sec. 44.81.243. BANK REMEDIES AFTER FAILURE TO CURE. If the
31 borrowers and guarantors on a loan secured by a permit pledged under AS 44.81.231

1 fail to cure a default within the time stated in the notice given under AS 44.81.241,
2 the total indebtedness owing on the loan immediately becomes due and payable to the
3 bank, and the bank shall be entitled to take any legal action to collect the loan,
4 including the foreclosure under AS 44.81.245 of the permit pledge that secures the
5 loan and the institution of legal action. If the bank forecloses the permit pledge, the
6 bank may proceed in the order the bank selects, whether before, after, or concurrent
7 with other action taken to collect the loan.

8 Sec. 44.81.245. FORECLOSURE NOTICE. The bank may foreclose on a
9 permit pledge that secures a loan by sending to the equitable owner of the permit
10 pledged and any other borrowers and guarantors on the loan a notice of foreclosure.
11 The notice shall be sent by certified mail to their last known address or addresses on
12 file with the bank and must include

13 (1) the date of the notice;

14 (2) a statement that the total indebtedness owing on the loan became
15 due and payable to the bank because the loan default was not cured within the time
16 specified in the notice of default and right to cure provided under AS 44.81.241, and
17 that as a result the bank is entitled to take legal action to collect the loan, including
18 the forfeiture of a permit pledge that secures the loan and the institution of legal
19 action;

20 (3) a description of the permit pledge that is being foreclosed by the
21 notice, including an identification of the permit by the number assigned by the
22 commission and the name of the equitable owner;

23 (4) the amount of the total indebtedness owing as of the date of the
24 notice;

25 (5) the amount of daily interest that accrues from the date of the notice;

26 (6) a statement that the costs of collection of the loan incurred by the
27 bank after the date of the notice will be added to the total amount of the indebtedness
28 due on the loan;

29 (7) a statement that to avoid forfeiture of all rights of the equitable
30 owner of the permit identified in the notice, the loan must be paid in full within 60
31 days from the date of the notice or within an extended time period that is specified in

1 an extension notice provided by the bank within the 60-day period under
2 AS 44.81.249;

3 (8) a statement that once a forfeiture of all rights of the equitable owner
4 of a permit described in the notice occurs, the permit may not be redeemed;

5 (9) a statement of the right of the equitable owner to nominate a person
6 to assume the loan under AS 44.81.245;

7 (10) the place where payment in full may be made; and

8 (11) a notice in at least 10 point bold type stating:

9 "IMPORTANT: IF THE LOAN IS NOT PAID IN FULL BY THE
10 DATE SPECIFIED, ALL RIGHTS OF THE EQUITABLE OWNER TO
11 THE PERMIT IDENTIFIED IN THIS NOTICE, WILL BE FORFEITED
12 WITHOUT FURTHER NOTICE TO YOU. IN THAT EVENT,
13 THERE WILL NOT BE A RIGHT OF REDEMPTION OF THE
14 PERMIT. IN ADDITION, THE BANK MAY NOW TAKE OTHER
15 ACTION TO COLLECT THE LOAN, INCLUDING THE
16 INSTITUTION OF LEGAL ACTION AGAINST YOU AND THE
17 FORECLOSURE OF OTHER PERMIT PLEDGES THAT SECURE
18 THE LOAN."

19 Sec. 44.81.247. TERMINATION OF PERMIT INTEREST. If a loan is not
20 paid in full within the time specified by the notice provided for the loan under
21 AS 44.81.245, the equitable interest in the permit identified in the notice terminates
22 by operation of law without further notice. The commission shall cancel an entry
23 permit card issued to the equitable owner of the permit immediately upon receipt by
24 the commission of a certificate of termination containing a copy of the notices required
25 by AS 44.81.241 and 44.81.245.

26 Sec. 44.81.249. CANCELLATION, EXTENSION, AND DELIVERY OF
27 NOTICES. (a) The bank may cancel a notice provided under AS 44.81.241 or
28 44.81.245 by delivering a written notice of cancellation to the persons who were given
29 the cancelled notice. The notice shall be given in the same manner as is required for
30 the cancelled notice.

31 (b) The bank may extend the 60-day period for curing a default under

1 AS 44.81.243 and the period before a forfeiture occurs under AS 44.81.247 by giving
2 a written notice of extension to the persons who were given the notice. The notice
3 shall be given in the same manner as is required for the giving of the notice being
4 extended.

5 (c) The bank may give a notice required to be provided in AS 44.81.241,
6 44.81.245, or 44.81.247 by personal delivery instead of by certified mail.

7 * Sec. 22. AS 44.81.250 is repealed and reenacted to read:

8 Sec. 44.81.250. TRANSFER OF ENTRY PERMITS AFTER FORECLOSURE.

9 (a) Upon foreclosure of a pledge of an entry permit under AS 44.81.241 - 44.81.249,
10 the bank shall determine if the permit is subject to a buy-back program under
11 AS 16.43.290 - 16.43.330 and, if it is subject to a buy-back program, shall offer the
12 permit to the commission at a price equal to the outstanding indebtedness on the loan.

13 (b) If the permit is not subject to a buy-back program, or if the commission
14 fails to buy back the permit within 30 days after the commission receives the offer, the
15 bank shall sell the permit to a person who qualifies as a transferee of an entry permit
16 under AS 16.43 and the regulations adopted by the commission. The bank shall give
17 preference to an offer to purchase a permit made by a state resident if the price offered
18 is equal to or greater than the price offered by a nonresident. If the proceeds of the
19 sale of a permit exceed the amount necessary to pay the indebtedness in full, the bank
20 shall remit the excess to the borrower.

21 (c) At any time before foreclosure of a pledge of a permit, or within 30 days
22 following foreclosure of a pledge of a permit, the equitable owner or former equitable
23 owner may nominate a person to assume the loan. A person nominated must qualify
24 as a transferee of the permit under AS 16.43 and must qualify to assume the loan
25 under the requirements of the bank. If the person qualifies, the permit shall be
26 transferred to the nominee upon the nominee's assumption of the loan.

27 (d) This section does not affect the right of the bank to institute legal actions
28 against the borrowers, guarantors, or other sureties for performance to collect the
29 indebtedness owing on the loan and to take other legal action on the collateral securing
30 the loan.

31 * Sec. 23. AS 44.81.270 is repealed and reenacted to read:

1 Sec. 44.81.270. AUDITS AND EXAMINATIONS OF BANK. (a) The
2 legislative auditor may cause the bank to be audited in the manner and under the
3 conditions established by AS 24.20.271 for audits performed by the legislative audit
4 division. The legislative audit division has free access to all books and papers of the
5 bank that relate to the business of the bank and books and papers kept by a director,
6 officer, or employee relating to or upon which a record of the business of the bank is
7 kept. The legislative audit division may summon witnesses and administer oaths or
8 affirmations in the examination of directors, officers, or employees of the bank or
9 another person in relation to the affairs, transactions, and conditions of the bank, and
10 may require and compel the production of records, books, papers, contracts, or other
11 documents by court order if not voluntarily produced. At the direction of the legislative
12 budget and audit committee under AS 24.20.271, the legislative auditor may conduct
13 an audit of the bank.

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

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

23 (d) The state bank examiners shall perform an annual qualitative examination
24 and evaluation of the bank. The commissioner of commerce and economic
25 development shall assess the bank a fee established under AS 06.01.010(b) for the
26 actual expenses incurred by the Department of Commerce and Economic Development
27 in connection with the examination. The examiners shall report to the board on the
28 examination. The examiners shall prepare a summary report evaluating the bank's loan
29 portfolio quality on a statistical basis and addressing the appropriateness and
30 effectiveness of the bank's policies, practices, and management within the context of
31 the bank's statutory purposes. The examiners shall distribute copies of the summary

1 report to the bank, the legislature, and the governor, and the other records related to
2 the examination of the bank are subject to AS 06.01.025.

3 * Sec. 24. AS 44.81 is amended by adding a new section to read:

4 Sec. 44.81.300. UNCLAIMED DISTRIBUTIONS, REDEMPTIONS, OR
5 PAYMENTS. The bank may revoke a distribution of net proceeds by the bank or a
6 redemption of or payment based upon an allocation of proceeds or upon capital stock
7 issued by the bank if the distribution, redemption, or payment remains unclaimed six
8 years after the date authorized for payment, redemption, or retirement. The amount
9 revoked may revert to an unallocated capital account of the bank if, at least six months
10 before the declared date of revocation, the bank has mailed to the last known address
11 of the person shown by the bank's records to be entitled to the amount a notice that
12 the payment is available to the person; if the address is unknown, the bank shall
13 publish the notice as provided by law for the publication of a summons. A
14 distribution, redemption, or payment subject to this section is not subject to
15 AS 34.45.110 - 34.45.780.

16 * Sec. 25. AS 44.81.350(3) is amended to read:

17 (3) "member of the bank" includes

18 (A) a holder of a share of membership stock of the bank; or

19 (B) a patron of the bank with retained patronage earnings, or

20 other form of capital ownership in the bank, of \$2,500 or more to the
21 patron's credit;

22 * Sec. 26. AS 44.81.350 is amended by adding new paragraphs to read:

23 (5) "commercial agriculture" includes commercially-related activity in
24 connection with producing, harvesting, processing, or marketing an agricultural,
25 maricultural, or horticultural commodity, including the breeding, raising, shearing,
26 feeding, caring for, training, and management of livestock, bees, poultry, shellfish, and
27 fur-bearing animals and wildlife, and the planting, cultivating, caring for, harvesting,
28 or processing of forest products on a sustained yield basis;

29 (6) "permit" means a limited entry permit issued under AS 16.43;

30 (7) "resident farmer" means a person who is a resident of the state and
31 who is engaged in commercial agriculture in the state;

1 (8) "resident fisher" means a person who is a resident of the state and
2 who is engaged in commercial fishing in the state.

3 * Sec. 27. AS 44.81.010(c), 44.81.040, 44.81.050, 44.81.060, 44.81.070, 44.81.090,
4 44.81.100, 44.81.110, 44.81.160, 44.81.190, 44.81.220, 44.81.230, 44.81.235, 44.81.240, and
5 44.81.280 are repealed.

6 * Sec. 28. TRANSITION PROVISIONS. This Act does not affect a contract, cause of
7 action, liability, penalty, or proceeding existing, incurred, or accrued on the effective date of
8 this Act. This Act does not affect an action of the Alaska Commercial Fishing and
9 Agriculture Bank taken on or before the effective date of this Act.

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE BROWN

TO: HB 284

CS HB 284 (FIN)

LETTER OF INTENT

The legislature requests that the board of directors of the Alaska Commercial Fishing and Agriculture Bank investigate the feasibility of providing services authorized under AS 44.81.210 to Alaskans other than those authorized for services under AS 44.81.210, and report the results of that investigation to the legislature by the 15th day of the first session of the twentieth Alaska Legislature.

Attachment #1
3/11/96

Audit Report

**ALASKA COMMERCIAL FISHING AND
AGRICULTURE BANK**

January 12, 1996



Audit Control Number:

08-4525-96

Division of Legislative Audit

P.O. Box 113300, Juneau, Alaska 99811-3300

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

DIVISION OF LEGISLATIVE AUDIT

The Legislative Budget and Audit Committee is a permanent interim committee of the Alaska Legislature. The committee is made up of five senators and five representatives, with one alternate from each legislative chamber. The chairmanship of the committee alternates between the two chambers every legislature.

The committee is responsible for providing the legislature with audits of state government agencies. The programs and activities of state government now cost more than \$5 billion a year. As legislators and administrators try increasingly to allocate state revenues effectively and make government work more efficiently, they need information to evaluate the work of governmental agencies. The audit work performed by the Division of Legislative Audit helps provide that information.

As a guide to all their work, the Division of Legislative Audit complies with generally accepted auditing standards established by the American Institute of Certified Public Accountants and with government auditing standards established by the U.S. General Accounting Office.

Audits are performed at the direction of the Legislative Budget and Audit Committee. Individual legislators or committees can submit requests for audits of specific programs or agencies to the committee for consideration. Copies of all completed audits are available from the Division of Legislative Audit's offices in either Anchorage or Juneau.

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Division of Legislative Audit



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(907) 465-3830
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January 12, 1996

Members of the Legislative Budget
and Audit Committee:

In accordance with the provisions of Title 24 of the Alaska Statutes, the attached report is submitted for your review.

ALASKA COMMERCIAL FISHING AND AGRICULTURE BANK

January 12, 1996

Audit Control Number

08-4525-96

The objectives of this audit were to determine: the financial condition of the Alaska Commercial Fishing and Agriculture Bank (CFAB); the factors affecting the continuance or discontinuance of the financial and statutory relationship between the State and CFAB; the new general/lending powers proposed in House Bill 284; and to determine whether the activities associated with those powers are available through existing programs of other state agencies, quasi-state corporations, or private lending institutions within the State.

The audit was conducted in accordance with generally accepted government auditing standards. Fieldwork procedures utilized in the course of developing the findings and discussion presented in this report are discussed in the Objectives, Scope, and Methodology section of this report. Audit results can be found in the Report Conclusions and the Findings and Recommendations sections.

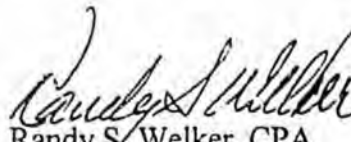

Randy S. Welker, CPA
Legislative Auditor

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OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Title 24 of the Alaska Statutes and a special request by the Legislative Budget and Audit Committee, we conducted an audit of the Alaska Commercial Fishing and Agriculture Bank (CFAB).

Objectives

The objectives of the audit were:

1. To determine the financial condition of CFAB.
2. To determine the factors affecting the continuance or discontinuance of the financial and statutory relationship between the State and CFAB.
3. To identify the new proposed general/lending powers included in House Bill 284 and to determine whether the activities associated with those powers are available through existing programs of other state agencies, quasi-state corporations, or lending institutions within the State.

Scope and Methodology

Our scope included a review of CFAB's audited financial statements for FY 91 through FY 95. We also reviewed the 1995 examination report by the Department of Commerce and Economic Development (DCED), Division of Banking, Securities, and Corporations' bank examiners. We interviewed the external auditors, KPMG Peat Marwick, and the DCED bank examiners and reviewed their procedures and workpapers to determine whether to place reliance on the results of their reviews.

We performed trend and ratio analyses of pertinent financial information contained in CFAB's accounting records and audited financial statements, including loan delinquencies.

A review was done of the enabling legislation (AS 44.81) for CFAB, including any subsequent statutory changes or proposed changes affecting its relationship with the State. A copy of the agreement between the Department of Revenue and CFAB regarding the repurchase of the Class C stock held by the State was reviewed to determine the terms of the repurchase. Discussions were held with CFAB's management and legal counsel. In addition, we reviewed management's correspondence files and the board meeting minutes for the calendar years 1993 through September 1995. We attended a meeting of CFAB's board of directors.

We also reviewed the enabling legislation (AS 16.10) for the Commercial Fishing Revolving Loan Fund (CFRLF) and the Alaska Commercial Fisheries Entry Commission (CFEC),

AS 16.43, to determine the effect of their authority and activities on CFAB's operations. In addition, we obtained pertinent loan portfolio information from CFRLF. Interviews with management of CFRLF and CFEC were conducted.

Decisions on legal cases between the Internal Revenue Service and the State regarding the seizure of limited entry permits from fishers for payment of back taxes were reviewed.

We attended certain segments of the Alaska Fish '95 conference and trade show for the fishing industry. Topics included were: individual fishing quotas, pending fish initiative, governor's policy on fisheries, the Board of Fisheries, and fisheries' market.

We reviewed HB 284 and the related legislative committee minutes. Discussions were held with CFAB management regarding the proposed expansion in general/lending powers.

The statutes and regulations of other state agencies and quasi-state corporations were reviewed to determine if they have the authority to provide similar financing/lending services. We interviewed the management of any of those organizations that appeared to provide such services. In addition, we held discussions with the management of the Alaska Fisheries Development Foundation, a private, nonprofit organization.

Our audit procedures also included a review of the Federal Farm Credit Act and agreements between the Cooperative Bank of Spokane (CoBank) and CFAB. Discussions were held with CoBank management as considered necessary.

ORGANIZATION AND FUNCTION

The Alaska Commercial Fishing and Agriculture Bank (CFAB or Bank) was established in 1978 by the enactment of AS 44.81. The Bank was subsequently incorporated under AS 44.81 on May 4, 1979, and began its operations in April 1980. In 1981, CFAB's statutes were revised to clarify the original intent of the legislation. The original intent was for the Bank to exist as a private, cooperative corporation, while filling a crucial need of the State in making capital available to commercial fishers and farmers. Alaska Statute 44.81.010(a) now reads as follows:

There is established the Alaska Commercial Fishing and Agriculture Bank. The exercise by the bank of the powers conferred by this chapter is considered to be for a public purpose. The bank is exempt from the provisions of AS 06.05 (Alaska Banking Code) and AS 10.15 (Alaska Cooperative Corporation Act) in the exercise of powers granted by this chapter.

As discussed in the Background Information section, the initial capitalization of the Bank was provided by the State through the purchase of \$32 million of CFAB's nonvoting, preferred Class C shares of stock. Alaska Statute 44.81.010(b) requires that these shares be repurchased by the Bank within 20 years of their sale to the State. Currently, CFAB is in the process of repurchasing the Class C shares of stock under an agreement with the Department of Revenue. Due to the early retirement of the shares, CFAB is repurchasing the shares at a discount.

CFAB's policies and directions are established, within its statutory authority, by a seven-person board of directors that hires professional management and staff to operate the Bank. Five of the directors must be borrowers/owners of CFAB and are elected by the total membership of the cooperative Bank. The other two directors are appointed by the governor. All directors' terms are for three years. CFAB holds an ownership meeting each year. At this meeting, the borrowers/owners have the opportunity to vote on important matters, to receive reports from CFAB's directors and managers, and to elect new directors.

CFAB makes loans for most fishing or farming related purposes. The most common purposes are the purchase, modification, or refinancing of a vessel; purchase of a limited entry fishing permit; gear, engine, or equipment replacement or upgrade; general operating capital; and fish processing. There are no "standard" repayment terms or programs. In order to be eligible to be a CFAB borrower, an applicant must be engaged in the commercial fishing or farming industries. An individual applicant must be an Alaska resident, and a partnership must have majority ownership by Alaska residents. When the applicant is a corporation, the majority ownership and control must rest with Alaska residents.

Eligibility, however, is only the first step of the lending process. 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 their experience, has allowed them to consider a broader range of applicant qualifications than most other lenders.

Borrowers, as members of the cooperative Bank, must purchase one share of Class A stock that has a par value of \$10. In addition, borrowers must purchase shares of Class B stock with a \$100 par value in an amount equal to 5% of the loan amount. The purchase costs of the Class B stock may be included in the loan amount. As of May 31, 1995, CFAB had outstanding \$28.2 million in net loan receivables, \$10,770 in Class A membership stock, and \$4.1 million in Class B preferred stock. Refer to Exhibit 1 in the Report Conclusions section for a summary of CFAB's FY 95 published financial statements.

In the disposition of the FY 95 net proceeds totaling \$1,439,066, CFAB's board of directors authorized a 7% dividend, totaling \$108,122, on the Class B preferred stock holdings of members whose related loans were paid in full at May 31, 1995. This was the sixth such dividend paid in the past seven years. In addition, \$650,000 of the proceeds were allocated to members/borrowers as a patronage refund¹ in accordance with CFAB's bylaws, with 50 % of that allocation being paid in cash. The remaining \$680,944 of net proceeds was transferred to CFAB's unallocated surplus account to be retained as capital.

¹A "patronage refund" is a return of a portion of the interest paid to CFAB by a member/borrower on a timely basis during a particular year. As a cooperative, CFAB may distribute a portion of its net proceeds (profits) back to its members/borrowers. This is an effective reduction in the interest paid by a member/borrower. For example, the patronage refund for FY 95 reduced the average interest rate charged during the year from 9.73% to 8.63%.

BACKGROUND INFORMATION

Improved access to capital by Alaskans with creation of CFAB

In the late 1970's the commercial fishing industry expressed dissatisfaction with the available credit sources to finance operations and the development of the industry. In response, the legislature commissioned a study in the fall of 1977 to evaluate the adequacy of the available financing sources for the commercial fishing industry in Alaska.

The study concluded that there was a need for improved access by the Alaska commercial fishing industry to sources of credit. Several alternatives to improve such access were discussed in the report. One of the options recommended was for the State to form a private, cooperative development bank for the Alaska commercial fishing industry that could leverage its capital with funds from the Federal Farm Credit System.

As a result of the study, in 1978 the legislature passed a bill that created the Alaska Commercial Fishing and Agriculture Bank (CFAB or Bank). It was to provide financing for the commercial fishing and agriculture² industries within the State by leveraging its capital with funds from the Federal Farm Credit System as recommended.

The initial capitalization of CFAB was provided through appropriations from the State totaling \$32 million. For this initial funding the State was issued nonvoting, preferred shares of stock in CFAB that by statute are required to be repurchased within 20 years of their issuance. Upon the full repurchase of the Class C stock, the specific statutes for the creation of CFAB (AS 44.81) will lapse and the cooperative Bank is to continue to operate under the terms of its bylaws and under the Alaska Cooperative Corporation Act (AS 10.15).

Cooperative banks provide CFAB with necessary capital

The concept of CFAB was patterned after the Federal Farm Credit System (System) which provides a source of credit to farmers, ranchers, and producers or harvesters of aquatic products. The Federal Farm Credit Act of 1933 provided for the organization of thirteen Banks for Cooperatives (BCs). BCs were initially capitalized by the federal government and remained largely owned by the government until the Farm Credit Act of 1953 was passed. This act provided for a means of control of the entire System by its users and paved the way for the ultimate retirement of all the federal government capital investment in the System. The Federal Farm Credit Act of 1971 recodified all the prior laws governing the System, modernized its functions, broadened its lending powers (e.g., loans to producers and harvesters of aquatic products), and brought decision making closer to its borrowers.

²Although the study only looked at the need for improved access to credit for the commercial fishing industry in Alaska, the legislature believed an analogous problem existed for farmers.

BCs are cooperatives themselves. They are financial institutions whose business is to provide credit and related services to their agricultural and aquatic cooperative members. BCs obtain a major portion of their loan funds through the sale of securities backed by the notes of borrowers. These securities are sold through a fiscal agent with the aid of a nationwide group of securities dealers. Through the issuance of these securities, BCs provide their cooperative members with direct access to the nation's money markets which helps to ensure an adequate supply of dependable credit.

Any association of farmers, ranchers, or producers or harvesters of aquatic products which is operated on a cooperative basis for the mutual benefit of its members as patrons may be eligible to borrow from BCs.³ The cooperative must also meet the following requirements:

- At least 80 percent of the voting control of the cooperative must be held by farmers, ranchers, or producers or harvesters of aquatic products.
- The cooperative must do at least 50 percent of its business with or for its members.
- No member of the cooperative shall have more than one vote regardless of the amount of stock or membership capital he/she owns.
- The cooperative must restrict dividends on its stock or membership capital to either 10 percent per year or the maximum allowed by state law, whichever is less.

CFAB, as an eligible borrower, has a Line of Credit Agreement with the Cooperative Bank of Spokane (CoBank). The current agreement provides for borrowings up to \$10 million or an amount equal to CFAB's borrowing base,⁴ whichever is less. This agreement is periodically renegotiated.

The agreement has certain requirements to ensure CoBank, as a major creditor, is kept apprised of CFAB's financial condition. Those requirements include: providing copies of the annual audited financial statements, monthly financial statements, and Alaska Division of Banking, Securities, and Corporations annual bank examination reports; maintaining at all times a ratio of total assets to total equity of not greater than 3.5 : 1 and an excess of total assets over total liabilities of not less than \$20,000,000; and utilizing credit policies satisfactory to CoBank. In addition, as discussed in the Report Conclusions section, unless

³The association must be engaged in one or more of the following functions:

- Storing, packing, processing, or marketing farm or aquatic products.
- Purchasing, testing, grading, processing, furnishing, or distributing farm or aquatic supplies.
- Furnishing business services to farmers, producers or harvesters of aquatic products, or other eligible cooperatives.

⁴According to the Line of Credit Agreement, the "borrowing base" means the sum of: (1) 80 percent of the principal balance of loans pledged to CoBank classified as acceptable or other assets especially mentioned, (2) 50 percent of the principal balance of loans pledged to CoBank classified as substandard, and (3) other assets at percentages acceptable to CoBank. All principal balances exclude loans made to finance the purchase of Class B stock and further excludes the portion of the total loans exceeding 10 percent of CFAB's total net worth, if any.

otherwise agreed to in writing by CoBank, CFAB may not merge or consolidate with any other entity, or acquire all or substantially all of the assets of any person or entity, or form or create any new subsidiary or affiliate, or commence operations under any other name, organization, or entity, including any joint venture.

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REPORT CONCLUSIONS

The Alaska Commercial Fishing and Agriculture Bank (CFAB or Bank) was in a satisfactory financial condition as of the end of its 1995 fiscal year and had good quality loans. However, the Bank's shrinking loan portfolio is of concern.

We also conclude that if CFAB repurchased all of its stock from the State as scheduled, the statutory relationship (AS 44.81) between the State and CFAB would lapse and would:

- Delete CFAB's ability to provide limited entry fishing permit loans to fishers.
- Eliminate the statutory requirement that CFAB borrowers be Alaska residents.
- Delete CFAB's exemption from the Alaska Banking Code and the specified applicability of the Alaska Cooperative Corporations Act; thus, CFAB's continued operations would be in question.
- Delete CFAB's charge to serve a public purpose, as currently stated in AS 44.81, to enhance the development of the aquatic and agriculture industries of the State.

On the other hand, the continuance of AS 44.81 would ensure CFAB would remain a source of capital for Alaska resident fishers, a financing mechanism for the purchase of limited entry permits, and an organization whose charge is to serve a public purpose in the development of the aquatic and agriculture industries of the State. In addition, we believe the Bank could be utilized to take over all or part of the functions of Commercial Fishing Revolving Loan Fund (CFRLF) through optimum use of its access to capital from the Federal Farm Credit System.

Further, we conclude that the general/lending powers proposed in HB 284 do not duplicate activities of existing state agencies or quasi-state corporations; rather, they may augment those activities. In addition, the proposed additional powers do not alter CFAB's current competition with private lending institutions within the State. The proposed changes to CFAB's general/lending powers in House Bill 284 are shown in Exhibit 4 of this section. We also determined that there are certain controls in place through CFAB's membership involvement and its credit agreement with the Cooperative Bank of Spokane (CoBank) to monitor these new activities.

The following is a more detailed discussion of our conclusions.

CFAB's financial condition satisfactory, with some future concerns

As of May 31, 1995, CFAB held \$31,813,164 in assets which included net loan and other receivables totaling \$28,204,726. Total liabilities included \$4,478,930 in notes payable to

CoBank which are secured by substantially all of CFAB's loan receivables. CFAB had a leverage ratio (Total Assets:Total Capital) of 1.2 : 1 while the CoBank line of credit agreement allows a ratio as high as 3.5 : 1. In other words, CFAB could have theoretically borrowed and loaned out an additional \$57 million with its capital structure as of May 31,1995.

Net proceeds for FY 95 totaled \$1,439,000, which included income of \$1.1 million in recoveries of previously charged-off loans. Therefore, without those recoveries CFAB's net proceeds would have been only about \$339,000. Summary amounts from the published Balance Sheet and Statement of Proceeds are shown in Exhibit 1.

On July 1, 1991, the Alaska Department of Revenue and CFAB entered into an agreement for the repurchase of the Class C stock held by the State. As of June 30, 1995, CFAB had repurchased \$22 million of the \$32 million of stock. Those repurchases were discounted by \$9 million dollars, thus the actual cash outlay for CFAB totaled about \$13 million. The repurchases at a discount are in accordance with an agreement between the Department of Revenue and CFAB. The discount is being given due to the repurchases occurring before the statutory deadline.

<u>Exhibit 1</u>	
Summary of CFAB's FY 1995 Financial Statements	
<u>Balance Sheet</u>	
Total Assets	<u>\$31,813,164</u>
Total Liabilities	5,211,654
State Capital	10,000,000
Members' Equity/Capital	<u>16,601,510</u>
Total Liabilities and Capital	<u>\$31,813,164</u>
<u>Statement of Net Proceeds</u>	
Loan Revenues	\$ 3,973,958
Interest Expense	(344,628)
Operating Expenses	(1,617,358)
Income Tax Expense	<u>(572,906)</u>
Net Proceeds	<u>\$ 1,439,066</u>

The amount of the discount was credited to the Bank members' unallocated surplus capital account. Therefore, the \$9 million in discounts was a significant portion of the total net increase in members' equity of \$11 million between July 1991 and June 30, 1995.

CFAB is to continue repurchasing the Class C stock in \$250,000 increments on a monthly basis until fully repurchased. We estimate the remaining \$10 million in Class C stock will be repurchased at an additional discount of about \$2 million. This will bring the total cash discount received by CFAB to approximately \$11 million for the full repurchase of the \$32 million in Class C stock originally purchased by the State.

We reviewed the audit and examination procedures of CFAB's independent auditors and the bank examiners with the Department of Commerce and Economic Development (DCED), Division of Banking, Securities, and Corporations. The following summarizes the results of their reviews.

External auditors express concern over CFAB's shrinking loan portfolio

KPMG Peat Marwick (KPMG) issued an unqualified opinion on CFAB's financial statements, meaning the statements were fairly stated. In its management letter to CFAB's board of directors, KPMG reported that no matters involving material weaknesses in CFAB's

internal control structure were noted. Other issues brought to our attention either through a review of KPMG's workpapers and/or the auditors' presentation to the board of directors were as follows:

- CFAB's loan portfolio is shrinking and, according to KPMG, if the trend continues CFAB will be at a break-even point (i.e., revenues equaling expenses) in approximately two years. This may impact CFAB's ability to repay the \$10 million to the State under the current pay-back plan.
- CFAB's loan portfolio is concentrated in the extremely volatile industry of fishing and is considered a high level of risk. Over the past several years, prices paid for fish have been declining. Further, the value for limited entry fishing permits has also declined. This affects the ability of borrowers to pay back loans, as well as the value of the collateral securing the loans.
- In FY 95, CFAB made a significant recovery of one major loan loss in the amount of \$2,031,703, \$1.1 million of which was credited to income.

Bank examiners conclude CFAB's overall condition is fundamentally sound

The DCED bank examiner's report concluded that "[t]he bank's condition appears to be fundamentally sound, but general areas of importance are called to your [CFAB board of directors'] attention. . . ." The report further states the following:

Recommendations made at this examination are generally minor in nature and focus on the need to:

1. *Continue decreasing the level of nonaccrual and classified⁵ loans.*
2. *Improve director [CFAB board members] attendance and loan maintenance.*
3. *Promote quality loan growth to increase earnings.*
4. *Continue monitoring stress level on bank earnings from repurchase of Class C stock.*

The bank examiners conducted a full-scope examination using a financial presentation date of May 31, 1995, and an asset review date of July 31, 1995. The examination focused on an evaluation of the following five areas: capital adequacy, asset quality, quality of management, and earnings and liquidity. The examiners concluded the following regarding these areas:

⁵Nonaccrual loans are loans 90 days or more past due that no longer are accruing interest for financial reporting purposes. Classified loans are problem loans identified by the DCED bank examiners, when performing a quality review, that they believe should be adversely classified as either substandard, doubtful, or a loss. Classified loans may also be included in CFAB's nonaccrual loan amounts.

The bank is considered well capitalized. [CFAB has 49.86% ratio of leverage capital over average total assets, while commercial banks generally have only about a 5.5% ratio.]

The asset quality has continued to show improvement over the last two examinations. . . . Management has also devoted a considerable amount of effort toward addressing problem credits. . . . In conjunction with the decrease of problem credits, the bank has been unable to attract quality loans to replace these credits . . . and benefit [increase] earnings. . . . Competition for quality loans with other financial institutions and the State of Alaska, Division of Investments, continues to remain strong.

The management of the bank has remained stable and are [sic] considered capable. Bank policies are kept in a current condition, expenses are well controlled, the loan loss reserve is considered adequate, and loan loss recoveries are aggressively pursued.

Earnings continue to remain good but have been enhanced considerably by some sizable recoveries from prior loan charge offs. . . . The Net Income (After Tax) for fiscal year-end May 31, 1995 was \$1,439M and represented 4.32% of Average Assets. Removing the loan loss recoveries from earnings would have decreased Net Income to \$339M or 1.02 % of Average Assets, which is considered acceptable but marginal.

The principal source of CFAB's funds is CoBank Funds are made available to CFAB on a term basis through a master borrowing agreement that gives CoBank a first security interest in all of CFAB's assets which includes cash, certificates of deposit, securities, bonds, loans to members, accounts receivable, and chattel paper. . . . To meet any additional loan demand, CFAB has a seasonal line of credit with CoBank. The maximum available amount is determined annually prior to the beginning of CFAB's fiscal year. CoBank sets the maximum amount based upon certain criteria which include its evaluation of loan portfolio quality and capital ratio

Our review of CFAB's annual reports, audited financial statements, and bank examiners' report indicated that CFAB's interest income has been declining. Gross revenue declined by 8%, from \$3,124,000 in FY 94 to \$2,874,000 in FY 95. Additionally, CFAB's loan portfolio declined by \$5.1 million or 16.8% between FY 94 and FY 95. According to the executive message to members in the 1995 annual report,

. . . CFAB seems still to be not widely recognized by Alaska fishers. . . . CFAB is positioned to accommodate significantly more loans -- and loan volume -- with very little, if any, increase in operating expenses. This would effectively translate into reduced costs for all borrowing members.

Problem loans in decline since FY 92

We performed trend analyses of pertinent financial information contained in CFAB's accounting records and audited financial statements, including loan delinquencies. The nonaccrual loan balances (loans 90 days or more past due) for the past five years were as follows:

Exhibit 2						
Schedule of CFAB's Nonaccrual Loans for FY 91 through August 1995						
	5/31/91	5/31/92	5/31/93	5/31/94	5/31/95	8/31/95 ^b
Seafood Harvesters	\$ 1,626,012	\$ 4,537,728	\$2,927,282	\$4,651,964	\$2,644,757	\$2,060,334
Fish Processors	8,007,250	8,599,440	5,692,651	3,220,523	1,515,624	1,485,091
Agriculture and Timber	4,856,522	3,173,045	-0-	-0-	-0-	-0-
Total	<u>\$14,489,784</u>	<u>\$16,310,213</u>	<u>\$6,619,933</u>	<u>\$7,872,487</u>	<u>\$4,160,381</u>	<u>\$3,545,425</u>

Exhibit 3 shows the loan modification information for the past four fiscal years. We conclude that the trends for nonaccrual loans and loan modifications appear to be moving in the right direction (i.e., decreasing), in spite of the volatility and risk associated with the fishing industry. This observation was also made by KPMG and the DCED bank examiners.

CFAB one of two sources of credit for limited entry fishing permit program

Not only is CFAB the State's only mechanism to access capital from the Federal Farm Credit System, it is also one of only two sources of capital for Alaska residents to finance the purchase of a limited entry permit. Financing from CFRLF⁸ is the only alternative.

In 1972, Article VIII, Section 15 of the Alaska Constitution was amended to allow a limited entry program to be created by the State for fisheries resource conservation

Exhibit 3				
Schedule of CFAB's Loan Modifications for FY 92 through FY 95				
Modification Type	1992	1993	1994	1995
1	\$4,330,689	\$1,254,484	\$3,081,992	\$261,792
2	684,452	495,488	45,585	564,116
3	1,629,053	395,415	300,760	33,704
Total	<u>\$6,644,194</u>	<u>\$2,145,387</u>	<u>\$3,428,337</u>	<u>\$859,612</u>

⁶The \$3,545,525 excludes nonaccrual Class B preferred stock notes receivable, which reduces the overall amount of the nonaccrual loans. For instance, the \$4,160,381 at 5/31/95 could be reduced by \$900 if nonaccrual Class B notes were excluded. Due to immateriality, the totals for FY 91 through FY 95 were not adjusted to exclude the nonaccrual Class B notes receivable amounts.

⁷The following are the types of modifications that took place in the given years:

1. Modified loans with the payment of interest in full by the borrowers and the principal reamortized within the original loan terms.
2. Modified loans with the payment of interest in full and the reamortization of principal resulted in new and later final payment dates.
3. Modified loans with no payment or partial payment only of the interest due.

⁸CFRLF is administered by the Division of Investments, Department of Commerce and Economic Development.

and development purposes. Then, in 1973 the legislature enacted the Commercial Fisheries Limited Entry Act (AS 16.43).

This Act contained limitations and restrictions on permits that were designed to keep control of the permit in the hands of the holder and to not allow direct or indirect control by third parties, i.e., canneries, financial institutions, or speculative investors. Specifically, AS 16.43.150(g) stated:

An entry permit may not be:

- (1) pledged, mortgaged, or encumbered in any way;*
- (2) transferred with any retained right of repossession or foreclosure;*
- or*
- (3) attached, distrained, or sold on execution of judgment or under any other process or order of any court.*

In 1978, this statutory section was amended to allow the fishers to take advantage of the value of their permits to fund their operations or if they no longer wanted to participate in the fishery. With the passage of Chapter 83, SLA 1978, CFRLF was authorized to make and foreclose on limited entry permit purchase loans to Alaska residents. The aim of the State was to place more limited entry permits in the hands of Alaskans. CFRLF loans would still be consistent with the original intent of the Limited Entry Act as the State would be the holder of the foreclosed permit in the case of default on the loan by the fisher. This would ensure the permit would be sold to a qualified person under the Limited Entry Act requirements, allowing the State to maintain control over its fisheries resource management. In addition, if the sale of the foreclosed permit was financed by CFRLF, the purchaser would have to meet the residency requirements of the loan program.

The next year, the legislature passed an amendment to CFAB's statutes that gave the Bank the same authority to make limited entry permit loans as was given to CFRLF. The sectional analysis of the bill stated in part:

. . . This language parallels the existing law that allows the state division of loans to make limited entry permit loans. . . . The purpose of this section is to expand the bank's power to provide for limited entry permit loans to Alaskans. Since the Bank provides for loans only to resident Alaskans this additional capital source will be an advantage to Alaskans who want to get into the fishery in the future. At least one-third of Alaska's salmon fishermen are still nonresidents This expansion of loan authority to the Commercial Fishing and Agriculture Bank will provide another source of capital to Alaskans who want to move into the salmon fisheries in the state.

Again, the limited entry permit loans made by CFAB were considered consistent with the intent of the Limited Entry Act. As CFAB was a creature of Alaska law, the procedures for foreclosure could be set by statute, thus protecting the State's right to control the transfer of

any foreclosed limited entry permit. Also, any purchaser of a foreclosed limited entry permit that obtained financing for the purchase from CFAB would have to meet its statutory residency requirement.

In 1995 there were 13,364 limited entry fishing permits held by fishers. Of those, 1,363 had liens against them by CFRLF and 383 by CFAB.

As previously mentioned, CFAB's statutes will lapse upon the full repurchase of its Class C stock from the State. This could create problems for Alaskan fishers and the State.

Problems in the elimination of CFAB's statutes

If payments for the repurchase of CFAB's Class C stock are made in accordance with the agreement with the Department of Revenue, CFAB's statutes will lapse in about May 1998. The Bank is to continue operations under its bylaws and the Alaska Cooperative Corporations Act (ACCA). Nonetheless, this elimination of CFAB's enabling statutes will give rise to several significant issues.

First, since CFAB's authority to make limited entry fishing permit loans is contained in AS 44.81, the elimination of that chapter will also delete such authority. Thus CFRLF would be the only capital source for financing the limited entry fishing permits for Alaska resident fishers.

This raises additional questions as to the legal status of CFAB's outstanding liens against permits at the time the statute is eliminated. These questions include concerns regarding any potential seizures of those permits by the federal Internal Revenue Service (IRS). Currently the State and the IRS are in a legal dispute over the applicability of AS 16.43 regarding tax liens and ultimate seizure and sale of permits by the IRS.

Secondly, the current statutory requirement for CFAB to make loans only to Alaska residents would be deleted with the elimination of AS 44.81. Under AS 44.81.210(a)(1) and (20), CFAB is authorized to make loans to Alaska residents and to companies owned by Alaska residents. Alaska Statute 44.81.210(a)(23) and AS 44.81.210(c) provide narrow exceptions for protection-of-collateral loans and shore-based Alaskan processors, respectively.

Thirdly, there are concerns as to whether CFAB could conduct its operations under AS 10.15. ACCA specifically excludes cooperatives organized for banking purposes.⁹ However, ACCA does not define "banking." One possible definition can be found under the Alaska Banking Act (AS 06.05) which states:

(3) "banking" means performing activities that

⁹See AS 10.15.005.

(A) include, at a minimum, soliciting, receiving, or accepting money or its equivalent on deposit, whether the deposit is made subject to a check or is evidenced by a certificate of deposit, passbook, note, receipt, or other writing; in this subparagraph, "deposit" does not include a deposit made by an agent for a principal; and

(B) may also include the negotiation for and discounting of promissory notes or other evidences of indebtedness, selling and buying money or its equivalent, lending money on personal or real property or other security, or performing other similar financial operations. [Emphasis added.]

Although CFAB meets the criteria of section (B), it does not accept deposits, thus it may not be a "bank" under this definition. Regardless, the Alaska Banking Act is not controlling over the Alaska Cooperative Corporations Act. Thus, it is uncertain whether CFAB would qualify under ACCA.

In 1981 AS 44.81.010(a) was amended to make

... it clear that CFAB is not engaged in "banking" as contemplated by the Alaska Banking Code, as it seems clear that the Legislature intended that CFAB serve a different function than that of the commercial banks in the state. Regulation under the Alaska Banking Code would be inappropriate.¹⁰

This amendment to AS 44.81.010(a) also added the sentence, "[t]he bank is exempt from the provisions of the Alaska Banking Code (AS 06.05) in the exercise of powers granted by this chapter." However, the legislature believed the exclusion of cooperatives organized for banking purposes under ACCA still needed to be addressed. The legislative summary of HB 413 stated the following:

The last paragraph of CFAB's originating legislation states that upon repurchase of the original Class C stock, the legislation lapses and CFAB is to operate totally under the cooperative statutes of the State. However, the first section of the cooperative statute prohibits a cooperative from engaging in banking or insurance. Therefore, once the current legislation ceases, CFAB could be construed as being an illegal operation under the strictest definition of banking.

In order to address this problem with ACCA, the legislature amended AS 44.81.220 with the passage of FCCSHB 413 as follows:

¹⁰A 1981 legislative document concerning House Bill 413, *Summary of a Bill Concerning the Alaska Commercial Fishing and Agriculture Bank and Relating to the Relationship of the Bank with the State.*

Notwithstanding the provisions AS 10.15.005,¹¹ upon the repurchase of all the nonvoting, preferred shares initially issued by the bank and purchased by agencies of the state, the provisions of this chapter lapse and the bank may proceed to operate solely as a private cooperative corporation under the terms of its bylaws and the provisions of AS 10.15.010 - 10.15.600 [ACCA provisions].

The concern regarding the elimination of AS 44.81 upon repurchase of CFAB's Class C stock is that these exemptions for CFAB from the Alaska Banking Code and ACCA will be deleted. Of course, the problem can be addressed by amending AS 44.81, as proposed in HB 284, by repealing AS 44.81.220. This would retain AS 44.81 upon repurchase of the CFAB's Class C stock from the State and not require CFAB to operate under ACCA. Another possible alternative would be for the legislature to allow AS 44.81 to lapse but amend the Alaska Banking Act to specifically exclude CFAB and to amend AS 10.15 to specifically include CFAB as a cooperative to be governed by ACCA. If this alternative is pursued by the legislature, any legal ramifications for CFAB should be considered in constructing the specific legislation due to the fact that it was originally incorporated under AS 44.81.

Finally, with the elimination of AS 44.81, CFAB would no longer be required to serve a specific public purpose that the legislature found appropriate to enhance the development of the aquatic and agriculture industries of the State.

In 1981, through FCCSHB 413, the legislature made it clear that CFAB was established to serve a public purpose by amending AS 44.81.010(a) to state that "[t]he exercise by the bank of the powers conferred by this chapter is considered to be for a public purpose." The summary of HB 413¹² included the following:

The Bill now before the Legislature as HB 413 is designed to make clear what many believe to be the intent of the original drafters of the legislation which created the Alaska Commercial Fishing and Agriculture Bank ("CFAB") i.e., that CFAB was intended to exist as a private, cooperative corporation while filling a crucial need of the State in making capital available to commercial fishermen and farmers, thereby assisting with the development of fishing and agriculture in the state.

In an effort to retain this public service charge, HB 284 was introduced last session to amend CFAB's statutes to have the State retain for perpetuity a \$1 million investment in its Class C stock. However, based upon a request by CFAB's management and legal counsel the \$1 million investment has been deleted and replaced with a more direct conveyance of public purpose. The proposed change to AS 44.81.010(a) reads as follows:

¹¹Alaska Statute 10.15.005 states that "[A] cooperative may be organized under this chapter for any lawful purpose, except for the purpose of banking or insurance or the furnishing of electric or telephone services."

¹²See previous footnote 10.

In the exercise of its powers under AS 44.81.215(7) the bank is acting under the express authority and reservations of the state as the issuer of limited entry permits under AS 16.43.

The referenced section, AS 44.81.215(7), allows the Bank to “. . . accept the pledge of a limited entry permit as security for a loan made under this chapter”

As discussed earlier, CFAB was patterned after components of the Federal Farm Credit System, which were initially financed by the federal government. This initial financing was subsequently repaid and the components became fully owned and financed by their members/borrowers. However, with that repayment the Federal Farm Credit Act did not lapse; instead, it has remained to provide some congressional control over the public purpose of that system. This is similar to what is contemplated with CFAB in HB 284.

Retention of AS 44.81 may result in monetary benefits to the State

Retention of AS 44.81 would ensure CFAB would remain a source of capital for Alaska resident fishers, a financing mechanism for the purchase of limited entry permits, and an organization whose charge is to serve a public purpose in the development of the aquatic and agriculture industries of the State. In addition, we believe the Bank could be utilized to take over all or part of the functions of CFRLF through optimum use of its access to capital from the Federal Farm Credit System. See Recommendation No. 1 in the Findings and Recommendations section.

Appropriate changes proposed for CFAB statutes

One of the objectives of the audit was to identify the new proposed general/lending powers included in HB 284 and to determine whether those type of activities are already available through other State or private organizations. Exhibit 4 identifies the proposed additional powers. As discussed below, we do not consider these new powers to constitute new or additional competition.

Exhibit 4

HB 284 Proposed Additions to CFAB's General/Lending Authority

AS 44.81.210 General Powers of the Bank

The bank may . . .

(6) engage in programs to support the efforts of resident fishers or farmers in order to enhance the further development, efficiency, stability, or profitability of commercial fishing or agriculture in the State. . . .

(14) establish wholly-owned or majority-owned subsidiary corporations or limited liability companies to:

- acquire, hold, operate, maintain, or liquidate property received by the bank in a foreclosure action or other loan collection process, or
- provide services to resident fishers or farmers, or other persons, if the services are consistent with the corporate purposes and powers expressed in this chapter.

(15) acquire equity or other ownership interest in a domestic corporation or limited liability company if the purpose of the acquisition is to enhance the further development, efficiency, stability, or profitability of commercial fishing or agriculture in the State.

AS 44.81.215 Lending Powers of the Bank

The bank may . . .

(8) make loans in participation with other lenders as provided in (1), (2), or (4) of this section, whether or not an obligor is a member of the bank.

(9) purchase or acquire participations in loans from other lenders if the participations conform to the provisions of (1), (2), or (4) of this section, whether or not an obligor is a member of the bank.

AS 44.81.236 Limitations on the Pledge of Permits

A loan may not be secured by the pledge of a limited entry permit unless the proceeds of the loan are used for . . .

(2) the purchase or lease of quota shares, individual fishing quotas, or another license, permit, or other grant of commercial fisheries harvesting entitlement that is issued and regulated under state or federal law. . . .

(5) the payment of obligations incurred in the support of a borrower and the persons who are dependent upon that borrower if the majority of the borrower's earned income is derived through commercial fishing under the borrower's permit.

(6) the enhancement of the productivity of diversification of the commercial fishing activities of a borrower, including education and technical training.

(7) the payment of taxes or other obligations whose status places the permit of a borrower in jeopardy of attachment, distraint, or sale on execution of judgment or under a process or order of a court.

(8) the purchase of the bank's stock or other equity instruments and loan costs.

CFAB is a potential participant in AIDEA or ASTF projects, not a competitor

Neither the management of the Alaska Industrial Development Export Authority (AIDEA) nor the Alaska Science and Technology Foundation (ASTF) believe there is a duplication of services between the statutory authority of their organizations and CFAB. Both organizations' management view CFAB as a potential participant in their projects relating to the development of the agriculture and commercial fishing industries in the State.

With respect to the additional general powers proposed under AS 44.81.210(6), both AIDEA and ASTF have similar authority to engage in programs that support fishers and farmers in their efforts to enhance the commercial fishing and agriculture industries in the State. However, AIDEA's authority is restricted to "participation" with government or private

industry in programs for technical assistance, loans, technology, transfer, or other programs related to the exportation of Alaska goods, services, or raw materials, while ASTF administers a grant program (rather than a loan program) for research projects that may be in the fisheries or agriculture industries. ASTF cannot not fund a project beyond the research stage; that is, it cannot fund operations or the development of markets.

The addition of AS 44.81.210(14) conveys authority similar to AS 44.88.080(14) that gives AIDEA the power to acquire, manage, and operate projects it considers necessary or appropriate to serve a public purpose. This would include projects that AIDEA acquires through foreclosure or other loan collection processes. CFAB's proposed statutory power would allow it to establish a wholly-owned or majority-owned subsidiary corporation or limited liability company to own and/or operate such acquired property. Unlike AIDEA, CFAB has member/owner interests to protect as well as the interests of CoBank as a capital lender. The use of subsidiary corporate or limited liability structures may provide some protection of these interests in CFAB's assets.

Neither AIDEA nor ASTF have the power to establish service corporations as proposed under AS 44.81.210(14). Nevertheless, revenue from a service corporation would provide some diversification of CFAB's revenue sources, which is desirable due to its lending activity being primarily concentrated in a single-resource based industry. The statutory change requires that the services provided be consistent with CFAB's statutory purposes and powers expressed in AS 44.81.

Alaska Statute 44.81.210(15) would provide CFAB with the power to acquire equity or other ownership interest in a domestic corporation or limited liability company. AIDEA has made a similar investment in a limited partnership referred to as the Polaris Fund. The purpose of the fund is to provide equity capital to young companies. The companies sought by the fund for investment are those with the potential to achieve profitable sales of \$5 to \$50 million within three to five years, in a distinctive product line. AIDEA's power to invest in the limited partnership is derived from its authority to invest the amounts held in its revolving fund.¹³ The goal of both the proposed CFAB statutory change and AIDEA's investment in the Polaris Fund is to provide a source of venture capital to Alaskan enterprises. CFAB's authority would be limited to enterprises in the commercial fishing or agriculture industries in the State and limited to significantly lower dollar amounts.

There are in place certain controls over the type of activities that would result from the additional general powers proposed in HB 284. CFAB would have to obtain written approval

¹³Alaska Statutes 44.88.060 states ". . . the authority has the powers and responsibilities established in AS 37.10.071 [Investment Powers and Duties] with respect to the investment of amounts held in the revolving fund." According to an attorney general memorandum dated July 26, 1989, the discretion to concentrate or diversify investments under AS 37.10.071(b)(3) is ". . . the factor that makes the joint venture investment project feasible under existing law."

from CoBank¹⁴ to support or to acquire equity or other ownership interest in a domestic corporation or limited liability company and to engage in any new programs or activities. In addition, the agreement with CoBank would effectively limit the amount of capital available to invest¹⁵ in such programs or entities. In addition, on an annual basis CoBank representatives perform a quality review of all or part of CFAB's loan portfolio, much like that performed by the DCED bank examiners. These controls would assist in ensuring that CFAB does not perform activities that may jeopardize its financial stability.

Proposed loan participation authority is standard industry practice

Under AS 44.88.155(c), AIDEA has the authority to purchase loans or purchase participations in loans for projects. The Farm Credit Act allows banks for cooperatives (BCs) to either purchase or acquire loan participations from other lenders, or make loans in participation with other lenders. These loans must be to entities engaged in similar activity as the BC's members but the loan obligors need not be members of the BC. The principle behind participations in loans with other entities is one of managing the risk of the transaction. This is a common practice in the financing industry.

The addition of sections (8) and (9) to AS 44.81.215 is consistent with AIDEA's statute and the changes to the Farm Credit Act. It is somewhat more restrictive than the Farm Credit Act in that the loans associated with the participations must conform to the lending powers of CFAB's statutes.

Limitations on the Pledge of Permits

In accordance with AS 16.43.150(g), only CFAB and CFRLF may use limited entry permits as security for loans to commercial fishers. No other entities may make these loans.

The proposed additions to AS 44.81.236 relate to the use of the proceeds from a loan secured by a limited entry permit. The statutes governing CFRLF were recently amended to allow loan proceeds to be used for the purchase of quota shares for halibut and sablefish fisheries¹⁶

¹⁴Per the National Bank for Cooperatives Line of Credit Agreement, dated April, 19, 1993, Section 15, "[u]nless otherwise agreed to in writing by CoBank, while this agreement is in effect, whether or not any indebtedness is outstanding hereunder the Borrower [CFAB] will not: . . . (C) . . . acquire all or substantially all of the assets of any person or entity, or form or create any new subsidiary or affiliate, or commence operations under any other name, organization, or entity, including any joint venture. . . . (G) . . . Engage in any business activities or operations substantially different from or unrelated to the Borrower's [CFAB's] present business activities or operations."

¹⁵Per the National Bank for Cooperatives Line of Credit Agreement, Section 13, "[u]nless otherwise agreed to in writing by CoBank, while this agreement is in effect, whether or not any indebtedness is outstanding hereunder, the Borrower [CFAB] agrees to: . . . (I) . . . Maintain at all times a ratio of total assets to total equity . . . of not greater than 3.50 to 1.00. . . . (J) . . . Maintain at all times an excess of total assets over total liabilities . . . of not less than \$20,000,000."

¹⁶The federal government implemented a rights-based fisheries' management program for the halibut and sablefish fisheries. The 1995 fishing season was the first season in which the program was operational. The program is administered by the National Marine Fisheries Services.

and to satisfy past due federal tax obligations that may result in the execution upon and involuntary transfer of the individual commercial fisher's entry permits. Only one such CFRLF loan may be obtained during the individual's lifetime and is limited to \$30,000.

We have concluded that duplication of lending services, including the additional authority provided in AS 44.81.236(2) and (7) above, exists between CFAB and the CFRLF. See Recommendation No. 1 in the Findings and Recommendations section.

Proposed changes do not alter CFAB's current competition with private financial institutions

The proposed changes to CFAB's lending powers do not constitute new or additional competition with the private financial institutions within the State. The factors in our determination are as follows:

- The legislature commissioned a study in the Fall of 1977 to study the problems and alternative solutions of financing the commercial fisheries industry in the State. The report entitled *Financing Alaska Commercial-Fisheries Businesses. Problems and Alternative Solutions*, dated October 14, 1977, confirmed that there was a need for improved access by the industry to sources of credit. It identified a number of options to address the need. One was to form a private cooperative development bank which would obtain its initial capitalization from the State and would leverage that capital base with funds provided through the Federal Farm Credit System. This would allow the State access to a source of capital generally available to the agriculture and commercial fishing industries in other states. This recommended option resulted in the legislature establishing CFAB.

CFAB was a device to access the capital provided through the Federal Farm Credit System and that capital source is available to farmers, ranchers, and fishers in other states through cooperative banks or production credit associations. These cooperative banks or production credit associations do not appear to be considered undue competition with the private lending institutions in those states.

- In enacting the limited entry system, the legislature recognized that, for the purpose of conservation, the State needed to retain control of its fishery resources. In view of this, the legislative intent of the limited entry permit program was that an entry permit would not be the property of its holder but rather a use privilege which can be modified or revoked by the legislature without compensation.

The legislature further recognized that the absence of a property right in a limited entry permit would not allow the holder the ability to obtain financing for its purchase or to use it as collateral to obtain financing for his/her commercial fishing operations. In order to provide a source of capital to the fishers, the legislature amended the Alaska Commercial Fisheries Entry Commission in 1978 (Ch. 83, SLA 1978) to allow the Commercial Fishing Revolving Loan Fund to take limited entry permits as

security for its loans to fishers. Then in 1981(Ch. 51, SLA 1981), similar legislation was passed which provided for CFAB to take limited entry permits as security for loans.

- Therefore, the proposed additions to AS 44.81.236 that relate to the use of proceeds from loans secured with limited entry permits do not constitute any new or additional competition with the private financial institutions. Private institutions can only make loans to commercial fishers or processors that are secured by assets other than limited entry permits.

CFAB was established because there was a need for improved access by the Alaska commercial fishing industry to sources of credit. Through the creation of CFAB the State had a mechanism to access the low cost funds of the Federal Farm Credit System. The proposed changes to HB 284 do not create any additional competition beyond that of the original intent of AS 44.81.

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FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

The management of CFAB and the Division of Investments, in conjunction with the Cooperative Bank of Spokane, should perform an analysis to determine whether CFAB should assume the Alaska Commercial Fishing Revolving Loan Fund functions and/or purchase, in whole or part, that fund's loan portfolio.

As discussed in the Report Conclusions section, retention of the Commercial Fishing and Agriculture Bank's (CFAB's or Bank's) enabling statutes, AS 44.81, would ensure CFAB would remain a source of capital for Alaska resident fishers, a financing mechanism for the purchase of limited entry permits, and an organization whose charge is to serve a public purpose in the development of the aquatic and agriculture industries of the State. In addition, we believe the Bank could be utilized to take over all or part of the functions of the Commercial Fishing Revolving Loan Fund (CFRLF) through optimum use of its access to capital from the Federal Farm Credit System. This would decrease the demand on CFRLF and allow excess funds to be deposited into the General Fund.

CFRLF makes loans under AS 16.10.310(a)(1) sections (A), (B), and (C) as follows:

- Section A Loans. These loans are to individual resident commercial fishers for the purpose of purchasing a limited entry permit, upgrading of existing vessels and gear, or satisfying past due federal tax obligations that may result in the execution upon and involuntary transfer of the fisher's limited entry permits.

To qualify, the applicant must have held a limited entry permit or commercial fishing or crew member license for the year preceding the application and two other years out of the last five years. He/she must have fished in Alaskan waters during those qualifying years. The applicant does not have to demonstrate that he/she cannot obtain financing from a private lending institution or CFAB. The lending limit is \$300,000 less any loan balances outstanding with CFRLF, excluding Section C loans. If an applicant receives a loan under this section, he/she does not qualify to borrow under Section B. In addition, tax obligations are limited to \$30,000 and are a one time only loan.

- Section B Loans. These loans are to individual resident commercial fishers for purposes similar to Section A loans. However, to qualify, the applicant must not have occupational opportunities available other than commercial fishing due to either a lack of training or a lack of employment opportunities in the area of residence or must be economically dependent on commercial fishing for a livelihood and for whom

commercial fishing has been a traditional way of life in Alaska. There is a regulatory requirement¹⁷ that the fisher must be determined not to be eligible for an alternative source of financing. The lending limit is \$100,000 less any other Section B outstanding loan balances with CFRLF. The lending limit for tax obligation loans under this section is the same as for Section A loans.

- Section C Loans. These loans are for the purpose of purchasing quota shares for fisheries in or off the State by individual resident commercial fishers who for any two of the past five years possessed a crewmember or commercial fishing license or permit and who actively participated in the fisheries for which the license or permit was issued. In addition, the fisher must qualify as a transferee for quota shares under the applicable law. As with the Section B loans, the fisher must be determined not to be eligible for an alternative source of financing, which for these loans is required by statute¹⁸ in addition to the regulatory requirement.

In addition to the above loans, in FY 95 CFRLF implemented a refinance program for vessel or gear loans made by other lenders (including CFAB). The fishers must meet the eligibility requirements of Section A, B, or C loans. The lending limit is \$300,000 less any other outstanding loan balances with CFRLF.

According to legislative committee minutes, the refinance program was necessary to allow CFRLF borrowers to take advantage of the new lower interest rate of 8% in effect at the time of the discussions. In addition, the refinance program allows the fishers to combine debt service on permit loans held by CFRLF and vessel loans held by private lending institutions. This restructuring provides a more reasonable repayment schedule and in some cases a lower overall interest rate, as the private lending institution vessel loan interest was higher than CFRLF's interest rate. Refer to Appendix A for the interest rates charged by CFRLF between FY 91 and November 1995.

There appears to be duplicative lending services provided by CFRLF and CFAB for the Section A loans. Both lending organizations can make loans to creditworthy individual fishers for the purpose of purchasing a limited entry permit. As of November 22, 1995, CFRLF had outstanding Section A loans secured with limited entry permits totaling \$40.8 million, while as of October 31, 1995, CFAB held \$18.7 million in loans secured with limited entry permits. The \$40.8 million represented approximately 57% of CFRLF's total outstanding loan portfolio.

Prior to FY 95, CFRLF was authorized to make Section A loans only for the purchase of limited entry permits. In the 1994 legislative session, a bill was adopted authorizing Section A loans for the purposes of upgrading existing vessels and gear and to satisfy past due federal tax obligations. These loans can be secured by limited entry permits, vessels, gear, other assets or any combination thereof. CFAB was already making loans to upgrade vessels and gear that could be secured by any of the aforementioned assets. The current version of HB 284 would

¹⁷See 3 AAC 80.055(b).

¹⁸See AS 16.10.310(a)(1)(C)(iv).

give CFAB the authority to make loans for past due tax obligations secured by limited entry permits.

In FY 95, CFRLF's new authority for Section A loans resulted in about \$269,000 in new loan originations. The total loan originations for the fiscal year were \$18.7 million with \$6.4 million or (34%) of that being Section A loans. CFRLF originated \$4.9 million in refinancing loans from other lenders during FY 95. Of that amount, approximately \$1.7 million were loans held previously by CFAB.

As noted previously, CFAB's loan portfolio is shrinking and if that trend continues the Bank will be at a break even point in approximately two years. The state bank examiners reported that "[c]ompetition for quality loans with other financial institutions and the State of Alaska, Division of Investments, continues to remain strong."

We compared CFAB's loan portfolio for seafood harvesters¹⁹ from 1991 through October 1995 with the loan portfolio of CFRLF. See Appendix A for a schedule of that comparison. From FY 91 through FY 95, CFAB's loan portfolio for seafood harvesters declined from \$37 million to \$25.1 million, a 32% decrease. While CFRLF's loan portfolio remained steady at an average of \$66 million between FY 91 and FY 94, its FY 95 loan portfolio increased by approximately \$7 million over that average.

We are uncertain why CFRLF has continued to hold a larger market share of loans than CFAB. It does not appear to be due to interest rates. In fact, as shown in Appendix A, the interest rates for CFRLF limited entry permit loans have generally been greater than on similar CFAB loans. In four of the past six years, CFRLF interest rates were 1% higher, while in the remaining two years CFAB rates were 1.5% higher. Further, CFAB's rates may be reduced for borrowers/owners who are current on their loan payments through patronage refunds. As discussed in the Organization and Function section, the FY 95 patronage refund effectively reduced the average interest rate paid by 1.1%. CFAB declared and distributed patronage refunds in four of the five last fiscal years.

The market share differential could be due to a perceived difference in credit policies. Delinquency rates have been comparable (within about 2%) for FY 91 through FY 93. Then, for FY 94 and FY 95 CFAB's delinquency rate has been about 5% higher than CFRLF's rate. Further analysis is difficult without reviewing CFRLF's loans, as one reason for a lower delinquency rate could be the practice of modifying loans without collecting the interest due. Thus, through a mere paper transaction a loan can be removed from the delinquency status. CFAB does modify some loans without collecting the interest. The extent of that practice for FY 92 through FY 95 can be seen in Exhibit 3 in the Report Conclusions section of this report. CFRLF does not track the dollar amount of this type of loan modification.

¹⁹CFAB makes loans to commercial fishing processors and agriculture harvesters, processors, suppliers, and marketers, including those in the timber industry. CFRLF only makes loans to individual seafood harvesters.

These and other issues must be reviewed and analyzed by management of CFAB and the Division of Investments, in conjunction with the Cooperative Bank of Spokane (CoBank) representatives. Among the options to be considered, we recommend inclusion of the following:

A. Delete CFRLF's authority to make new Section A loans

The legislature could delete CFRLF's authority to make Section A loans from AS 16.10. The existing loan portfolio of Section A loans would continue to be serviced by CFRLF. CFAB's annual loan originations potentially could increase by approximately \$7 million. As estimated by CFAB, this amount of increased loan volume would not significantly increase its operating expenses as shown below.

Exhibit 5					
CFAB's Estimates of Effect of Increased Loan Volume²⁰					
Number of Loans	100	200	300	400	500
New Loan Volume	\$10,000,000	\$20,000,000	\$30,000,000	\$40,000,000	\$50,000,000
New Borrowings by CFAB	\$ 9,500,000	\$19,000,000	\$28,500,000	\$38,000,000	\$47,500,000
New Operating Expenses	\$3,750	\$42,500	\$111,250	\$195,000	\$243,750
New Net Proceeds	\$165,000	\$295,000	\$395,000	\$480,000	\$600,000
New Personnel	None	1 support	1 loan officer and 1 support	2 loan officers and 1 support	2 loan officers and 2 support

As CFRLF's existing portfolio of Section A loans pays down, any funds in excess of the lower loan demand and the annual statutory transfer²¹ for the needs of the Fisheries Enhancement Revolving Loan Fund could be transferred to the General Fund of the State through legislative action.

B. Delete CFRLF's Section A loan authority and sell these loans to CFAB

This alternative would be the same as alternative No. 1, except CFAB would purchase the existing Section A loan portfolio from CFRLF using borrowed funds from CoBank. A due diligence review of the CFRLF loans would have to be conducted by CFAB and CoBank representatives to determine the quality of the loan portfolio. Those loans meeting CFAB's credit policies and approved by CoBank could be purchased at a negotiated price. As of November 22, 1995, CFRLF's Section A loan portfolio totaled \$44.2 million.

²⁰This schedule was prepared by CFAB staff and presented by CFAB president, Ed Crane, at the board of directors' December 7, 1995, meeting. We did not review any of the underlying assumptions for the amounts presented, nor did we perform any audit procedures in regard to the calculations of those amounts.

²¹Alaska Statute 16.10.340(c) states that if the commissioner determines that CFRLF contains money that is excess to that needed to carry out its purpose, then the commissioner may use the excess money to carry out the purpose of the Fisheries Enhancement Revolving Loan Fund.

As stated in the Background Information section, the Line of Credit Agreement that CFAB has with CoBank requires that CFAB maintain an equity balance (total assets over total liabilities) of not less than \$20,000,000 with a leverage ratio (total assets to total equity) of no greater than 3.5 : 1. Given CFAB's total capital balance of \$26.6 million and that CFAB had an outstanding payable balance to CoBank of \$4.5 million as of May 31, 1995, CFAB could have borrowed approximately another \$57 million from CoBank.

This alternative would provide the General Fund of the State with a lump-sum payment for the Section A loan portfolio. However, a sufficient amount would have to be retained in CFRLF to ensure that the fund could meet its annual loan demand for new Sections B and C loans.

C. Abolish CFRLF and sell all Section A, B, and C loans to CFAB

Under this alternative, the legislature would repeal the Alaska Commercial Fishing Loan Act (AS 16.10). CFAB would receive the authority to make all the loans currently made by CFRLF. A due diligence review of the CFRLF loans would have to be conducted by CFAB and CoBank representatives to determine the quality of the total loan portfolio held by CFRLF. The loans made under Section B and C are considered higher risk as they are made to fishers who do not qualify under normal lending credit policies. For the existing and new loans made by CFAB under these sections, the State may have to agree to continue a share in the risks of these loans. Both the terms of the purchase agreement and the value of the purchase would have to be negotiated.

As of November 22, 1995, CFRLF's total loan portfolio balance was \$71.4 million. Depending on the terms of the purchase, the State might need to use a portion of the proceeds to purchase additional Class C stock in CFAB in order to comply with CoBank's required leverage ratio. A financial analysis would need to be prepared to determine the benefits to the State of increasing CFAB's equity in order to leverage more CoBank funds.

The vice president of CoBank stated that the alternatives merited consideration and CoBank would assist in reviewing them. CFAB and CFRLF have not yet taken a position regarding these alternatives.

In an early version of the bill adopted in 1978 to establish CFAB, there was a clause to repeal the Commercial Fishing Loan Act upon the creation of CFAB. However, this verbiage was deleted from the bill that was ultimately adopted by the legislature. Perhaps the deletion was due to the uncertainty of the success of CFAB as a viable lending institution for the commercial fishing and agriculture industries of the State. CFAB has proven to be a successful lending organization and we believe it is time to reappraise the need for both CFRLF and CFAB.

APPENDIX A

Commercial Fishing and Agriculture Bank

Comparison of CFAB and CFRLF Loan Activity for Seafood Harvesters (millions)

	1991		1992		1993		1994		1995		10/31/95	11/22/95	
	CFAB	CFRLF	CFAB	CFRLF	CFAB	CFRLF	CFAB	CFRLF	CFAB	CFRLF	CFAB	CFRLF	
Loan Balances	\$37.0	\$67.0	\$35.4	\$67.0	\$33.3	\$65.5	\$29.1	\$64.9	\$25.1	\$73.4	\$23.5	\$71.4	
CFRLF Section A Loan Balances	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	\$44.2	N/A	\$40.8	
Delinquent	4.3%	2.8%	12.7%	14.9%	8.7%	6.4%	16.2%	11.1%	10.4%	5.9%	12.8%	3.9%	
Loan Originations	\$15.0	\$13.8	\$4.0	\$6.7	\$4.2	\$10.2	\$1.8	\$7.3	\$3.6	\$18.7	N/A	N/A	
Section A Loan Originations	N/A	\$10.5	N/A	\$5.8	N/A	\$7.7	N/A	\$4.5	N/A	\$6.4	N/A	N/A	
Interest/Fee Income Note	\$5.1	\$7.3	\$3.9	\$5.8	\$3.7	\$8.3	\$3.1	\$5.5	\$2.9	\$6.7	N/A	N/A	
Interest Rate Range	Low	10.50%	10.50%	10.00%	10.50%	9.50%	8.00%	9.50%	8.00%	9.50%	10.50%	9.50%	10.50%
	High	12.00%	10.50%	11.50%	10.50%	11.00%	8.00%	11.00%	8.00%	11.00%	10.50%	11.00%	10.50%
Interest Rate for Limited Entry Permit Loans	9.50%	10.50%	9.50%	10.50%	9.50%	8.00%	9.50%	8.00%	9.50%	10.50%	9.50%	10.50%	

Notes:

- Only loans to seafood harvesters are included in this comparison schedule. As CFRLF only makes loans to seafood harvesters, CFAB's loans to other categories of borrowers have been excluded for comparison purposes.
- CFAB amounts are gross loan receivables as of May 31 of each year and as of October 31, 1995. CFRLF amounts are presented net of estimated uncollectable amounts as of June 30 of each year and as of November 22, 1995.
- CFAB's delinquency rate represents loans 90 days or more past due, while CFRLF uses a 60 day or more past due standard.
- CFAB's interest rate is based on the blended interest rates of its borrowings from CoBank plus 1.5% to 3% depending on the type of collateral obtained. Per AS 16.10.320(a)(2), CFRLF loans "may not bear interest exceeding 10.5 percent." From January 1, 1990 to November 28, 1992, the maximum statutory interest rate was charged. Subsequently, based on a departmental policy change, the rate of interest was set at 2 percent over the prime rate, with a maximum of 10.5 percent.

N/A - Not applicable or not available.

Sources:

- CFAB's annual reports, internal documents, and accounting records.
- State of Alaska's comprehensive annual financial reports.
- Department of Commerce and Economic Development, Division of Investments' reports, internal documents, and accounting records.



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February 16, 1996

Edward E. Crane
President

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FEB 20 1996

LEGISLATIVE AUDIT

Randy S. Welker, Legislative Auditor
Legislative Audit Division
Post Office Box 113300
Juneau, Alaska 99811-3300

Dear Mr. Welker,

Mr. Alan Otness, Chairman of CFAB's Board of Directors, and I have discussed the substance of the preliminary audit report transmitted to him by your letter of February 8. He has directed that I provide this written response. The audit report, presumably in its final version, will be discussed by the entire Board of Directors at its next meeting.

Response to Recommendation

We concur with the logic of the recommendation. Perhaps it is more accurate to say that we agree with the recommendation in total but would urge that it be received and analyzed with extreme care and thoroughness by potential decisionmakers and other third parties.

1. We believe that certain CFRLF activities -- particularly, but not exclusively, Section B loans as referenced in the audit report -- serve a very real and extremely important socio-economic need in Alaska, to an extent which may not be fully appreciated by urban Alaskans. It is perhaps misleading to unqualifiedly refer to those activities as "lending," but their maintenance is critical to the economic fabric of many rural communities. We believe that rational credit standards would not permit CFAB to replicate those CFRLF activities; but we also believe those activities should not be curtailed.

2. While the concept embodied in the recommendation is not totally new and has been the subject of casual discussion over several years, there has not been any analysis of the factors which might be legally relevant to the transfer (on any basis) of loan assets between two non-traditional lenders such as CFRLF and CFAB. The world of commercial law for lenders and lienors is more complex and peril-ridden than a casual observer might suspect. This is not to presume or to suggest any particular difficulty; rather, it is to warn against any premature assumption that a transfer would be "simple."

Randy S. Welker, Legislative Auditor
February 16, 1996
Page 2

3. We have little clear knowledge of the Division of Investment's circumstances and activities. We do have the impression that the CFRLF is a major piece of those activities and that the gross revenue generated by the CFRLF covers a good deal of the Division's "overhead" and, effectively, permits the administration of many other and smaller loan programs and activities. If that impression is correct, any abruptly-imposed or -effected transfer of assets might adversely impact the State's overall interests even though there were "benefit" to CFAB.

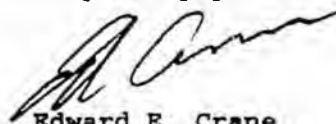
Other Matters

There are two other matters mentioned in the report on which we would like to comment.

First -- As reported, HB 284 as introduced included provision for a "permanent" State of Alaska investment of \$1.0 million. As of this writing, that provision remains in Section 9 of HB 284. We do anticipate that, at the earliest and/or most logical procedural opportunity, HB 284 will be amended to make the changes discussed on pages 17-18 of the report. We mention this only because the report language may inadvertently suggest that HB 284 has already been amended.

We would also like to comment on the several references to CFAB's declining loan volume. That decline is a fact and is indeed of concern to CFAB's Board and management. We would caution, however, that loan volume (i.e., the measurement in dollars only) is but one aspect of CFAB's overall health, and we do not consider the recent trends in total to suggest a critical situation. As a matter of fact, there are strong arguments that -- at least from the sole standpoint of financial effectiveness -- a loan portfolio of \$25 to \$30 million represents CFAB's "optimum" size. Nevertheless, we do want to build CFAB's loan volume and are frustrated that a lender can only obtain new volume by finding/developing new markets or by holding a "sale" (i.e., lowering standards). The aggregate histories of financial institutions demonstrate the folly of the latter approach, while the former is denied to CFAB. It would certainly be nice if your office's report in total, and the discussion of CFAB's development and evolution in particular, could lead today's legislature to recognize that its predecessor iterations have created a "good thing" whose values and services might logically be extended to inadequately-served participants of other Alaska resource-based industries!

Very truly yours,



Edward E. Crane
President

DEPARTMENT OF COMMERCE AND
ECONOMIC DEVELOPMENT

OFFICE OF THE COMMISSIONER

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February 23, 1996

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FEB 23 1996

LEGISLATIVE AUDIT

Mr. Randy S. Welker, CPA
Legislative Auditor
Division of Legislative Audit
P.O. Box 113300
Juneau, AK 99811-3300

Dear Mr. Welker:

Re: Alaska Commercial Fishing and Agriculture Bank preliminary audit report dated
January 12, 1996.

This letter is in response to the above-referenced preliminary audit report.

Recommendation No. 1

The report recommends that "The management of CFAB and the Division of Investments, in conjunction with the Cooperative Bank of Spokane, should perform an analysis to determine whether CFAB should assume the Alaska Commercial Fishing Revolving Loan Fund functions and/or purchase, in whole or part, that fund's loan portfolio."

We have significant concerns with the concept of transferring the functions and/or selling the assets of the CFRLF to CFAB, but are certainly willing to participate in an analysis as recommended in the report. An independent third party, however, may be able to provide a more objective analysis. It would also be important that this analysis not only consider the financial ramifications, but also look at the long-term effect on several important public policy issues.

Our primary concern with this concept is that it attempts to solve a short-term problem at the expense of an extremely successful program. The CFRLF has been helping Alaskan's participate in the fishing industry since the early 1970's. It has received approximately \$60 million in total appropriations during that time, but has not requested any appropriations since 1985. In fact, over \$58 million has been appropriated from the CFRLF (most of it back to the General Fund) in the last ten years. The Fund is completely revolving and has committed nearly \$294 million in 4,600 loans since its inception. A House Research Agency report from October of 1989 described the CFRLF program as "one of the healthiest loan programs ever

created by the State." Admittedly, we have had to modify a number of these loans over the years and use creative financing techniques to help applicants through difficult times. This, however, is one of the real advantages of maintaining this program in the public sector. The primary public purpose of helping Alaskans compete in the commercial fishing business continues to be the main focus. While we have accomplished this without sacrificing the financial integrity of the Fund, the fact remains that a private lender would not have the same degree of flexibility enjoyed by the CFRLF.

This short term fix is not likely to solve CFAB's declining portfolio problem. Permit purchases in general have been declining over the past six years. Loan applications for the CFRLF this fiscal year are running considerably behind last year and unless there are drastic changes in salmon prices, this trend will probably continue. In addition, the increased risk associated with the fishing industry because of current market conditions makes it more difficult for fishers to obtain loans from private sector lenders. A large number of borrowers receiving loans under the CFRLF would not be able to obtain financing through CFAB. This would adversely impact the public purpose of maintaining a predominately resident fishery. Although some of the loans made under Section A would qualify for CFAB financing, there does not appear to be enough of an overlap to justify eliminating the CFRLF. In addition, these stronger borrowers help balance the overall makeup of the CFRLF portfolio and continue a positive cash flow to the Fund.

CLARIFICATIONS

There are several items in the report that need further clarification. Page 25 contains a description of the loan purposes authorized under Sections A and B of AS 16.10.310(a)(1). Under Section A, loans to upgrade existing vessels and gear may only be made to improve the quality of Alaska seafood products (such as refrigeration). The vast majority of loans made under Section A continue to be for the purchase of limited entry permits. Under Section B, the report indicates that loans may be made for similar purposes. While it is true that loans to purchase limited entry permits, satisfy past due federal tax obligations, or upgrade vessels and gear to improve seafood quality may be made under either Section A or B, loans to purchase new or existing vessels and loans to purchase gear or upgrade vessels that are not specifically for the improvement of seafood quality may only be made under Section B.

On page 26 of the report, there is an explanation of the purpose of the vessel refinance program that was passed by the 1994 legislature (SB 251). The report indicates that the primary purpose of the refinancing section was to allow fishers an opportunity to take advantage of lower interest rates and more favorable loan terms which resulted in lower payments. This certainly was one of the primary considerations, however there was another factor worth mentioning. Following the 1993 season, the Division traveled to communities to work with fishers experiencing financial difficulties because of a disastrous season. While many of the fishers were extremely grateful for the assistance in restructuring loans, several indicated that in spite of our help they were in danger of losing their fishing operation because their private lender was unable or unwilling to restructure their vessel and gear debt. Refinancing is the last lending priority (3 AAC 80.055(a)) and as a result of increased demand in other areas, this portion of the program was closed down in March of 1995 and is projected to remain closed for the balance of FY 96.

On page 27, the report theorizes that the market share differential between the CFRLF and CFAB could be due to "a perceived difference in credit policies." Based on input from applicants and past experience with applications that have been forwarded to CFAB for consideration, the credit policy differences are more than just perceived. This is understandable as private sector lenders are more conservative by nature. Likewise, we utilize extension policies that are more creative than usually found in the private sector. Deferring interest to maturity, extending and reamortizing loans, utilizing oil spill assignments, and refinancing existing loans to a lower interest rate are all tools commonly used to help borrowers through difficult years. Generally, private lenders do not have the same degree of flexibility because of various financial requirements such as those mentioned in the last paragraph on page 6 of the report.

OPTIONS

Pages 28 and 29 deal with three options that are recommended for consideration by the report. They are as follows:

A. Delete CFRLF's authority to make new Section A loans

Many of the loans currently being made under Section A would not be made by CFAB. There are a number of applicants who qualify for both Section A and B and choose to apply under Section A because of the larger loan limit (\$300,000 vs. \$100,000). These are individuals that would not meet private sector lending criteria. In addition, there are other Section A borrowers who simply do not meet CFAB's more conservative lending criteria. Because CFAB and the CFRLF are the only two entities that can secure a loan with a limited entry permit, these individuals would be unable to obtain financing elsewhere. This would frustrate the primary public purpose of the CFRLF, which is to maintain and promote a predominately resident fishery.

Over the past 16 years, both the CFRLF and CFAB programs have provided financing to Alaskan fishers to accomplish this goal. These efforts have been successful, but it has taken both programs (one public, one private) to meet this goal. According to statistics provided by the Commercial Fisheries Entry Commission (CFEC Report Number 95-12N), Alaskan residents received 81.6% of permits issued between 1975 and 1994. By the end of 1994 Alaskans still held 77.6%. Less than half of this decrease was due to transfers. Revocation and migration were two other factors included in the decrease. According to CFEC, the CFRLF has provided financing for 27.6% and CFAB 3.5% of all permits purchased by Alaskans. Eliminating Section A loans from the CFRLF will eliminate a permit financing source for a large number of Alaskan fishers.

B. Delete CFRLF's Section A loan authority and sell these loans to CFAB

The problems associated with eliminating Section A loans from the CFRLF has been discussed under option A above. In addition, this option contemplates selling the existing Section A

portfolio to CFAB. It is unlikely that CFAB and its lender, CoBank, would be willing to purchase this portfolio without a substantial discount. As the report suggests, falling fish prices, declining permit values, and competition from foreign countries has substantially increased the risk of lending in an already volatile industry. As a result, we have had to modify a substantial number of these loans and utilize creative restructuring techniques to help fishers survive difficult seasons. In addition, a number of borrowers under this section would not have qualified financially for CFAB in the first place. Thus while the State may enjoy a one time lump-sum payment to the General Fund from the sale of this portfolio, it is likely that this payment will be a fraction of what could be reaped over the long-term if this portfolio was left intact.

Several other questions come to mind concerning the sale of existing CFRLF loans. Will CFAB's (CoBank's) policies provide the same kind of flexibility and creativeness utilized by the CFRLF to deal with some very difficult times forecasted in the immediate future? Will the borrowers become members of CFAB? Will they be required to purchase class A and class B stock? Where will the funds for those purchases come from? The impact on existing borrowers should also be considered.

C. Abolish CFRLF and sell all Section A, B and C loans to CFAB

The concerns relating to the elimination of Section A loans are mentioned above and many of those comments would also apply to elimination of the other portions of the CFRLF. Section B and C loans are only made to individuals that do not qualify for other financing and, for the most part, these loans would be considered high risk. Section B was actually created to fill a financing void in rural Alaska that was not adequately being met by the private sector. While CFAB was created to help serve a public purpose, it is by definition a private lender with fiduciary responsibilities to its members and its lender (CoBank). It is unlikely that they would be anxious to make loans to many of the fishers currently receiving loans under Sections B and C of the CFRLF. It is also unlikely that they would be interested in purchasing many of the loans contained in this portfolio without a substantial discount.

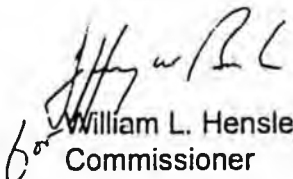
One further comment relating to the last paragraph on page 29 which contemplates the reason for not deleting the CFRLF at the time that CFAB was created. The report theorizes that the legislature was unsure as to whether CFAB would become a viable lending institution for the commercial fishing and agricultural industries in the State. There is an overall policy consideration of keeping limited entry permits in the hands of Alaskans and having two programs available (one public and one private) significantly increases the likelihood of successfully accomplishing this goal. As it turned out, this decision appears to have been a good one, as over 1,800 permits have been purchased with loans through the CFRLF. In addition, over 2,600 vessel and gear loans have been made, as well as 159 tax obligation loans which prevented the IRS from seizing the permits owned by these individuals. Many of these borrowers were located in rural areas of the State. They would be considered high risk and would not have been able to obtain financing through a private source.

SUMMARY

In conclusion, both the CFRLF and CFAB programs serve a valuable purpose. They both help Alaskan's compete in the fishing industry. As a private lender, CFAB has been able to help fishers that meet more traditional lending criteria. The CFRLF has been able to help fishers that fall outside normal private sector lending guidelines. It has taken both programs working toward a mutual goal to help stem the flow of limited entry permits from the hands of Alaskans. In addition, the CFRLF has been especially active in rural Alaska through various outreach programs. We are concerned that if the CFRLF program is severely restricted or eliminated, these public purposes will not be accomplished as effectively.

Thank you for the opportunity to comment on this report.

Sincerely,


William L. Hensley
Commissioner



Alaska State Legislature

House of Representatives
Special Committee on Fisheries

RE: AMENDMENT TO HB 284

TO BE OFFERED BY REP. AUSTERMAN
March 11, 1996

The amendment offered in the House Finance Committee affects only Sections 8 and 9 of HB 284 and is best explained by addressing those sections in reverse order.

Section 9 of HB 284, as it passed out of the Fisheries and Labor & Commerce committees, includes a provision for the state to maintain a permanent \$1.0 million stock investment in CFAB. The purpose of that feature was to provide foundation for a future legal assertion that CFAB is acting as an agent of the state with respect to its financing of limited entry permits. The amendment removes that feature, leaving CFAB obligated to return the entire state investment to the state.

The amendment adds a new (third) sentence to Section 8 of HB 284. That sentence provides a more precise and clearly limited expression of CFAB's relationship to the state in its financing of limited entry permits.



Alaska State Legislature

House of Representatives
Special Committee on Fisheries

SPONSOR STATEMENT

House Bill 284

"An Act relating to the Alaska Commercial Fishing and Agricultural Bank."

House Bill 284 enacts changes to AS 44.81 and AS 16.43. These statutes contain the enabling language of the Alaska Commercial Fishing and Agricultural Bank (CFAB) and set forth the operating procedures, structure, and authorities of the bank. Most of the changes contained in HB 284 are for purposes of clarification.

It has become increasingly apparent that the statutes which established CFAB require some adjustment to meet the needs of evolving commercial law and 1990s commercial fishing economies. Since CFAB's inception in 1978, there has been little modification or refitting of the statutes.

Perhaps the most significant change contained in HB 284 is the move to permanent ownership of CFAB by the state. The state's initial investment in CFAB was \$32 million in stock. This stock was to be retired by the year 2000. Section 9 of the bill will require CFAB to repurchase the state's shares in the bank that exceed \$1 million ensuring a permanent investment by the state and reinforcing CFAB's public purpose mandate. At present, CFAB has retired nearly \$22 million of the state's stock, and, at the current rate, will have retired all but \$1 million by mid-1998.

The other most significant changes appear in Section 20. This section broadens the purposes and circumstances under which a fisherman may use a limited entry permit as collateral for securing CFAB loan. CFAB is the only private commercial lender with the authority to accept a consensual lien on a limited entry permit. The changes in Section 20 reflect the needs of new economic pressures on resident fishermen.

Some of these changes include loans for the purchase or lease of quota shares, individual fishing quotas or other licenses; the purchase, construction, maintenance, repair, or improvement of commercial fishing boats, sites, gear or equipment; and, other purposes which will enhance diversification.

House Bill 284 will help the Alaska seafood industry compete more effectively in the world market as it proceeds to the twenty-first century. The state will benefit through more revenue and more jobs through industry diversification. We would respectfully request your support.

DIVISION OF LEGAL SERVICES
LEGISLATIVE AFFAIRS AGENCY
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MEMORANDUM

February 22, 1995

SUBJECT: Sectional Summary of CFAB Bill Draft
(Work Order No.9-LS0584\F, 2-14-95)

TO: Representative Alan Austerman
Attn: Amy Daugherty

FROM: 
Theresa Bannister
Legislative Counsel

You have requested a sectional summary of the above-described bill draft. Please use this summary rather than the summary of February 17, 1995. This summary corrects a misstatement made in Section 9 of the earlier summary and rewrites the section.

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

Section 1 corrects the CFAB cross-references to conform to the new CFAB provisions.

Section 2 corrects the CFAB cross-references to conform to the new CFAB provisions.

Section 3 corrects the CFAB cross-references to conform to the new CFAB provisions.

Section 4 corrects the CFAB cross-reference to conform to the new CFAB provisions.

Section 5 corrects the CFAB cross-reference to conform to the new CFAB provisions.

Section 6 corrects a CFAB cross-reference to conform to the new CFAB provisions.

Section 7 corrects a CFAB cross-reference to conform to the new CFAB provisions.

Section 8 establishes the Alaska Commercial Fishing and Agriculture Bank. Provides that the exercise of bank powers is considered to be for a public purpose. Exempts the bank from the Alaska Banking Code and the Alaska Cooperative Corporation Act in the bank's structure, operations, and exercise of its powers.

Section 9 authorizes the bank to issue certain shares of stock in order to acquire and accumulate capital. Allows the state, through the Department of Revenue, to purchase the stock shares. Requires the bank to repurchase the state's shares in the bank that exceed \$1,000,000. Sets a time for the repurchase. Authorizes the commissioner of commerce to appoint a receiver to manage the bank until the shares are repurchased, if the bank fails to make the repurchase within the set time. Gives the nonvoting, preferred stock shares of the state priority for redemption if there is a liquidation of the bank, after payment of all legal obligations of the bank.

Section 10 establishes a board of directors to govern the bank. Establishes the number of directors, the method of appointment and election, the duration of the terms, the staggering of the terms, the bases for removal from the board, the method of removal, the quorum for transacting business, the election of officers for the board, and the compensation the members will receive. Prohibits a board member from voting on a bank transaction under this chapter if the member is a party to the transaction.

Section 11 contains provisions about the officers and employees of the bank. Requires the board to employ a president. Restricts who can be president. States that the president serves at the pleasure of the board. Requires the board to appoint those officers provided for in the bylaws and as the board determines necessary for the bank. Limits who can be an officer. Authorizes the president to hire employees for the bank. Gives approval of salaries to the board. States that employees are not state employees and exempts them from the public employees retirement system chapter.

Section 12 states that the bank is to be structured and run as a cooperative corporation. Directs the board to issue membership stock shares. States that the membership stock may be issued to persons eligible to transact business with the bank. Allows the board to establish one or more mechanisms by which certain persons are required to provide or establish capital ownership in the bank.

Section 13 authorizes the board to adopt, alter, amend, or repeal bylaws for running the bank.

Section 14 allows the bank to indemnify its directors, officers, and employees. Allows the bank to maintain insurance on their behalf. Requires the indemnification and insurance to comply with an indemnification and insurance provision in the corporations code.

Section 15 states that the state pledges to and agrees with a lender to the bank that the state will not change the bank's powers and rights under this chapter to fulfill the terms of a contract made by the bank with the lender, or otherwise impair the lender's rights and remedies with regard to the bank. Indicates the limitations of the pledge.

Section 16 requires the board to publish an annual report to the bank's members and make the report available to the governor, legislature and the public. Indicates what the report must contain. Authorizes the board to publish other appropriate reports.

Section 17 lists the general powers of the bank.

Section 18 describes the lending powers of the bank, including to whom and for what purposes the bank may lend. The powers include making loans for limited entry permits and obtaining the pledge of a limited entry permit as security for a loan.

Section 19 allows a limited entry permit to be pledged as security for a loan. Requires the bank, after the loan has been paid, to certify the repayment to the Commercial Fisheries Entry Commission, so that the Commission can amend the permit certificate to list the equitable owner as the holder. Requires the annual permit cards to be in the name of the equitable owner, who remains responsible for compliance with permit requirements. States that co-borrowers and guarantors on the loan have no right in the pledged permit. Allows the equitable owner of a pledged permit to nominate a person to whom the permit may be transferred if the pledge is foreclosed.

Section 20 lists the purposes for which a permit may be pledged as security for a loan from the bank.

Section 21 adds five sections.

Sec. 44.81.241 requires the bank to notify the borrowers and guarantors (on a loan for which a limited entry permit is pledged) if there is a default on the loan. Lists what information must be included in the notice. This information includes a statement that the default may be cured under certain conditions.

Sec. 44.81.243 provides that if the borrowers and guarantors (on a loan for which a limited entry permit is pledged) fail to cure a default, the entire loan indebtedness becomes due and the bank can take any legal action to collect the loan. If the bank forecloses on the permit pledge, the section allows the bank to proceed with the foreclosure and its other remedies in any order the bank selects.

Sec. 44.81.245 allows the bank to foreclose on a permit pledge by sending a notice of foreclosure. Specifies how the notice is to be sent and what the notice must include.

Sec. 44.81.247 states that the equitable interest in the pledged permit terminates automatically without further notice after the foreclosure notice if the loan is not paid in full within the time allowed. Directs the Commercial Fisheries Entry Commission to cancel the entry permit card of the equitable owner of the permit when the commission receives a certificate of termination containing a copy of the required notices.

Sec. 44.81.249 authorizes the bank to cancel its initial notice of default and a foreclosure notice. Authorizes the bank to extend the time for curing the default. Allows the bank to personally deliver the notices rather than using certified mail.

Section 22 directs the bank, after foreclosing an entry permit pledge, to determine if the permit is subject to the buy-back program. If it is, directs the bank to offer the permit to the commission for the price of the outstanding indebtedness on the loan.

Directs the bank to sell the permit to an eligible person if the permit is not subject to the buy-back program or if the commission fails to buy back the permit within a certain time. Requires the bank to give preference to a state resident under certain circumstances. Requires the bank to pay the borrower the sale proceeds that exceed the indebtedness.

Allows the equitable owner or former equitable owner to nominate a qualified person to assume the loan at any time before foreclosure or within 30 days after foreclosure. Requires transfer of the permit to the nominee when the nominee assumes the loan.

States that the section doesn't affect certain other remedies of the bank.

Section 23 provides for the legislative auditor to cause the bank to be audited. Gives the legislative audit division access to the bank's records. Gives the division specific powers to carry out the audit.

Prohibits the legislative auditor and the auditor's employees from disclosing information acquired during an audit, unless required by law or court order.

Requires the bank to be audited annually by independent outside auditors. Allows the legislative auditor to confer with the outside auditors and to review the audit work papers. Directs the bank board to engage the auditors. Requires the bank to submit copies of the audit to the legislative auditor.

Requires state bank examiners to perform an annual qualitative examination and evaluation of the banks. Provides for payment of a fee for the examination. Directs the examiners to report to the board on the examination. Requires the examiners to prepare a summary report evaluating the bank's loan portfolio quality and addressing bank policies, practices, and management. Directs the examiners to distribute copies of the summary report to the bank, the legislature, and the governor. Subjects the other records related to the examination to a confidentiality and retainage provision in the state banking code.

Section 24 allows the bank to revoke certain distributions, redemptions, and payments if the distribution, redemption, or payment remains unclaimed for a specified period of time. Indicates that the revoked amount may revert to an unallocated capital account of the bank under certain conditions. Provides that the distribution, redemption, or payment is not subject to the state's unclaimed property provisions.

Section 25 amends the definition of "member of the bank" for the CFAB chapter.

Section 26 adds new definitions to the CFAB chapter.